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September 15, 2010

414-02

**VIA EMAIL & U. S. MAIL**

Mr. Kevin Davis, President  
St. Tammany Parish Government  
Post Office Box 628  
Covington, LA 70434

Re: Administrative Complex (Towers Building) Renovations  
Slidell, Louisiana

Dear Mr. Davis:

I am writing this letter to you on behalf of my client, Dammon Engineering, Inc. ("Dammon"). As you know, Dammon was retained by The St. Tammany Parish Government ("the Parish") as the Engineer of Record for a project known as "Administrative Complex (Towers Building) Renovations," which, as you know, is located in Slidell, Louisiana ("the Project"). The Contract between Dammon and the Parish is designated as "Professional Services Contract No. 06-009" and is dated June 30, 2007. ("the Designer Contract"). The original general contractor on the Project failed to timely perform, defaulted on the construction contract, and was ultimately terminated from the Project by the Parish. As is pointed out below in more detail, the contractor's default on the Project and takeover by its surety has placed a tremendous financial hardship on Dammon Engineering, as well as on Pete Dammon personally. Accordingly, the purpose of this letter is to request an equitable adjustment to the contact between the Parish and Dammon and to provide you with sufficient facts for use in addressing this situation.

1. **Background**

A. **The NATCO Contract**

Pursuant to the Design Contract, Dammon worked closely with Parish officials to design the Project, and then prepared plans and specifications for the Project. Bids were accepted on July 24, 2007; the apparent low bidder was NATCO, Inc. of Tennessee ("NATCO"). On October 15, 2007, the Parish and NATCO entered into a Construction Contract in the amount of \$7,125,000 with a contract time period of 540 days from the date of a Notice to Proceed. ("NATCO Contract"). Accompanying the recorded NATCO Contract was a Performance Bond issued by Travelers Casualty and Surety Company of America ("Travelers"). On October 17, 2007, Dammon issued the Notice to Proceed to NATCO wherein NATCO was notified that the Contract Time would commence on that same date. Accordingly, NATCO's original contract completion date was April 7, 2009.

During the course of the Project before NATCO defaulted, nine Change Orders were executed which collectively increased the Contract Amount to \$7,241,983.32, and extended the Contract Time to June 24, 2009. NATCO failed to complete work on the Project within the Contract Time; accordingly the Parish assessed liquidated damages against NATCO, which commenced on or about June 24, 2009. NATCO continued to work on the Project for about three more months. On or about September 23, 2009, NATCO abandoned the Project. Unbeknownst to Dammon at that time, and I believe also to the Parish, NATCO had filed bankruptcy in Tennessee on May 7, 2009.

On or about October 26, 2009, the Parish obtained an Order terminating the automatic stay that resulted from NATCO's bankruptcy. On or about November 4, 2009, due to NATCO's default, the Parish terminated the NATCO Contract. Pursuant to the Performance Bond, Travelers took over the Project and thereafter made arrangements with another contractor, Landmark Construction, Inc. ("Landmark"), to complete construction of the Project. Numerous liens had been filed by NATCO's subcontractors and suppliers, and these were addressed by Travelers. At the time of NATCO's default, according to NATCO's Payment Applications, approximately 12% of the work under NATCO's contract remained to be done. In addition, a significant portion of the that NATCO had allegedly completed turned out to be defective. As such, the defective work had to be either corrected, or completely redone. A list of the defective work was prepared. Further, because NATCO left the Project in a condition which permitted moisture intrusion into the building, the Project was plagued with an infestation of mold and mildew. Pursuant to directives from the Parish, Travelers arranged for the Project to be put into a watertight condition and for remediation of the mold and mildew that had infested the building.

B. The Takeover Agreement with Travelers

The Parish and Travelers entered into a Contract whereby Travelers and its contractor, Landmark, would complete construction of the Project ("Takeover Agreement"). Despite several requests to the Parish, Dammon has not been provided with a fully executed copy of the Takeover Agreement, although we do have a draft sent by the Parish to Dammon on April 20, 2010. In order to be able to properly administer completion of construction on the Project, Dammon needs a fully executed copy of the Takeover Agreement and hereby makes formal request for a copy. It is our understanding that the Takeover Agreement was executed on or about June 1, 2010, although we further understand that the executed Takeover Agreement was back dated to have an effective date of March 31, 2010. We understand that the commencement date under the Takeover Agreement was June 1, 2010, and that the contract completion date is December 31, 2010.

At the time of NATCO's default, the Parish had paid NATCO a total of \$6,049,479.19 out of the \$7,241,983.32 Contract Amount, leaving a Contract balance at that time of \$1,192,504.13. In order to accurately calculate the percentage completion of the work according to NATCO's Payment Applications, it is necessary to add the amount of retainage withheld to the amount paid. The amount of the retainage as of the date of default was \$319,459.29; accordingly, the total Contract Amount of work completed as of the date of NATCO's default was \$6,389,948.30. That figure is 88% of the total Contract Amount. Thus, at the time of NATCO's default, work on the Project was 88% complete, leaving approximately 12% of the work still to be completed. Of course, these figures are based on an assumption that none of NATCO's work was defective and also on the assumption that NATCO properly and honestly prepared the Payment Applications which it submitted to Dammon and to the Parish. As it turned out, much of NATCO's work was found to be defective and has had to be redone by Landmark.

