

RECEIVED

JAN 27 2025

SC Court of Appeals

APPENDIX C

Outlined of requirements by the United States Department of Justice "Private Sector/Prison Industries Enhancements Certificate" to be completed by the SCDC.

1. Deductions will be made from inmate wages and provided to State Victim Compensation Fund.
2. Consultation with organized labor prior to implementation of program.
3. Consultation with representative of local businesses prior to implementation of program.
4. Inmate participation must be voluntary.
5. Inmate workers must be covered under workers compensation.
6. Employment Security Commission has provided written assurance that wages paid to inmates are similar in the locality to other workers or Federal minimum wage, whichever is higher.
7. Employment Security Commission has provided written assurance that inmate labor will not displace currently employed local workers.
8. Proposed Cost Accounting Center (CAC) has complied with the National Environmental Policy Act (NEPA).

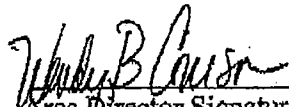
S.C. Department of Corrections
P.O. Box 21787
4444 Broad River Rd.
Columbia, S.C. 29221-1787

To Whom it May Concern:

Having reviewed the proposed project/s for the Lieber Correctional Institution under the Prison Industries Enhancement program, I make the following determination regarding projected impact upon the local area.

X This project will not result in the displacement of workers and will not adversely affect employers in the area.

 This project will result in the displacement of workers and will adversely impact employers in the area.


Area Director Signature

Summerville
SCESC Workforce Center

AGREEMENT

This Agreement ("**Agreement**") is entered into this 30th day of September 2008 (the "**Effective Date**"), by and between the South Carolina Department of Corrections (hereinafter called "**SCDC**") by its duly authorized agent Jon Ozmint, Director and Caterpillar Reman Powertrain Services, Inc., (hereinafter referred to as "**CRPSI**") by its duly authorized agent, Brad Chambers, President. SCDC and CRPSI each may be referred to in this Agreement as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this Agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, CRPSI represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, CRPSI intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as "**LCI**"); and,

WHEREAS, this Agreement is made in the best interest of the State of South Carolina.

NOW, THEREFORE, the Parties hereto do agree as follows:

ARTICLE 1 General:

SCDC hereby permits CRPSI to use a building of up to 45,000 square feet on the LCI premises (the "**Building**"), and related premises during the term and in accordance with the provisions of this Agreement. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

ARTICLE 2 Conditions of Occupancy of the Industry Facility:

2.0 Environmental:

CRPSI shall not cause or permit any hazardous substances to be used, stored, generated, or disposed of on or in the premises by CRPSI, its agents, employees, contractors or invitees, without first obtaining SCDC's written consent. SCDC represents that the premises are substantially free of any known contamination at the commencement of this Agreement, and agrees to the extent permitted by law to indemnify and hold CRPSI harmless from any damages or claims relating to contamination present on the premises prior to the commencement of this Agreement. If the premises become contaminated in any manner for which CRPSI is responsible during the term of this Agreement, CRPSI shall indemnify and hold SCDC harmless from any damages or claims arising during or as a result of CRPSI's occupancy of the premises and arising as a result of such contamination by CRPSI. SCDC acknowledges that it has consented to the presence of transmission fluids and oils on the premises.

