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Attorneys for Strider Construction Co., Inc.

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO. INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01-22-10932

DECLARATION OF TIMOTHY
YEDINAK IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO ORDER
RETURN OF STATE PROPERTY

I, Timothy Yedinak, testify as follows:

1. I am over the age of eighteen, competent to testify, and have personal knowledge of the matters herein.
2. I am an employee of Plaintiff Strider Construction Co., Inc. and served as Strider's Project Manager on the Priest Lake Outlet Dam Improvement Project (the "Project"). In my capacity as Project Manager on the Project, I was onsite regularly and working out of Strider's onsite officer

(trailer). I interacted with various owner representatives from the Idaho Department of Water Resources (“IDWR”) and IWRB as well as the consultants hired by them (collectively “Owner”).

3. In August 2020, Strider executed its Contract with Defendant Idaho Water Resource Board (“IWRB”) for the Project. The Project scope of work included the removal and disposal of old J-seals from the eleven Tainter gates at the dam and the fabrication and installation of new J-seals. Attached as **Exhibit A** is a true and correct copy of a portion of the Contract’s Specifications.

4. During construction, after roughly half of the Tainter gates had had their J-seals removed and replaced, the Owner raised concerns that a couple of gates were leaking and the new seals were not completely water tight. This was raised and discussed during regular project meetings between the Owner and Strider. It was also raised during site visits by the Owner.

5. I recall a site visit from Michelle Richman and Mike Morrison (from IDWR) in late 2021 or early 2022 during which the seals were discussed. At that time there was a dumpster onsite filled with old J-seals that had been removed from the Tainter gates. I recall cutting a small sample piece of old J-seal (approximately two feet long) from the material in the dumpster and showing it to Michelle and Mike.

6. At a later site visit in March 2022, I again showed the sample of old J-seal to various Owner representatives and compared it to a sample piece of new J-seal. Attached as **Exhibit B** is a true and correct copy of an internal email thread obtained from IWRB in discovery containing notes from that site visit.

7. I made no secret of the fact that I had a sample of the old J-seal in my office in the trailer onsite. No one associated with the Owner ever indicated that this was a problem or in any way expressed the view that I had stolen state property by retaining a piece of the old J-seal.

8. No one associated with the Owner ever asked me to provide them with their own samples. Had they asked, I would have gone to the dumpster and cut another sample piece of the old J-seal for them. Had anyone associated with the Owner gone into the dumpster to cut a sample, I would not have stopped them. It was trash.

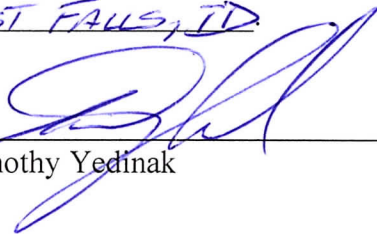
9. After Strider terminated the Contract due to the Stop Work Order and nonpayment, we demobilized and the sample of old J-seal was taken to Strider's office in Wenatchee where it has remained since. Attached as **Exhibit C** is a photograph I took on March 28, 2023 showing the sample of old J-seal and the sample of new J-seal in Strider's office.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: This 2nd day of June, 2023 at PAST FALLS, ID

By: _____

Timothy Yedinak



CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2023, a true and correct copy of the within and foregoing instrument was served upon:

Garrick L. Baxter, ISB #6301

Garrick.baxter@idwr.idaho.gov

Meghan M. Carter, ISB #8863

Meghan.carter@idwr.idaho.gov

Steven B. Andersen, ISB #2618

sandersen@kmclaw.com

Jennifer Reinhardt-Tessmer, ISB #7432

jtessmer@kmclaw.com

*Attorney for Defendant Idaho Water
Resource Board*

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

DATED: This 2nd day of June, 2023.

