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Counsel for Defendant Brown and Caldwell

ARRIOLA LAW FIRM HAGÁTÑA, GUAM 96910

THE DISTRICT COURT OF GUAM

GOVERNMENT OF GUAM,)

Plaintiff,)

v.)

BLACK CONSTRUCTION)
CORPORATION; BROWN AND)
CALDWELL, GEO-LOGIC ASSOCIATES)
f/k/a VECTOR ENGINEERING, INC. f/k/a)
AUSENCO VECTOR; and GHD, INC. f/k/a)
WINZLER & KELLEY)

Defendants.)

CIVIL CASE NO. 1:24-cv-00011

**DEFENDANT BROWN AND CALDWELL'S
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Brown and Caldwell (“BC”), hereby submits its Answer and Affirmative Defenses to Plaintiff Government of Guam’s Complaint in like-numbered paragraphs as follows:

ANSWER

1. BC is without information sufficient to admit or deny the allegations of Paragraph 1 of Plaintiff's Complaint, and therefore, they are denied.

2. Denied.

3. BC admits that BC contracted with Gershman, Brickner & Bratton, Inc. ("GBB") for services related to the Ordot Dump, the terms of which speak for themselves. BC further admits that BC entered into a subcontract with Vector Engineering, Inc., which later became Geo-Logic Associates ("GLA"), and with GHD, Inc., to perform certain work related to the Ordot Dump, the terms of which speak for themselves. Except as so admitted, denied.

4. Denied.

5. BC admits that BC entered into a subcontract with GLA to perform certain work related to the Ordot Dump, the terms of which speak for themselves. Except as so admitted, denied.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

10. BC is without information sufficient to admit or deny the allegations of Paragraph 10 of Plaintiff's Complaint, and therefore, they are denied.

11. Denied.

12. BC is without information sufficient to admit or deny the allegations of Paragraph 12 of Plaintiff's Complaint, and therefore, they are denied.

13. BC is without information sufficient to admit or deny the allegations of Paragraph 13 of Plaintiff's Complaint, and therefore, they are denied.

14. Denied.

15. Paragraph 15 is a prayer for relief for which no response is required. To the extent a response is required, they are denied.

PARTIES

16. BC is without information sufficient to admit or deny the allegations of Paragraph 16 of Plaintiff's Complaint, and therefore, they are denied.

17. BC is without information sufficient to admit or deny the allegations of Paragraph 17 of Plaintiff's Complaint, and therefore, they are denied.

18. BC admits that Brown and Caldwell is a corporation organized pursuant to the laws of the State of California, with its principal place of business located at 201 N. Civic Dr., Suite 300, Walnut Creek, California 94596.

19. BC is without information sufficient to admit or deny the allegations of Paragraph 19 of Plaintiff's Complaint, and therefore, they are denied.

20. BC is without information sufficient to admit or deny the allegations of Paragraph 20 of Plaintiff's Complaint, and therefore, they are denied.

JURISDICTION AND VENUE

21. Admitted.

22. Admitted.

FACTUAL ALLEGATIONS

23. Admitted.

24. BC is without information sufficient to admit or deny the allegations of Paragraph 24 of Plaintiff's Complaint, and therefore, they are denied.

25. BC is without information sufficient to admit or deny the allegations of Paragraph 25 of Plaintiff's Complaint, and therefore, they are denied.

26. BC is without information sufficient to admit or deny the allegations of Paragraph 26 of Plaintiff's Complaint, and therefore, they are denied.

27. BC is without information sufficient to admit or deny the allegations of Paragraph 27 of Plaintiff's Complaint, and therefore, they are denied.

28. BC is without information sufficient to admit or deny the allegations of Paragraph 28 of Plaintiff's Complaint, and therefore, they are denied.

29. BC is without information sufficient to admit or deny the allegations of Paragraph 29 of Plaintiff's Complaint, and therefore, they are denied.

30. BC is without information sufficient to admit or deny the allegations of Paragraph 30 of Plaintiff's Complaint, and therefore, they are denied.