EXHIBIT #

G

CASE # 2024-001892 - Scott, V. SCDC

2.1 The Duties of CRPSI:

1. Maintenance: CRPSI shall keep the occupied area clean, neat and tidy, and shall report any damage to the Building structure or material fixtures or unsafe conditions to the appropriate institutional authority. Further, CRPSI shall be responsible for all maintenance to the Building.
2. Insurance: CRPSI shall maintain insurance coverage for its equipment, supplies and material located in the Building and related premises against casualty occurrences. CRPSI shall maintain general liability coverage for itself, its agents, servants and employees. CRPSI shall satisfy all applicable statutory Workers' Compensation insurance requirements. CRPSI will provide proof of insurance coverage, including pursuant to a program of self-insurance, upon executing this Agreement and upon request during the term of the Agreement.
3. Telephone Service: CRPSI may, with prior approval of SCDC, which will not be unreasonably withheld, install telephones and/or computer lines in the Building, which must be secured at all times in accordance with SCDC guidelines. The cost of installation and maintenance of such telephones will be at CRPSI's sole expense.
4. Tools, Equipment and Supplies: CRPSI shall be responsible for providing all necessary tools, equipment, and/or supplies which may be necessary for the performance of the work herein contemplated. Such tools and equipment supplied by CRPSI may be removed by CRPSI upon termination of the Agreement.
5. Building Modification: CRPSI shall not make any alterations or improvements to the Building other than those outlined herein above without prior written approval of SCDC, which shall not be unreasonably withheld.
6. Waiver of Subrogation: CRPSI shall be liable for any damages to the Building, and for damages to its equipment, supplies and material located in the Building caused by casualty occurrence, it being understood that CRPSI shall repair such damages and look to its insurer for reimbursement and shall obtain from its insurer waiver of subrogation rights against SCDC.
7. Loss of Property: All personal property, inventory, equipment, improvements and/or fixtures or other property of any kind or description whatsoever, installed or brought into the area by CRPSI or CRPSI's employees or agents (the "**Equipment**"), shall be at CRPSI's sole risk and neither the State of South Carolina, SCDC or any employee or agent thereof, shall be liable for any damage done to or loss of such property or Equipment or loss suffered by the business or occupation of CRPSI arising from any acts or occurrences whatsoever except where the damage or loss is due to the malicious destruction of Equipment caused by inmates or employees of the State of South Carolina (as reasonable determined by the SCDC). If SCDC is held liable, the loss or damage shall be limited to replacement cost or to the repair cost of damaged or destroyed property whichever is less. Consequential or punitive damages shall not be recoverable.
8. Condition of Property: Upon termination of this Agreement, CRPSI shall remove its Equipment and vacate the premises; or negotiate a new agreement between SCDC and CRPSI to continue operation of the facility. CRPSI and SCDC may negotiate a new lease and continue operations. However should the Agreement not continue at the end of this Agreement, SCDC shall take possession of the building.

9. Hazardous Waste: Any hazardous waste generated in the Building by CRPSI shall be disposed of promptly by CRPSI at its sole expense according to federal and state regulations.

2.2

1. Premises to be Occupied: SCDC shall provide space for an up to 45,000 sq. ft. Building and related area at LCI. The occupancy of this area should be consistent with the terms of this Agreement regarding work authorized and hours. CRPSI will maintain the facility and fixtures in good condition throughout the term of the Agreement.
2. Utilities: SCDC shall provide water, electricity, propane or natural gas, and trash removal services and pass through actual cost to CRPSI for its use of the Building or allow CRPSI to install at its own cost separate meters for calculating payment.
3. Supervisory Staff: SCDC shall provide at least one (1) civilian supervisor to coordinate all activities between SCDC and CRPSI. CRPSI shall provide sufficient civilian staff for supervision of work products on each shift. SCDC will provide supervisors satisfactory to CRPSI and the actual cost of supervision shall be passed through each pay period by SCDC to CRPSI. Payment of such services shall be paid within thirty (30) days from receipt of invoice.

ARTICLE 3 Conditions Related to Inmates:

3.0 General

CRPSI agrees to provide sufficient work in the facility for SCDC to employ a minimum of 50 inmates working 6 hours daily, five days per week. Overtime can be worked if sufficient notice is given to SCDC. SCDC will provide inmate labor upon adequate notice by CRPSI up to a maximum of 300 inmates. Overall staffing will be agreed upon by both SCDC and CRPSI. If CRPSI requests overtime, CRPSI shall pay for such additional hours at the standard hourly rate and shall bear additional costs of security and supervision, of any, for such overtime.