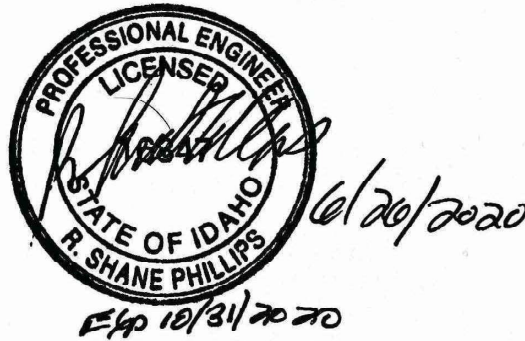
/s/ John H. Guin

EXHIBIT A

PRIEST LAKE WATER MANAGEMENT PROJECT OUTLET DAM IMPROVEMENTS

TECHNICAL SPECIFICATIONS

Division 01
Division 02
Division 31
Division 35
Appendices



Division 03
Division 05

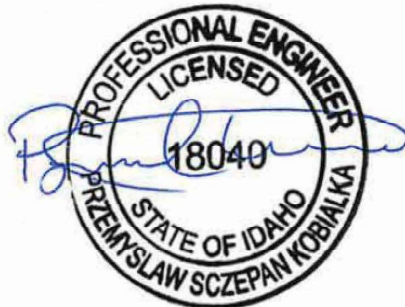


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01 40 00	Quality Requirements
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DIVISION 1 – GENERAL REQUIREMENTS
Section 01 20 00 – Measurement and Payment

and provide them to the designated receiver, not later than the end of shift, for reconciliation. Tickets for loads not verified as delivered will receive no pay.

- i. Stone Products: Types of material shall not be mixed in any given load.
- j. Over placement: In the event of over- or under-placement of material with respect to the lines and grades shown on the Contract Drawings, the following conversion for pay quantities shall be used:
 - (1) When the quantity of material is determined by weight and must be computed by the volume, the weight will be determined by calculating the in-place gross volume of material and multiplying that volume by the specific gravity of the material as measured in laboratory tests. The weight will then be reduced by 28 percent to account for voids in the gross volume for the Stone.

1.02 MEASUREMENT METHOD – VOLUME IN PLACE

Volume (excavation and fill) – Measured by the average-end-area method or by the finite element analysis method utilizing digital terrain modeling techniques, based on pre- and post- construction surveys and intermediate/progress surveys (as outlined in Technical Specification 01 71 23 Construction Surveying).

1.03 MEASUREMENT FOR PAYMENT:

- A. Measurement for payment will be at the unit price as stipulated in the bid form for the items listed below. Payment shall be considered full compensation for furnishing all labor, materials, and equipment to complete the work as specified.
- B. The bid items are for work as shown in the Contract Drawings.
 - 1. Mobilization/Demobilization:
 - a. Measurement: Lump Sum.
 - b. Description: Work under this item shall include mobilization and demobilization of construction equipment and costs of preparatory work and operations performed by the Contractor that are not defined as a part of a payment item.
 - c. Payment:
 - 1) 40% after completion of 5% of the total contract amount of other bid items have been earned.
 - 2) 80% after completion of 20% of the total contract amount of other bid items have been earned.

DIVISION 1 – GENERAL REQUIREMENTS
Section 01 20 00 – Measurement and Payment

- 3) 100% after completion of all work on the project has been completed, including cleanup and acceptance of the project by the Owner's Representative.
 2. Environmental Protection, Site Prep, & Site Restoration:
 - a. Measurement: No unit of measurement shall apply to the lump sum price for "Environmental Protection, Site Prep, & Site Restoration".
 - b. Measurement: Lump Sum (LS).
 - c. Description: Work under this item shall include all materials, supplies, equipment, and labor required for fabricating, constructing, installing, and maintaining and repairing environmental protection measures as needed for temporary erosion and sediment control (TESC), traffic control, water quality protection and compliance with permit conditions, and spill prevention as described in Sections 01 57 13 – Temporary Erosion and Sediment Control, 01 35 43 – Environmental Controls of these Technical Specifications and as shown in the Contract Drawings. Work elements for this item include, if required, but are not limited to:
 - 1) Water Quality Monitoring and Control Plan
 - 2) Water Quality Control
 - 3) Water Quality Monitoring
 - 4) Spill Prevention, Control and Countermeasure Plan
 - 5) TESC Plan and Compliance
 - 6) BMPs (silt fencing, construction fencing, debris boom, silt curtain, etc.) as needed for compliance with permits
 - 7) Noise and air pollution controls
 - d. Payment: Lump Sum (LS).
 3. Temporary Access Road/Structure and River Crossing
 - a. Measurement: Lump Sum (LS).
 - b. Description: Work under this item shall include all materials, supplies, equipment, and labor required for designing, constructing, maintaining, and protecting temporary access roads and providing access to the outlet dam and apron as defined in the Technical Specifications and as shown on the Contract Drawings.
 - c. Payment: Lump Sum (LS).
 4. Construction Surveying:

DIVISION 1 – GENERAL REQUIREMENTS
Section 01 20 00 – Measurement and Payment

- a. Measurement: Lump Sum (LS).
 - b. Description: Work under this item shall include all materials, supplies, equipment, and labor required for terrestrial and hydrographic surveying work required to construct the project components as defined in Technical Specification Section 01 71 23 – Construction Surveying. The construction survey work includes establishing control and performing staking, electronic templates, pre-construction survey, pre- and post-excavation surveys, intermediate/progress surveys, and post-construction survey, as described in these Technical Specifications and as shown in the Contract Drawings.
 - c. Payment: Lump Sum (LS).
5. Cofferdams and Dewatering
- a. Measurement: Lump Sum (LS).
 - b. Description: Work under this item shall include all materials, supplies, equipment, and labor required to design, complete, maintain, and remove all cofferdam, stream diversion, and dewatering activities, as described in Technical Specification Section 02 20 00 – Cofferdams and Dewatering and as shown on the Contract Drawings. Work also includes development and refinement of a Construction Phasing & Dewatering plan to complete the work.
 - c. Payment: Lump Sum (LS).
6. Excavation & Disposal - Streambed
- a. Measurement: Per cubic yard (CY); measurement will be calculated on an in-situ basis for cubic yards removed within the work area presented on the Plans using pre-construction and intermediate/progress surveys in accordance with Section 01 71 23 Construction Surveying. The quantity of material disposed of upland will be confirmed by truck measurement.
 - b. Description: Work under this item shall include all materials, supplies, equipment, and labor required to complete the excavation and disposal of existing streambed material and riprap, in accordance with the Contract Documents. This item includes removing 2,010 CY of material from the stream channel and transporting the material to the Contractor-provided upland disposal site, in accordance with these Technical Specifications. The total excavated volume shall be determined by pre- and post-excavations surveying of in-place excavated areas. Payment for the work includes all work

DIVISION 1 – GENERAL REQUIREMENTS
Section 01 20 00 – Measurement and Payment

incidental to excavation and upland disposal of excavated material as described in these Technical Specifications and as shown in the Contract Drawings. Work also includes development and refinement of a work plan to complete the excavation work. All excavation work conducted outside the lines and grades shown in the Contract Drawings will not be paid.

- c. Payment: Per cubic yard (CY).
7. Concrete – Apron Scour
- a. Measurement: Per cubic yard (CY).
 - b. Description: Work under this item shall include all materials, supplies, equipment, and labor required to place 10 CY of lean concrete underneath portions of the existing apron to fill existing scour holes or undermining resulting from excavation operations as described in these Technical Specifications and as indicated in the Contract Drawings.
 - c. Payment: Per cubic yard (CY).
8. Reinforced Concrete – Apron Extension
- a. Measurement: Per cubic yard (CY).
 - b. Work under this item shall include all materials, supplies, equipment, and labor required to construct 365 CY of the reinforced concrete apron extension, associated joints, and connections to the existing dam as described in these Technical Specifications and as indicated in the Contract Drawings.
 - c. Payment: Per cubic yard (CY).
9. Concrete Repair – Pier 6 Spalled Areas
- a. Measurement: Per cubic foot (CF).
 - b. Description: Work under this item shall include all materials, supplies, equipment, and labor required for saw cutting/chipping; capture and disposal of all deteriorated concrete debris, abrasive grit, water from repair activities. Included shall be all labor, equipment, and materials required to prepare and install the 36 CF repair materials as described in these Technical Specifications and as indicated in the Contract Drawings.
 - c. Payment: Per cubic foot (CF).
10. Miscellaneous Steel – Strengthen Tainter Gate Skin Plate

DIVISION 1 – GENERAL REQUIREMENTS
Section 01 20 00 – Measurement and Payment

- a. Measurement: Per bay (BAY).
 - b. Description: Work under this item shall include all materials, supplies, equipment, and labor required to field measure, fabricate, and install vertical skin plate stiffeners in all 11 bays. Work shall also include field drilling, repair coatings, angles, bolts, nuts, and washers as described in these Technical Specifications and as indicated in the Contract Drawings.
 - c. Payment: Per bay (BAY).
11. Miscellaneous Steel –Tainter Gate Extension
- a. Measurement: Per bay (BAY).
 - b. Description: Work under this item shall include all materials, supplies, equipment, and labor required to field measure, fabricate, and install tainter gate extension in all 11 bays. Work shall also include field drilling, repair coatings, angles, bolts, nuts, and washers as described in these Technical Specifications and as indicated in the Contract Drawings.
 - c. Payment: Per bay (BAY).
12. Miscellaneous Steel – Replace Trunnion Pins
- a. Measurement: Per bay (BAY).
 - b. Description: Work under this item shall include all materials, supplies, equipment, and labor required to field measure, fabricate, and install tainter gate replacement trunnion pins in all 11 bays. Work shall also include temporary support of existing gates, bolts, nuts, and washers as described in these Technical Specifications and as indicated in the Contract Drawings.
 - c. Payment: Per bay (BAY).
13. Replace J-Seals
- a. Measurement: Per bay (BAY).
 - b. Description: **Work under this item shall include** all materials, supplies, equipment, and labor required for **removal and disposal of existing J-Seals** and fabricating, installing, and installation of new J-Seals in all 11 bays as described in these Technical Specifications and as indicated in the Contract Drawings.
 - c. Payment: Per bay (BAY).
14. Repair Expansion Joints – N & S Abutment Wing Walls