31. BC is without information sufficient to admit or deny the allegations of Paragraph 31 of Plaintiff's Complaint, and therefore, they are denied.

32. BC is without information sufficient to admit or deny the allegations of Paragraph 32 of Plaintiff's Complaint, and therefore, they are denied.

33. BC is without information sufficient to admit or deny the allegations of Paragraph 33 of Plaintiff's Complaint, and therefore, they are denied.

34. BC is without information sufficient to admit or deny the allegations of Paragraph 34 of Plaintiff's Complaint, and therefore, they are denied.

35. BC is without information sufficient to admit or deny the allegations of Paragraph 35 of Plaintiff's Complaint, and therefore, they are denied.

36. BC is without information sufficient to admit or deny the allegations of Paragraph 36 of Plaintiff's Complaint, and therefore, they are denied.

37. BC is without information sufficient to admit or deny the allegations of Paragraph 37 of Plaintiff's Complaint, and therefore, they are denied.

38. BC is without information sufficient to admit or deny the allegations of Paragraph 38 of Plaintiff's Complaint, and therefore, they are denied.

39. BC admits that it is a company that performs various consulting and professional services. BC further admits that it entered into a contract with GBB dated May 12, 2011 (2011 Consulting Services Agreement) to perform consulting services related to the Ordot Dump, the terms of which speak for themselves. BC further admits that the initial Contract Amount for the 2011 Consulting Services Agreement was \$6,192,198.00. Except as so admitted, denied.

40. BC admits that it entered into the 2011 Consulting Services Agreement, the terms of which speak for themselves. Except as so admitted, denied.

41. BC admits that it entered into the 2011 Consulting Services Agreement, the terms of which speak for themselves. Except as so admitted, denied.

42. BC admits that it entered into the 2011 Consulting Services Agreement, the terms of which speak for themselves. Except as so admitted, denied.

43. BC admits that it entered into a subcontract with Winzler & Kelly, which later became GHD, Inc. ("GHD") related to the Ordot Dump, the terms of which speak for themselves. BC is without information sufficient to admit or deny the allegations of Paragraph 43 of Plaintiff's Complaint, and therefore, they are denied.

44. BC is without information sufficient to admit or deny the allegations of Paragraph 44 of Plaintiff's Complaint, and therefore, they are denied.

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45. BC admits that it entered into a subcontract GLA, the terms of which speak for themselves. Except as so admitted, denied.

46. BC is without information sufficient to admit or deny the allegations of Paragraph 46 of Plaintiff's Complaint, and therefore, they are denied.

47. Denied.

48. BC is without information sufficient to admit or deny the allegations of Paragraph 48 of Plaintiff's Complaint, and therefore, they are denied.

49. BC admits that it prepared the referenced document Final Closure Plan: Ordot Dump Closure Construction (Permitting Copy Mar. 2013) ("Final Closure Plan"), the content of which speaks for itself. BC further admits that it contracted with subconsultants, including GLA and GHD to assist in the preparation of the Final Closure Plan. Except as so admitted, denied.

50. BC admits that it entered into subcontracts with Marianas Drilling and ARC Environmental to perform work related to the Ordot Dump, the terms of which speak for themselves. Except as so admitted, denied.

51. BC admits that it prepared the Final Closure Plan, the content of which speaks for itself. Except as so admitted, BC is without information sufficient to admit or deny the allegations of Paragraph 51 of Plaintiff's Complaint, and therefore, they are denied.

52. Admitted.

53. BC admits that it prepared the Design Report: Ordot Dump Closure Construction (Permitting Copy Mar. 2013) ("2013 Design Report"), the content of which speaks for itself. Except as so admitted, BC is without information sufficient to admit or deny the allegations of Paragraph 53 of Plaintiff's Complaint, and therefore, they are denied.

54. BC admits that it prepared the 2013 Design Report, the content of which speaks for itself. Except as so admitted, BC is without information sufficient to admit or deny the allegations of Paragraph 54 of Plaintiff’s Complaint, and therefore, they are denied.

55. BC admits that it issued reports related to the Ordot Dump, the content of which speak for themselves. Except as so admitted, denied.

