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State Parks Division
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November 13, 2013

Tom Groseclose
Travelers Bond & Financial Products Claim
300 Arboretum Place, Suite 390
Richmond, VA 71957

Re: ABA No. 9001211; Lodge Renovation Project
Queen Wilhelmina State Park (the "Project")

Dear Mr. Groseclose:

Arkansas Department of Parks and Tourism, State Parks Division (ASP) looks forward to our meeting on November 14, 2013. I would like to respond to your November 8, 2013 letter, starting with:

Summary

The general contractor, Wade Abernathy Incorporated (WAI), was issued a notice of termination August 15, 2013 and, as subsequently amended via my August 21, 2013 letter, the effective date of termination was set as August 30, 2013. Travelers Bond & Financial Products Claim (the "Surety") was carbon copied each of these notifications. As stated in my letter dated August 15th the lodge building was not fully enclosed by the deadline set in previous correspondence and, in fact, the building was still not enclosed as of the date of writing the August 15th letter. Further, based on well documented rates of progress, it is apparent that WAI did not demonstrate that it could provide sufficient resources to complete the project in a reasonable amount of time as established by the contract nor was there reasonable expectation that WAI would be willing or able to apply sufficient resources necessary to complete the project during the amended contract period.

As stated in our initial conversations and every communication since, ASP considers working directly with the terminated contractor as a principal to be an unacceptable approach to completing the project. Therefore, we are surprised that the Surety ever formed the impression that ASP would be willing to work directly with WAI and is, in turn, disappointed that the Surety has not yet identified a contractor other than WAI to complete this project in the seventy plus days since WAI was terminated.

ASP Termination of WAI

- (1) **Completion:** The issue of finding WAI in default does not rely on WAI's ability to apply sufficient resources to complete the project in a timely manner based on approved and/or entitled time. Rather, default arises from WAI's failure to meet a

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deadline required for enclosure of the building. This demonstrated inability to perform follows extensive documentation showing WAI's rate of production throughout the project to be below that necessary to complete the project in a timely manner. The initial contract required the contractor to complete the project in 450 days or between 14 and 15 months. This comes to 6.67% of the project to be completed each month using 15 months. As of the 18th Pay Estimate WAI's completion rate had not reached that percentage for a single pay period and had averaged 3.56% per month. WAI has maintained that the completion percentage would increase but evidence of willingness or ability to deliver had not been evident after 18 monthly pay estimates. The lack of progress is directly caused by lack of resources devoted to the project. WAI has been granted time extensions for the change order work as agreed upon and approved by all parties and the Arkansas Building Authority (ABA).

- (2) **Mold:** WAI refused to acknowledge that there was an issue with excessive mold in the building despite obvious visual evidence. Therefore ASP hired EEG Environmental to conduct a limited environmental mold screen. After EEG's report confirmed excessive mold, WAI then refused to accept any responsibility, or to present a remediation plan. ASP was again placed in the position necessitating the development of a plan and chose Morris and Associates.

There has been no documentation of pre-existing mold in quantities that would be an environmental hazard. Visible evidence of mold occurred after the building was opened to the elements which resulted in the high moisture levels required for widespread mold amplification. As the visible mold growth is present in existing as well as new construction, ASP sees no reason to separate them with regard to remediation. Additionally, there is no scientific proof or related evidence that pre-existing conditions caused the mold during WAI's contract period. Section 01 32 33, Part 3.1, E, A, 2 required WAI to take photographs of the existing building to accurately record physical conditions prior to construction. We haven't been provided the required photographs, which would be evidence of ATOKA's assertion that pre-existing conditions caused the mold problem.

Both the Morris and Associates remediation specification and one option of the EEG recommendations require manual removal of surface mold, cleaning, drying and fogging and encapsulation of effected members, ASP feels that these steps are required to ensure that a re-occurrence of excessive mold will not happen. ASP commissioned and presented the Morris and Associates remediation plan to WAI as an approved course of action. ASP has indicated it is open to some modifications of the Morris and Associates plan. ASP does not agree with either the first or the second versions of the ATOKA plan that was subsequently commissioned by WAI and will address our concerns under separate cover.

- (3) **Construction Quality:** Numerous construction photos and reports well document the quality shortcomings of the work by WAI. The Surety has been provided copies of bi-weekly reports from the architect and hundreds of photographs documenting work issues, and the failure of WAI to properly protect the work site, improvements, and materials stored on site. ASP's and ABA's inspection reports were also provided. Every pay estimate submitted by WAI has had work items reduced to reflect items that required corrections. Under the General Conditions Sections 3.6.2 and 3.6.3 all materials are to be new, and defective materials can be rejected at any time prior to final acceptance of the Project (Final Completion).
- (4) **Termination:** The general contractor, Wade Abernathy, Inc. (WAI), was notified that there was justification to terminate the contract and Travelers Bond & Financial Products Claim (the "Surety") was included in this notification on August 15, 2013. WAI received my August 15th notification, as confirmed by its attorney Brett D. Watson, who communicated such to ABA on August 16th. A follow-up letter dated August 21, 2013 changed the termination date to August 30, 2013 to comply with the ten day notice requirement.

There is no question that WAI did not fully enclose the lodge building as required by my June 19th and July 16th letters, which was the basis for termination. We also have extensive documentation that WAI did not protect the building during the construction period, as is required by the contract. WAI also did not demonstrate either willingness or ability to devote the resources necessary to accomplish the required amount of work for even one month on this project and certainly gave no sign that their rate of progress could have been increased and maintained as necessary to complete the Project within the amended contract period. ASP, therefore, had more than sufficient justification to terminate WAI's contract and expects the Surety to furnish a competent contractor as required by section 14.2.1. Based on the content of the 4th paragraph of your November 8th letter, we have all hope and expectation that this will happen during our meeting this week.

Should you have any questions, contact me at 501-682-7743 or greg.butts@arkansas.gov.

Sincerely,



Greg Butts, Director
Arkansas State Parks
GB/kar

cc: Richard W. Davies, Executive Director, Arkansas Department of Parks and Tourism
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