3.1 Duties of CRPSI:

CRPSI shall provide to SCDC job descriptions and personnel procedures. CRPSI reserves the right to have SCDC remove and replace inmate workers based on job performance, so long as its actions conform with nondiscrimination provisions referenced herein.

1. Training of Inmates: CRPSI shall be responsible for training of inmates in the disassembly and/or remanufacturing of its product lines and activities related thereto.
2. Scope of Work: Prison Industry inmates under the general oversight of SCDC will disassemble and/or remanufacture CRPSI's product lines according to engineering design and manufacturing specifications developed and provided by CRPSI, with CRPSI providing work product quality supervision, as set forth in Paragraph 2.2(3). It will be the sole responsibility of CRPSI to provide a quality control manual for these operations and to ensure compliance with the terms provided therein.
3. Raw Materials: CRPSI shall provide all raw materials and component parts for work. All raw materials, personal property, inventory, machinery, equipment and improvements and/or

- fixtures or other property of any kind or description whatsoever installed or brought into the prison buildings by CRPSI or its employees or agents, shall be at the sole risk of CRPSI and neither the State of South Carolina or SCDC or its employees and agents thereof, shall be liable for any damage or loss suffered except as provided in Section 2.1.7 contained herein above.
4. Security: CRPSI understands and specifically agrees that its deliveries, shipments and employees are subject to search before entering or leaving the premises of SCDC.
 5. Compliance With Rules and Regulations: CRPSI agrees that it and its employees must comply with all applicable policies and procedures of SCDC made known to them and all applicable federal, state, and local laws, ordinances, regulations and accreditation standards.
 6. Payment for Inmate Services: SCDC will invoice CRPSI on a bimonthly basis for inmate labor. CRPSI will pay all sums due and owing within thirty days of receipt of invoice. Payments shall be made to S.C. Department of Corrections, Division of Prison Industries account.
 7. Specifications: CRPSI will assume the responsibility to provide specifications to the Building along with the specifications and layout of production equipment.
 8. Training of CRPSI's Staff: CRPSI shall make its civilian staff available for training in security concerns by SCDC's training staff.

3.2 Duties of SCDC:

1. Inmate Laborers: SCDC will use its best efforts to provide a stable and available work force of inmates, which shall fulfill CRPSI's reasonable manpower requests.
2. Screening of Potential Inmate Laborers: Subject to Section 3.1, SCDC will pre-screen, interview and select inmates according to the job descriptions submitted, which shall specify performance criteria for each job.
3. Holidays: The inmates participating in the project will observe holidays as described in Appendix A attached hereto and incorporated herein.
4. Security: At its expense, SCDC shall be responsible for the security of the inmate labor force and the security of CRPSI's employees and agents.
5. Training of CRPSI's Staff: SCDC shall train CRPSI's civilian staff in institutional operational matters.
6. Management and Supervision: SCDC will provide management and supervision of the inmates for all phases of the work.
7. Access:
 - a. For maintenance purposes, SCDC will provide access to the premises at reasonable times for maintenance by CRPSI.

- b. For material handling purposes. SCDC shall provide security clearance and transport (at CRPSI's request) for trailers bringing raw materials and goods in and out of the premises in a timely fashion. SCDC will allow CRPSI's trucks, common carrier and others transporting raw materials, equipment and finished products to and from ICI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.
- c. Other access. SCDC will provide access to the facility during CRPSI's hours of operation for CRPSI's employees, agents, and business invitees, subject to SCDC's security requirements.
- d. CRPSI's employees and visitors shall be permitted to use the Sallyport entrance to ensure their safety.

3.3 Mutual Duties of the Parties:

1. Payment for Services: CRPSI agrees to pay SCDC \$4.20 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by CRPSI, SCDC and CRPSI may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this Agreement, SCDC and CRPSI may negotiate an increase in the per hour rate paid by CRPSI to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the Parties that such increase shall only reflect SCDC's increased cost of prison overhead.