56. BC admits that it prepared the Final Closure Plan, the content of which speaks for itself. Except as so admitted, denied.

57. BC admits that the Post-Closure Care Plan for Ordot Dump Post-Closure Facility (Oct. 2021) (“Post-Closure Care Plan”) was prepared by BC, the content of which speaks for itself. Except as so admitted, denied.

58. BC admits that the Post-Closure Care Plan was prepared by BC, the content of which speaks for itself. Except as so admitted, denied.

59. BC admits that it provided consulting services during construction pursuant to task orders, the terms of which speak for themselves. Except as so admitted, BC is without information sufficient to admit or deny the allegations of Paragraph 59 of Plaintiff’s Complaint, and therefore, they are denied.

60. Denied.

61. BC is without information sufficient to admit or deny the allegations of Paragraph 61 of Plaintiff’s Complaint, and therefore, they are denied.

62. BC is without information sufficient to admit or deny the allegations of Paragraph 62 of Plaintiff’s Complaint, and therefore, they are denied.

63. BC is without information sufficient to admit or deny the allegations of Paragraph 63 of Plaintiff’s Complaint, and therefore, they are denied.

64. BC is without information sufficient to admit or deny the allegations of Paragraph 64 of Plaintiff's Complaint, and therefore, they are denied.

65. Denied.

66. BC admits that BC performed design services related to the Ordot Dump reflected in a variety of design documents, the content of which speak for themselves. Except as so admitted, denied.

67. Denied.

68. BC admits that BC performed design services related to the Ordot Dump reflected in a variety of design documents, the content of which speak for themselves. Except as so admitted, denied.

69. BC admits that the LCRS includes three bolted steel storage tanks. Except as so admitted, BC is without information sufficient to admit or deny the allegations of Paragraph 69 of Plaintiff's Complaint, and therefore, they are denied.

70. BC admits that the LCRS includes the PLCT, the WLIT, a pumping system and a force-main that discharges into the GWA sewer through a flow meter. BC further admits that the PLCT and WLIT collect leachate, which leachate is delivered into the storage tanks for eventual discharge into the GWA sewer. Except as so admitted, denied.

71. BC admits that it issued reports related to the Ordot Dump, the content of which speak for themselves. Except as so admitted, denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

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76. BC is without information sufficient to admit or deny the allegations of Paragraph 76 of Plaintiff's Complaint, and therefore, they are denied.

77. BC is without information sufficient to admit or deny the allegations of Paragraph 77 of Plaintiff's Complaint, and therefore, they are denied.

78. BC admits that it prepared the LCRS As-Built Design Capacity Evaluation (Oct. 2021) the content of which speaks for itself. Except as so admitted, denied.

79. BC admits that, since 2022, collection flow volumes have declined at the Ordot Dump. Except as so admitted, denied.

80. Denied.

81. BC admits that it prepared the March 22, 2019 Technical Memorandum regarding the Evaluation of Ordot Leachate Collection and Removal System ("March 2019 Technical Memorandum"), the content of which speaks for itself. Except as so admitted, denied.

82. BC admits it was made aware that bucket tests performed by the then-operator at the Ordot Dump showed results as high as 72 gallons per minute. Except as so admitted, BC is without information sufficient to admit or deny the allegations of Paragraph 82 of Plaintiff's Complaint, and therefore, they are denied.

83. BC admits that it prepared the March 2019 Technical Memorandum, the content of which speaks for itself. BC further admits that it prepared the July 21, 2023 Technical Memorandum regarding Leachate Flow and Seep Investigation Update (July 2023 Technical Memorandum"), the content of which speaks for itself. Except as so admitted, denied.

84. BC admits that it prepared the March 2019 Technical Memorandum, the content of which speaks for itself. Except as so admitted, denied.

85. BC admits that it prepared the LCRS As-Built Design Capacity Evaluation (Oct. 2021) the content of which speaks for itself. BC further admits that it prepared the February 4, 2023 Technical Memorandum regarding the November Site Reconnaissance Trip Report and Leachate Flow Study Update (“February 2023 Technical Memorandum”), the content of which speaks for itself. Except as so admitted, denied.