EXHIBIT B

From: Morrison, Mike
Sent: Tuesday, March 29, 2022 11:05 AM MDT
To: John Dawson <John.Dawson@mottmac.com>
Subject: RE: 3/24 Priest Lake visit

That works. If you find anything else, let me know.

M^2

From: John Dawson <John.Dawson@mottmac.com>
Sent: Tuesday, March 29, 2022 10:51 AM
To: Morrison, Mike <Mike.Morrison@idwr.idaho.gov>; Shem Kobialka <Przemyslaw.Kobialka@mottmac.com>; Michelle Gostic <Michelle.Gostic@mottmac.com>
Cc: Keith Hall <kph@deainc.com>
Subject: RE: 3/24 Priest Lake visit

Mike,
See below. I will look around for more examples.

DIVISION 5 – METALS
Section 05 12 00 – Structural Steel Framing

- C. Align and adjust various members that form part of complete frame or structure before permanently fastening. Before assembly, clean bearing surfaces and other surfaces that are in permanent contact with members. Perform necessary adjustments to compensate for discrepancies in elevations and alignment.
 - 1. Level and plumb individual members of structure.
 - 2. Make allowances for difference between temperature at time of erection and mean temperature when structure is completed and in service.
- D. Install radial gates in such a way that the rubber J-seals are not damaged and proper sealing will occur when upstream water levels are restored.

Best regards,
John Dawson, PE
Principal Project Manager - Ports and Coastal
D 1-206.487.1307
john.dawson@mottmac.com

From: Morrison, Mike <Mike.Morrison@idwr.idaho.gov>
Sent: Tuesday, March 29, 2022 9:31 AM
To: John Dawson <John.Dawson@mottmac.com>; Shem Kobialka <Przemyslaw.Kobialka@mottmac.com>; Michelle Gostic <Michelle.Gostic@mottmac.com>
Cc: Keith Hall <kph@deainc.com>
Subject: RE: 3/24 Priest Lake visit

That sounds like a good idea.

I perused the contract, drawing notes, and specifications and was unable to find any unequivocal statement that the contractor is responsible for making the Tainter gates leak proof. If y'all could help me find this, I'd appreciate it.

Mike

From: John Dawson <John.Dawson@mottmac.com>
Sent: Tuesday, March 29, 2022 10:18 AM
To: Morrison, Mike <Mike.Morrison@idwr.idaho.gov>; Shem Kobialka <Przemyslaw.Kobialka@mottmac.com>; Michelle Gostic <Michelle.Gostic@mottmac.com>
Cc: Keith Hall <kph@deainc.com>
Subject: RE: 3/24 Priest Lake visit

Mike, Would like to have a conversation with you about this and next steps. Sounds like we need some explanation from Strider as well.

What does your availability look like this week?

Best regards,

John Dawson, PE

Principal Project Manager - Ports and Coastal

D 1-206.487.1307

john.dawson@mottmac.com

From: Morrison, Mike <Mike.Morrison@idwr.idaho.gov>

Sent: Monday, March 28, 2022 7:57 AM

To: John Dawson <John.Dawson@mottmac.com>; Shem Kobialka <Przemyslaw.Kobialka@mottmac.com>; Michelle Gostic <Michelle.Gostic@mottmac.com>

Subject: FW: 3/24 Priest Lake visit

Hi folks:

We asked Doug Jones to come-out of retirement in order to visit the dam site and inspect the J seals. Here are his observations.