**2. Payments to Dammon Engineering**

A. The Original Design Contract

Pursuant to the Designer Contract and amendments to it, Dammon's fee for professional services on the Contract was \$537,522. It was agreed that 25% of Dammon's fee would be allotted to professional services performed during the Construction Phase of the Project. After some minor adjustment, the agreed upon figure for Dammon's professional services during the Construction Phase would be \$133,405.63.

The Designer Contract does not specify precisely how and when Dammon's fees were to be paid. It states only that the Parish will pay Dammon "as agreed upon by both parties in the Scope." But the Scope set forth in the contract does not indicate at what

point Dammon is to be paid or what amount. I understand from Pete Dammon that the agreement was that Dammon's fee for the Construction Phase would be paid periodically according to the percentage of completion set forth in the contractor's Payment Applications. As noted above, based on the amounts paid to NATCO, the Project was 88% complete at the time of NATCO's default. Accordingly, Dammon's fee earned as of that date in late September 2009 was \$177,369.95. The amount that Dammon has actually been paid for Construction Administration Services provided up until NATCO's default is \$120,039.16. Thus, the balance that would have been paid to Dammon had NATCO not defaulted is \$13,366.47 (\$133,405.63 - 120,039.16).

B. Payments to Dammon Between NATCO's Default and Startup of the Takeover Work by Travelers and Landmark

After NATCO defaulted, Dammon's Contract with the Parish was amended to provide a mechanism for Dammon to be paid during the "liquidated damages" phase of the Project. The amended Designer Contract provided for payment of up to \$25,000, but it was informally understood that this was an estimate which might be exceeded because no one knew how long it would take, or how much additional work Dammon would have to perform, as a direct result of NATCO being placed into liquidated damages or of its ultimate default on the construction contract. Keep in mind that these fees were in addition to the base Construction Administration fees under the Designer Contract.

Between July 27, 2009, and May 10, 2010, Dammon invoiced the Parish several times for the "liquidated damages" fees, for a total of \$20,977.50, and this amount has been paid to Dammon. These invoices were based on various hourly rates of Dammon's personnel.

In early June 2010, Bruce Crouch advised Dammon that the Parish would no longer pay Dammon under the "liquidated damages" amended Designer Contract. Mr. Crouch further advised Dammon that it would have to complete all Construction Administration services on the Project for the amount remaining in the Designer Contract, which as per Paragraph 2A above is \$13,366.47. Dammon advised Mr. Crouch that such an agreement was not acceptable to them, but Dammon has continued to provide professional services for the Construction Administration phase in absence of an agreement between Dammon and the Parish as to how Dammon is to be compensated for the remainder of its Construction Administration services.

C. Payments to Dammon After Travelers and Landmark Took Over the Project

NATCO's default and the takeover by Travelers and Landmark significantly altered the scope of work set forth between Dammon and the Parish in the Designer Contract. One would hope that after getting through the "liquidated damages" phase that the surety and its new contractor would be able to move the Project forward at a reasonable pace. However, that has not been the case. Dammon has had to "hold Landmark's hand" every step of the way since Landmark took over construction of the Project.

One key issue that has taken a huge amount of time was NATCO's loss of the set of plans which had been reviewed and stamped by the State Fire Marshal at the outset of the Project. Without this set of plans, the local Fire Marshal officials refused to make inspections at the Project site. Dammon was required by the Parish to submit another set of Project drawings and specifications to the State Fire Marshal. Upon review, code questions were raised by the Fire Marshal that had been worked out and "grandfathered in" on the original Fire Marshal review. Numerous additional drawings had to be prepared and submitted to the Fire Marshal, and Dammon is still awaiting the Fire Marshal's review on a key element of the drawings - a key element that was originally approved by the Fire Marshal. This has caused Dammon to expend huge quantities of additional, uncompensated time on the Project.

Further, it has taken Landmark much longer than anticipated, or what would be considered normal, for it to come up to speed on getting the Project completed. Landmark has submitted dozens of RFI's which Dammon has had to respond to. Dammon has had to prepare numerous supplemental drawings. Dammon has had to attend numerous meetings with Travelers and Landmark, many of which have been of a hostile nature. It is clear that Landmark and Travelers are seeking to find every question and detail which can be submitted in the hope of getting a change order to cover some of Traveler's huge loss on this Project. In order to keep up with the Construction Administration duties on this Project, it has become necessary for Dammon's project manager, Chuck Dammon, to spend about 35 hours per week, on average, working on this Project. This is not what Dammon bargained for or agreed to when it entered into the Designer Contract with the Parish for this Project.