CRPSI and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by CRPSI to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: CRPSI and SCDC agree that no goods produced under this Agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:

CRPSI, its employees or agents performing under the Agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. CRPSI will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not

limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of CRPSI nor agents of CRPSI in any manner whatsoever and for any purpose whatsoever. None of the above will hold themselves out or claim to be an officer or employee of CRPSI by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of CRPSI, including but not limited to, worker's compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

1. Period of Performance: The term of this Agreement shall be for five (5) years commencing on the Effective Date of this Agreement and terminating on September 30, 2013. SCDC grants to CRPSI a right of first refusal to match any bona fide third party offer as to the use of the premises after the termination of this Agreement.

Acts and Omissions: Each party agrees that it shall be responsible for its own acts and omissions and the acts and omissions of its agents, servants or employees. The foregoing shall not be interpreted to waive any contractual or other claims that may arise between the parties against each other.

2. Notices: All notices regarding the terms of this Agreement, including terminations, amendments and disputes shall be sent by certified mail to SCDC as follows:

Jon Ozmint, Director
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787

to CRPSI as follows:

Caterpillar Reman Powertrain Services, Inc.
175 McQueen Blvd.
Summerville, SC 29483
ATTN: Brian Yoder, VP & General Manager

With a copy to:

Caterpillar Inc.
100 N.E. Adams Street
Peoria, IL 61629
ATTN: General Counsel

3. Non-Discrimination in Employment: Neither SCDC nor CRPSI shall discriminate against any inmate worker or applicant because of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory mental or physical handicap, which does not impair the inmate's or applicant's ability to perform the duties of his job, with or without reasonable accommodation or pose a danger to himself or others.
4. Noncompliance with Nondiscrimination Requirements: In the event CRPSI fails to comply with the discrimination laws, the Agreement may be rescinded, canceled or terminated in

whole or in part, and CRPSI may be declared ineligible for further contracts from SCDC. CRPSI shall, however, be given a reasonable time in which to cure the noncompliance.

5. Records, Documents and Reports: CRPSI shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect cost of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times for inspection, review or audit by SCDC personnel or other personnel duly authorized by SCDC, the office of the State Auditor and Federal Officials so authorized by law, rules regulations or contract such audit shall be at the expense of the auditing agency. CRPSI shall retain all books, records, documents and other materials relevant to this Agreement for five (5) years and the authorities described herein above shall have full access to and the right to examine any of said materials during the extended period.

Only the Director of SCDC or his delegated designee by writing shall have the expressed, implied, or apparent authority to alter, modify or waive any clause or condition in this Agreement. Furthermore, any alterations, amendment or modification or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the Director.

6. Termination: It is understood and agreed that this Agreement shall terminate:
 - a. Upon the written, mutual, agreement of the Parties;
 - b. Upon the material breach or default of any provision of this Agreement by either Party, provided thirty (30) days written notice of the breach is given to the breaching Party by the non-breaching Party and the breaching Party fails to cure within the thirty (30) days;
 - c. (i) If CRPSI fails to utilize a minimum of fifty (50) inmates for 6 hours per day, five (5) days per week for a period of thirty (30) consecutive days; or (ii) if SCDC fails to provide a minimum of fifty (50) inmates for a period of thirty (30) consecutive days;
 - d. If Section 24-3-310 of the Code of Laws of the State of South Carolina, 1976, as amended, or the interpretation thereof is materially changed, altered, amended, or repealed so as to abrogate this legislation charged with establishing business relationships with private industry;
 - e. If federal, state, or local laws or the interpretation of such laws (including any provision of Chapter 24 of the Code of Laws of the State of South Carolina) change to prevent the shipment of goods produced under this Agreement or change so that there is a material alteration in the terms of this Agreement;
 - f. If CRPSI becomes bankrupt and such is not cured within sixty (60) days, insolvent, or makes an assignment for the benefit of creditors, or becomes subject to the administration of its assets in any kind of voluntary or involuntary creditors proceedings;
 - g. If CRPSI performs any intentional act which damages the reputation or property of SCDC and CRPSI does not cure such damage with thirty (30) days of notice thereof;
 - h. If CRPSI loses its corporate charter in its state of incorporation or loses the authority to transact business in the State of South Carolina pursuant to mandate by the Secretary of State of South Carolina, or if CRPSI's corporation is dissolved voluntarily or involuntarily and CRPSI does not cure such defect within thirty (30) days of notice thereof;