86. Denied.

87. BC admits that it prepared the February 2023 Technical Memorandum, the content of which speaks for itself. Except as so admitted, denied.

88. BC admits that it prepared the February 2023 Technical Memorandum, the content of which speaks for itself. Except as so admitted, denied.

89. Denied.

90. BC admits that the design intent was to provide a long-term barrier to infiltration of precipitation into the waste. Except as so admitted, denied.

91. BC admits it prepared the 2013 Design Report, which speaks for itself. Except as so admitted, denied.

92. Denied.

93. BC admits that in 2023, BC took the position that no significant correlation between leachate generation and stormwater had been identified. Except as so admitted, denied.

94. BC is without information sufficient to admit or deny the allegations concerning the conclusions of Geosyntec reference in Paragraph 94 of Plaintiff’s Complaint, and therefore, they are denied.

95. BC admits that it prepared the July 2023 Technical Memorandum, the content of which speaks for itself. Except as so admitted, denied.

96. BC is without information sufficient to admit or deny the allegations of Paragraph 96 of Plaintiff's Complaint, and therefore, they are denied.

97. BC is without information sufficient to admit or deny the allegations of Paragraph 97 of Plaintiff's Complaint, and therefore, they are denied.

98. BC is without information sufficient to admit or deny the allegations of Paragraph 98 of Plaintiff's Complaint, and therefore, they are denied.

99. Denied.

100. BC admits that it prepared the July 2023 Technical Memorandum, the content of which speaks for itself. Except as so admitted, denied.

101. BC admits that it prepared the 2013 Design Report, the content of which speaks for itself. The remainder of Paragraph 101 presents speculation and hypotheticals that are not statements of fact for which a response is required. To the extent a response is required, they are denied.

102. BC is without information sufficient to admit or deny the allegations of Paragraph 102 of Plaintiff's Complaint, and therefore, they are denied.

103. Denied.

104. BC admits that there have been four documented overflows. Except as so admitted, denied.

105. BC admits that on or about September 13, 2017, it was reported that there was an overflow at the Ordot Dump. BC further admits that BC asserted the overflow was not caused by any lack of the LCRS as-built design capacity. Except as so admitted, BC is without information sufficient to admit or deny the allegations of Paragraph 105 of Plaintiff's Complaint, and therefore, they are denied.

106. BC admits that on or about October 18, 2017, it was reported that there was an overflow at the Ordot Dump. BC further admits that BC asserted the overflow was not caused by any lack of the LCRS as-built design capacity. Except as so admitted, BC is without information sufficient to admit or deny the allegations of Paragraph 106 of Plaintiff’s Complaint, and therefore, they are denied.

107. BC admits that on or about September 11, 2018, during Typhoon Manghut, a blockage in a pipe carrying leachate from the PLCT and WLIT caused an overflow of the WLIT of an estimated 40,000 – 50,000 gallons. BC further admits that in 2021, BC asserted that the overflow was not caused by LCRS design issues. BC is without information sufficient to admit or deny what GBB told GSWA, and therefore, they are denied. BC denies the remaining allegations contained in Paragraph 107.

108. BC admits that on or about May 24, 2023, during Typhoon Mawar, leachate pumps at the Ordot Dump temporarily stopped working during an island-wide power outage, causing an overflow estimated to be up to 100,000 gallons of leachate and impacted water. BC is without information sufficient to admit or deny what GBB stated about the overflow. Except as so admitted, denied.

109. BC admits that parts of the Ordot Dump’s closure were designed to minimize the infiltration of stormwater. BC further admits that it provided the design for the geomembrane cover at the Ordot Dump, which was intended to minimize the infiltration of rain water into the waste mass, and a surface water diversion system intended to capture run-off from the cover. BC is without information sufficient to admit or deny the allegations concerning the conclusions of Geosyntec reference in Paragraph 109 of Plaintiff’s Complaint, and therefore, they are denied. Except as so admitted, denied.