Mike

From: Richman, Michelle <Michelle.Richman@idwr.idaho.gov>

Sent: Friday, March 25, 2022 6:10 PM

To: Morrison, Mike <Mike.Morrison@idwr.idaho.gov>; Keith Hall <Kph@deainc.com>

Cc: Frederick, Adam <Adam.Frederick@idwr.idaho.gov>

Subject: FW: 3/24 Priest Lake visit

Mike and Keith,

Per Doug's email below, I think it would be valuable for us to have the samples of the old J seal material and the new J seal material for comparison. Is there any way Tim could provide us with those samples? As for the boulder, Adam (copied) has photos, and Keith probably has photos so everyone is aware of the situation.

The cable attachment location seems significant and worth further exploration.

I will be out of town all of next week and unable to attend the Wednesday meeting. I'm hoping to keep the ball rolling by passing along Doug's email.

Thanks,
Michelle

From: Doug Jones <dougjones.geol.engr@gmail.com>

Sent: Friday, March 25, 2022 4:10 PM

To: Richman, Michelle <Michelle.Richman@idwr.idaho.gov>

Subject: 3/24 Priest Lake visit

On March 24 I visited Priest Lake Dam at the invitation of Michelle Richman for the purpose of observing the gate seals and state of the structure at the close of Season 2 construction. Michelle could not attend and requested I share with her my impressions based on Strider's discussions of the work completed to date.

I arrived a little after 9 AM and rendezvoused with Bob Stutz, Roy Peckham, Adam Frederick, Emily Barnes, and Keith (David Evans Assoc) in Kokanee Park. We discussed the issues that have come up during the two past construction seasons. In particular leakage in the gate seals hinders the ability to maintain lake level late in the summer when lake inflows are at a minimum. Gate 3 seal was installed in Phase 1 work and was the only gate to exhibit unacceptable leakage; some leakage is present at other gates. This was pointed out to Strider ahead of the Phase 2 work with the expectation that it would be addressed this season. Gate 3 leakage was not dealt with this past construction season.

Another concern was brought forward by Bob and Roy, Principal and Assistant Operators (respectively), regarding a large rock from cofferdam work that was left in the river about 50 feet downstream of the dam and a few feet from the south downstream shore. Bob expressed that high spring flows may cause erosion of the bank and lead to bank instability.

The group then proceeded to the Strider office trailer to meet with Tim Yednak. Tim summarized the gate problem and challenges encountered during installation. He had samples of the old and new seal material on hand with sufficient lengths to display the bolt holes cut through the material. It was my observation, and discussed among the group, that the wall cross section of the "bulb" portion of the new gate seal was much thicker and stiffer than the original seal. The stiffer material may prevent sufficient deformation under hydrostatic pressures to fill the gap between the gate and the glide. Tim also had copies of the original construction drawings from 1978. The drawings illustrate that the cable was originally supposed to be installed differently than was accomplished.

As presently configured the cable is attached to the inboard flanges of the take up reel. The drawings envisioned that the cable would be attached to the outboard flange. Installing on the outboard flange would create a pulling vector in opposing directions that would create a gate "centering" resulting stress as the gate was increasingly lowered, equalizing the gap on either side of the gate. I asked the question whether elongated or oversized holes in the seals would provide an ability to custom fit the seal to the available gap between the gate and the glide. Some pros and cons of this were voiced.

The group then went out onto the dam to observe the gates and consider the possibilities. It was noted that most of the gates modified this year have observable gaps between the glide and the seal along the south side of the gate. We could not get a measurement of the gap. Tim expressed that it is really difficult to get the cable tensioning correct in the cold and would require many full cycles of gate operation to dial in the correct match between each cable in the pair at each gate with full hydrostatic load. He suggests the operators do this work. Tim appears to view that his objective was to replace the seals, cables, and linkages (along with adding the stiffeners and 6" raise). Perfecting the fit is beyond the scope.

I am not sure that a full hydrostatic head is needed to effect the proper tensioning of the cables. If not then Strider could make the corrections, but is it within the contract requirements or would it be a cost+ argument. There may be a benefit to restringing the cables to the outboard flange, but again is this a cost+ argument since he dutifully replaced what was there. Redrilling all the holes in each seal would be EXPENSIVE but would provide custom fitting. The downside is the possibility that the seal could then move within the larger hole after the bolts are retightened.

Tim said that he would have the boulder returned to where it came from and bank disturbance addressed.

Tim pointed out that Gate 7 should only be used in an emergency. I recommend that you or MM request a drawing and narrative be prepared by Strider for review to describe how the sheet pile wall at the apron will be protected until the next construction season.

Regards,

Douglas Jones

EXHIBIT C