- i. Failure of CRPSI to pay promptly to SCDC any inmate wages due or supervision pass through costs hereunder for a period of fifteen (15) days after written notice from SCDC to CRPSI of such default; or
- j. At the end of any fiscal year (June 30) after the commencement date of this Agreement when sufficient appropriations, revenues, income, grants, or other funding from whatever source are not available to SCDC to carry on the purpose of program of SCDC, this sufficiency of funds to be solely determined by the State Budget and Control Board;

Upon early termination of the Agreement due to SCDC's breach of default, change in the law or an insufficiency of State funding for this Agreement, CRPSI shall have one hundred eighty (180) days to cease operations and vacate the premises. Upon early termination of the Agreement due to CRPSI's breach or default, CRPSI shall have one hundred and twenty (120) days to cease operations and vacate the premises. In the event of an early termination of this Agreement for any reason whatsoever, SCDC's obligation to provide a work force and CRPSI's obligation to provide and pay for work for a minimum number of inmates shall cease as of the date of cessation of operations. Upon any such termination, the Parties will cooperate to affect the purpose of Section 2.1.8, 3.1.6 and 3.3.1.

7. Immediate Suspension: This Agreement shall be suspended immediately in the event that the safety or security of the institution, its personnel or inmates is jeopardized by CRPSI, its agents or employees, and shall remain inoperative until such time as the condition no longer exists.
8. Government Compliance: SCDC warrants that it complies with all federal, state and local laws, Executive Orders, rules, regulations and ordinances which may be applicable to the performance of its obligations under this Agreement, including but not limited to Chapter 24 of the Code of Laws of the State of South Carolina (including federal certification of the private sector/prison industries program), the Fair Labor Standards Act, regulations of the U.S. Department of Labor, equal opportunity clauses applicable to government contracts, and environmental, health and safety laws and regulations, and will provide certification of such compliance if requested. If for any reason SCDC is not in compliance, CRPSI may terminate this Agreement, cease operations and vacate the premises in accordance with the final paragraph of Section 4.0.7 above, or at its option, temporarily cease operations until such noncompliance is remedied to its satisfaction.
9. Force Majeure: Neither Party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or otherwise for an interruption of service or employment deemed resulting from civil or military authority, from acts of God, riots, war, or any similar or dissimilar cause beyond reasonable control of either Party.
10. Governing Law: This Agreement shall be governed by the laws of the State of South Carolina and venue shall be located in the County of Richland, State of South Carolina.
11. Severability: If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are to be declared to be severable.

12. All Writings Contained Herein: This Agreement contains all the terms and conditions agreed upon by the Parties, no other understandings oral or otherwise, regarding the subject matter of this Agreement shall be deemed binding.
13. Successors and Assigns: The provisions hereof will inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Witness

Ann Robertson
Ann B. Bowers

Jon Ozmint
Jon Ozmint, Director

John Ziegler
Heather Miller

Bradley S. Chambers *st*
Bradley S. Chambers, President
Caterpillar Reman Powertrain Services, Inc.

APPROVED AS TO FORM
SOUTH CAROLINA DEPARTMENT OF REVENUE
OFFICE OF GENERAL COUNSEL
DATE: 10/2/08 [Signature]

effect without the invalid provision, and to this end, the provisions of this agreement are to be declared to be severable.

11. All Writings Contained Herein: This agreement contains all the terms and conditions agreed upon by the parties, no other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed binding.

Only the Director of SCDC or his delegate or designee by writing shall have the expressed, implied, or apparent authority to alter, modify or waive any clause or condition in this contract. Furthermore, any alterations, amendment or modification or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Director.