110. BC admits that in November 2022, BC investigated seeps at the Ordot Dump with USEPA and GEPA. BC further admits that it prepared February 2023 Technical Memorandum, the content of which speaks for itself. Except as so admitted, denied.

111. BC admits that it prepared the July 2023 Technical Memorandum, the content of which speaks for itself. Except as so admitted, denied.

112. Paragraph 112 of Plaintiff's Complaint sets forth conclusions of law for which no response is required. To the extent a response is required, they are denied.

113. Denied.

114. BC admits that there was a leak in a water pipe situated outside the Ordot Dump along Dero Road, which was subsequently repaired. Except as so admitted, BC is without information sufficient to admit or deny the allegations of Paragraph 114 of Plaintiff's Complaint, and therefore, they are denied.

115. Denied.

116. BC is without information sufficient to admit or deny the allegations concerning the conclusions of Geosyntec reference in Paragraph 116 of Plaintiff's Complaint, and therefore, they are denied.

117. Denied.

118. BC admits that it prepared the 2013 Design Report, the content of which speaks for itself. BC is without information sufficient to admit or deny the allegations concerning the conclusions of Geosyntec reference in Paragraph 118 of Plaintiff's Complaint, and therefore, they are denied. Except as so admitted, denied.

119. BC admits that it prepared the February 2023 Technical Memorandum, the content of which speaks for itself. Except as so admitted, denied.

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120. Denied.

121. Denied.

122. Denied.

123. BC admits that in March 2019, BC noted that the groundwater monitoring well north of the WLIT contained groundwater at levels approximately 50 or 60 feet higher than parts of the WLIT. Except as so admitted, denied.

124. BC is without information regarding the scope of “these issues” referenced in Paragraph 124 of Plaintiff’s Complaint, and therefore, they are denied. The remaining allegations of Paragraph 124 of Plaintiff’s Complaint are denied.

125. BC admits that an initial evaluation of certain data collected through December 2020 suggested that the WLIT was not a major contributor to the total leachate flow in the LCRS and that the monitored leachate flows were easily handled by the existing system. Except as so admitted, denied.

126. BC admits that the closure design included the relocation of an approximately 510-foot section of a natural drainage channel along the western boundary of the Ordot Dump. BC is without information sufficient to admit or deny the details of Black Construction’s subcontracting of this work. Except as so admitted, denied.

127. BC admits that BC performed consulting services during construction of the Ordot Dump, the scope of which are set forth in Task Orders, the content of which speak for themselves. Except as so admitted, BC is without information sufficient to admit or deny the allegations of Paragraph 127 of Plaintiff’s Complaint, and therefore, they are denied.

128. Denied.

129. BC is without information sufficient to admit or deny the allegations concerning the conclusions of Geosyntec reference in Paragraph 129 of Plaintiff’s Complaint, and therefore, they are denied. BC admits that the western channel described was relocated to a higher elevation as part of the overall designed closure of the Ordot Dump. BC further admits that leachate-impacted groundwater is captured in the WLIT. Except as so admitted, denied.

130. Denied.

131. BC is without information sufficient to admit or deny what the USEPA concluded. The remaining allegations of Paragraph 131 of Plaintiff’s Complaint are denied.

132. BC is without information sufficient to admit or deny the allegations of Paragraph 132 of Plaintiff’s Complaint, and therefore, they are denied.

133. BC is without information sufficient to admit or deny the allegations of Paragraph 133 of Plaintiff’s Complaint, and therefore, they are denied.

134. Denied.

135. Denied.

136. Denied.

137. BC is without information sufficient to admit or deny the allegations of Paragraph 137 of Plaintiff’s Complaint, and therefore, they are denied.

138. BC is without information sufficient to admit or deny the allegations of Paragraph 138 of Plaintiff’s Complaint, and therefore, they are denied.

139. BC admits that it prepared the March 2019 Technical Memorandum, the content of which speaks for itself. Except as so admitted, denied.

140. Denied.

141. BC is without information sufficient to admit or deny the allegations of Paragraph 141 of Plaintiff's Complaint, and therefore, they are denied.