As of the date of this letter, Dammon has not received any payment from the Parish for its many hours of Construction Administration services expended since June 1, 2010. Bruce Crouch has continued to insist that Dammon's invoices must be proportional with the percentage of completion set forth in Traveler's Payment Applications. Only recently has Traveler's submitted its first Payment Application since taking over the Project, but the Pay App has not yet been approved by the Parish, and as such, Dammon has not been able to submit an invoice based on Traveler's Payment Applications. Even if it had been possible to submit an invoice, based on the current "rule" being applied by Bruce Crouch

and the Parish, the invoice amount would have only been some percentage of the \$13,366.47 balance due to Dammon under the Designer Contract. Simply put, that amount would not come close to covering the compensation that Dammon is due for Construction Administration services since Travelers took over the Project.

Further, the Takeover Agreement required Travelers and Landmark to substantially complete the Project on or about December 31, 2010, although it now appears unlikely that Landmark will be able to meet that deadline. As a result of those delays, as well as all the other factors pointed out in this letter, Dammon's scope of work has increased exponentially. Clearly, professional services that Dammon will have to perform through completion of this Project far exceed the scope of work that Dammon bargained for and agreed to when it entered into the Designer Contract with the Parish.

### **3. The Designer Contract Must be Equitably Adjusted**

For all the reasons set forth in this letter, Dammon Engineering requests that its contract with the Parish for this Project be equitably adjusted. Dammon did not cause this fiasco, nor did the Parish. Nevertheless, the Parish is the owner, and it is the owner to whom Dammon must now look in order to be made whole in this matter.

While subject to negotiation, Dammon suggests the following as a basis for the requested equitable adjustment:

- A. Amend the Designer Contract so that it is clear that the remaining \$13,366.47 left to be paid to Dammon in the Contract, as currently written, is no longer the limit of the fees to be paid to Dammon on the Project.
- B. Amend the Designer Contract to provide that Dammon will be compensated on an hourly basis for services provided through completion of the Project, including the following 4 invoices which have been submitted to the Parish (the last one just today), but have not been paid:
  - 1) Invoice #5870 dated 6/14/10 in the amount of \$5,422.50;
  - 2) Invoice #5892 dated 7/12/10 in the amount of \$6,575.00;
  - 3) Invoice #5905 dated 8/6/10 in the amount of \$11,390.00; and
  - 4) Invoice #5915 dated 9/15/10 in the amount of \$15,507.50.

We suggest that the amendment include time through December 31, 2010, the current end of Travelers' contract time, and we would have no objection to a reasonable upset amount being established for these fees, but it must have mechanism to be amended further in the event that Travelers and Landmark fail to complete the Project on time.

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- C. Reimburse Dammon for its legal expenses incurred in relation to this request for equitable adjustment to the Designer Contract.
- D. Such other changes necessary in order for Dammon to be equitably compensated for all the additional services made necessary by NATCO's default.

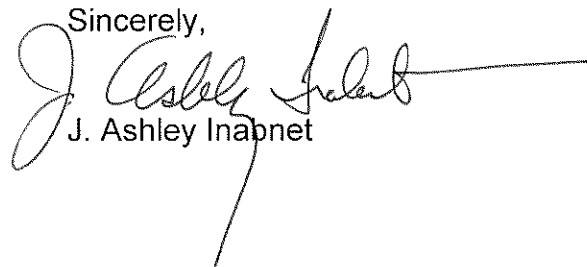
We request that a meeting be scheduled as soon as possible between Dammon and its counsel (me), and Parish representatives and counsel, in order to discuss and hopefully arrive at an agreeable solution for equitable adjustment to the Designer Contract. We realize that you are in the midst of a political campaign and thus likely cannot attend the meeting yourself. But any assistance and directives you can give in causing this meeting to be arranged will be appreciated.

Alternatively, in the event that the Parish has another engineer or architect who it wishes to employ to provide the professional services necessary for completion of this Project, we would be willing to consider such an option. However, Dammon would still need to be paid for its services provided up until the replacement engineer or architect takes over, and provision for division of responsibilities and agreement to certain indemnities would have to be addressed. Candidly, this is not Dammon's preference as we believe the Project is best served by the same engineer of record being involved throughout the Project, all the way to completion. Nevertheless, we do want to suggest this alternative if no other solution can be reached.

It will be appreciated if you will have someone contact me as soon as possible to schedule the meeting (or meetings) requested herein. We would prefer to have the meeting held before the end of September if possible; if not, a date in October should be agreed to as soon as possible in September.

Thank you for your considerations in this matter. Should you have any questions or comments, I would welcome the opportunity to discuss this matter with you and/or with your representative.

Sincerely,



J. Ashley Inabnet

cc: William Oiler, CAO (via mail and email)  
Kelly Rabalais, Esq. (via mail and email)  
Ronald S. Hagan, Esq. (via mail and email).  
Bruce Crouch (via mail and email)  
Emmett G. "Pete" Dammon, P.E. (via mail and email)