IN WITNESS WHEREOF the parties have executed this contract on the first written herein above.

Witness

Witness

William R. Byars, Jr.,
Director

Brad Grossman, President

assignment for the benefit of creditors, or becomes subject to the administration of its assets in any kind of voluntary or involuntary creditors proceedings;

- g. If Contractor performs any intentional act which damages the reputation or property of SCDC;
- h. If Contractor loses its corporate charter in its state of incorporation or loses the authority to transact business in the State of South Carolina pursuant to mandate by the Secretary of State of South Carolina, or if Contractor's corporation is dissolved voluntarily or involuntarily;
- i. Failure of Contractor to pay promptly any inmate wages due, hereunder, for a period of fifteen (15) days after written notice from SCDC to Contractor of such default;
- j. At the end of any fiscal year (June 30) after the commencement date of this contract when sufficient appropriations, revenues, income, grants or other funding from whatever sources are not available to SCDC to carry on the purpose of program of SCDC, this sufficiency of funds to be solely determined by the State Budget and Control Board; and
- k. Immediately, in the event that the safety or security of the institution, its personnel or inmates is jeopardized.

Upon termination of the contract, the Contractor shall have thirty (30) days to vacate the facilities of SCDC.

8. Force Majeure: Neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or otherwise for an interruption of service or employment deemed resulting from civil or military authority, from acts of God, riots, war, or any similar or dissimilar cause beyond reasonable control of either party.

9. Governing Law: This contract shall be governed by the laws of the State of South Carolina and venue shall be located in the County of Richland, State of South Carolina.

10. Severability: If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract, which can be given

canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts from SCDC. The Contractor shall, however, be given a reasonable time in which to cure the noncompliance.

6. Records, Documents and Reports: The Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect cost of any nature expended in the performance of this agreement. These records shall be subject at all reasonable times for inspection, review or audit by SCDC personnel or other personnel duly authorized by SCDC, the office of the State Auditor and Federal Officials so authorized by law, rules, regulations or contract. Such audit shall be at the expense of the auditing agency. The Contractor shall retain all books, records, documents and other materials relevant to this agreement for five (5) years after termination of the agreement and the authorities described herein above shall have full access to and the right to examine any of said materials during the extended period.
7. Termination: It is understood and agreed that this Agreement shall terminate:
 - a. Upon the written, mutual, agreement of the parties with thirty (30) days written notice;
 - b. Upon the material breach or default of any provision of this Agreement by either party, provided fifteen (15) days written notice of the breach is given to the breaching party by the non-breaching party and the breaching party fails to cure within the fifteen (15) days;
 - c. If Contractor fails to employ a minimum of 30 inmates 8 hours per day, 5 days per week;
 - d. If Section 24-3-310 of the Code of Laws of the State of South Carolina, 1976, as amended, is materially changed, altered, amended, or repealed so as to abrogate this legislation charges with establishing business relationships with private enterprise;
 - e. If federal, state, or local laws change to prevent the shipment of goods produced under this Agreement;
 - f. If Contractor becomes bankrupt and such is not cured within sixty (60) days, insolvent, or makes an

2. Hold Harmless: The Contractor agrees to protect, defend and hold harmless the State of South Carolina, SCDC or its employees or agents thereof, from any liability or claim for damage, including injury to the Contractor's employees or agents, except where such liability claim is due to negligence of the State of South Carolina, SCDC or employees or agents thereof, arising out of the performance of this contract. The Contractor further agrees to protect, defend and hold harmless the State of South Carolina, SCDC or any employees or agents thereof, for any product liability claims relating to the products produced or services rendered under this contract. The Contractor expressly understands that SCDC or its employees or agents thereof, is not a guarantor of the work performed by the inmate workers referred by SCDC. Inmates shall not be considered employees of Contractor.
3. Notices: All notices regarding the terms of this contract, including terminations, amendments and disputes shall be sent by certified mail to SCDC as follows:
- William R. Byars, Jr., Director
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, South Carolina 29221-1787
- to the Contractor as follows:
- Brad Grossman, President
Carolina Textiles
68 Anderson Road
Walterboro, SC 29488
4. Non-Discrimination in Employment: The Contractor shall not discriminate against any employee inmate worker or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory mental or physical handicap.
5. Noncompliance with Nondiscrimination Requirements: In the event the Contractor fails to comply with the discrimination laws, the contract may be rescinded,

agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by the Contractor.