CAUSES OF ACTION

142. BC restates and incorporates its responses set forth above.

143. Denied.

144. BC is without information sufficient to admit or deny the allegations of Paragraph 144 of Plaintiff's Complaint, and therefore, they are denied.

145. BC is without information sufficient to admit or deny the allegations of Paragraph 145 of Plaintiff's Complaint, and therefore, they are denied.

146. Denied.

147. Denied.

148. Denied.

149. Denied.

150. Denied.

151. Denied.

152. BC restates and incorporates its responses set forth above.

153. BC admits that it entered into the 2011 Consulting Services Agreement, the terms of which speak for themselves. Except as so admitted, denied.

154. BC admits that it entered into the 2011 Consulting Services Agreement, the terms of which speak for themselves. Except as so admitted, denied.

155. Denied.

156. Denied.

157. Denied.

158. BC restates and incorporates its responses set forth above.

159. Denied.

160. Denied.

161. BC admits that it entered into the 2011 Consulting Services Agreement, the terms of which speak for themselves. Except as so admitted, denied.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

166. BC restates and incorporates its responses set forth above.

167. BC admits that the Ordot Dump is located on Guam. The remainder of Paragraph 167 sets forth conclusions of law for which no response is required. To the extent a response is required, they are denied.

168. Paragraph 168 of Plaintiff's Complaint sets forth conclusions of law for which no response is required. To the extent a response is required, they are denied.

169. Denied.

170. Paragraph 170 of Plaintiff's Complaint sets forth conclusions of law for which no response is required. To the extent a response is required, they are denied.

171. Denied.

172. Denied.

173. BC is without information sufficient to admit or deny the allegations of Paragraph 173 of Plaintiff's Complaint, and therefore, they are denied.

174. BC is without information sufficient to admit or deny the allegations of Paragraph 174 of Plaintiff's Complaint, and therefore, they are denied.

175. Denied.

176. Denied.

177. BC restates and incorporates its responses set forth above.

178. Denied.

179. Paragraph 179 of Plaintiff's Complaint sets forth conclusions of law for which no response is required. To the extent a response is required, they are denied.

180. Denied.

181. Paragraph 181 contains a demand for trial by jury for which no response is required.

182. Paragraphs 182 to 189 of Plaintiff's Complaint is a prayer for relief for which no response is required. To the extent a response is required, it is denied.

183. BC denies each and every allegation of Plaintiff's Complaint not specifically admitted herein.

AFFIRMATIVE DEFENSES

Defendant Brown and Caldwell asserts the following affirmative defenses:

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's claims are barred by the applicable statutes of limitations and/or the statute of repose.
3. Plaintiff's claims are barred by the doctrine of laches.
4. Plaintiff's claims are barred by failure to satisfy conditions precedent.
5. Plaintiff lacks standing to bring its claims.
6. Plaintiff's claims are barred by the Economic Loss Doctrine.

7. Plaintiff's claims are barred by the doctrine of unclean hands.
8. Plaintiff's claims are barred by contributory or comparative negligence.
9. Plaintiff's claims are barred by assumption of risk.
10. Plaintiff failed to mitigate its damages.
11. Plaintiff's claims are barred by waiver.
12. Plaintiff's claims are barred by estoppel.
13. Plaintiff failed to join necessary parties.
14. Plaintiff's claims were caused by intervening or superseding causes.
15. Plaintiff's damages or injuries were caused by persons or entities other than BC.
16. BC reserves the right to add additional affirmative defenses.

WHEREFORE, Defendant Brown and Caldwell respectfully requests as follows:

1. That Plaintiff's Complaint be dismissed with prejudice;
2. That judgment be awarded in favor of Defendant Brown and Caldwell;
3. That Defendant Brown and Caldwell be awarded reasonable attorneys' fees and costs;

and

4. For such other and further relief as the Court may deem just and proper.

Dated this 12th day of August, 2024.

[Signature Page Follows]

BROWN AND CALDWELL



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Counsel for Defendant Brown and Caldwell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was filed and served electronically, this 12nd day of August 2024 to:

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