2. Charge to Contractor: SCDC will charge Contractor \$.08 per pound for processed goods and \$.02 per pound for scrap/waste goods up to 10% of total weight.

3. Compliance with Convict Labor Laws: The Contractor and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law change preventing interstate shipments of goods produced under this agreement, Contractor shall terminate without penalty under this contract.

ARTICLE 4 General Terms and Conditions:

4.1 General:

The Contractor, his/her employee under the agreement are not to be an officer or employee of SCDC nor as agents of SCDC in any way. The Contractor will not hold himself/herself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

1. Period of Performance: The term of this Agreement shall be for one (1) year commencing on the date of the execution of this Agreement and renewed annually in one year increments so long as both parties agree for a total of five (5) years. For the second, third, fourth and fifth year of this agreement, the rate shall be increased on the anniversary date of the agreement by the amount of the state employee salary increase passed by the most recent legislative session. Should both parties not agree upon the increased cost for the upcoming year, this agreement can be terminated.

.10 lb. for processed goods

take out .02 for scrap/waste up to 10% of total weight

agrees that its deliveries, shipments and employees are subject to search before entering or leaving the premises of SCDC.

4. Compliance With Rules and Regulations: The Contractor agrees that it and its employees must comply with all policies and procedures of SCDC and all applicable federal, state, and local laws, ordinances, regulations and accreditation standards.

5. Payment for Inmate Services: SCDC will invoice the Contractor on a monthly basis for inmate labor. The Contractor will pay all sums due and owing within fifteen days of receipt of invoice. Payments shall be made to SC Department of Corrections, Division of Industries account.

3.2 Duties of SCDC:

1. Scope of Work: Prison Industry inmates under the direct and total supervision of SCDC will cut wiping rags from scrap materials according to engineering design and manufacturing specifications developed and provided by the Contractor. It will be the sole responsibility of the Contractor to provide a quality control manual for these operations and to ensure compliance with the terms provided therein.

2. Inmate Laborers: SCDC will provide a stable and available work force of inmates.

3. Screening of Potential Inmate Laborers: SCDC will pre-screen inmates for interview according to the job descriptions submitted.

4. Holidays: The inmates employed in the project may observe holidays as described in Appendix A attached hereto and incorporated herein.

5. Inmate Workers Security: SCDC shall be responsible for the security of the inmate labor force

3.3 Mutual Duties of the Parties:

1. Bonus Pay: The Contractor and SCDC may mutually

Contractor shall provide employment for a minimum of 30 inmates working eight (8) hours per day, five (5) days per week. SCDC will provide one civilian supervisor paid from P.I. funds provided, however, Contractor shall pay for any additional staff sufficient to ensure security and supervision on each shift. Contractor shall abide by all SCDC policies and procedures. SCDC shall have the discretion to remove any agent or employee of Contractor from the institution in the event of a violation of any of SCDC's policies and procedures with regard to the institution.

3.1 Duties of Contractor:

SCDC, at its cost, will provide one civilian employee to supervise 30 inmates at Lieber CI. Any additional security supervision provided by SCDC will be passed through to the Contractor on a monthly basis. The Contractor will pay all sums due and owing within fifteen days from receipt of invoice to SCDC, Prison Industries.

1. Training of Inmate Employees: SCDC shall provide initial training after assuming work within the Prison Industries facility.

2. Raw Materials: The Contractor shall provide all raw materials, equipment and component parts for cutting wiping rags from scrap material. All raw materials, personal property, inventory, machinery, equipment and improvements and/or fixtures or other property of any kind or description whatsoever installed or brought into the prison buildings by the Contractor or its employees or agents, shall be at the sole risk of Contractor and neither the State of South Carolina or SCDC or its employees and agents thereof, shall be liable for any damage or loss suffered except as provided in Sections 2.1.4 and 2.1.5 contained herein above. SCDC will provide management and production supervision for all phases of the work. SCDC will allow Contractor's trucks, common carrier and others transporting raw materials, equipment and finished products to and from Lieber CI, reasonable access during normal business hours, subject to the Department's security requirements in Section 3.1.3.

3. Security: The Contractor understands and specifically

replacement cost less fair market value. Consequential or punitive damages shall not be recoverable.

6. Payment for Occupancy: The Contractor shall pay a fixed monthly amount of One (\$1.00) Dollar for occupancy of the premises herein above described.

7. Condition of Property: Upon termination of this agreement, the Contractor will surrender the building, equipment and fixtures belonging to SCDC in the same condition it received it, normal wear and tear and casualty excepted.

8. Hazardous Waste: No hazardous waste shall be generated in the Prison Industries building by the Contractor.

9. Worker Displacement: During term of this agreement, Contractor's civilian workers will not be displaced by inmate workers. SCDC will verify with the S. C. Employment Security Commission annually.

2.2 The Duties of SCDC:

1. Premises to be Occupied: SCDC shall provide space in the industry building at Lieber CI. The occupancy of this area should be consistent with the terms of this agreement regarding work authorized and hours. SCDC will maintain its facility and fixtures in good condition throughout term of contract.

2. Utilities: SCDC shall provide water, electricity, natural gas, and trash removal services and pass through actual cost to Contractor or allow Contractor to install at its own cost, separate meters for calculating payment.

3. Insurance: SCDC will maintain insurance coverage on the building and its property therein as required by the laws of the State of South Carolina.

ARTICLE 3 Conditions Related to Employment of Inmates:

3.0 General:

1. Insurance: The Contractor shall maintain insurance coverage for its equipment, supplies and material located in the Prison Industries building against casualty occurrences. The Contractor shall not be responsible for maintaining insurance on SCDC owned equipment and supplies.

2. Telephone Service: The Contractor may, with prior approval of SCDC, which will not be unreasonably withheld, install telephones and/or computer lines in the Prison Industries building, which must be secured at all times in accordance with SCDC guidelines. The cost of installation and maintenance of such telephones will be at the Contractor's sole expense.

3. Tools, Equipment and Supplies: The Contractor shall be responsible for providing all necessary supplies which may be necessary for the performance of the work herein contemplated. Such tools and equipment supplied by Contractor may be removed upon termination of the agreement after it is determined that the Contractor does not owe SCDC money.

4. Waiver of Subrogation: SCDC shall not be liable for any damages to the Contractor's equipment, supplies and material located in the Prison Industries building caused by casualty occurrence, it being understood that the Contractor shall look to its insurer for reimbursement and shall obtain from its insurer waiver of subrogation rights against SCDC.

5. Loss of Property: All personal property, inventory, equipment, improvements and/or fixtures or other property of any kind or description whatsoever, installed or brought into the area by the Contractor or the Contractor's employees or agents, shall be at the Contractor's sole risk and neither the State of South Carolina, SCDC or any employee or agent thereof, shall be liable for any damage done to or loss of such real or personal property or loss suffered by the business or occupation of the Contractor arising from any acts or occurrences whatsoever except where the damage or loss is due to the malicious destruction of equipment caused by inmates (as determined by the SCDC). If SCDC is held liable, the loss or damage shall be limited to

STATE OF SOUTH CAROLINA)

AGREEMENT

COUNTY OF RICHLAND)

THE AGREEMENT is entered into this 8th day of January 2011, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") and its authorized agent William R. Byars, Jr., Director, and Carolina Textiles (hereafter referred to as "Contractor") by its duly authorized agent Brad Grossman, President.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and,

WHEREAS, the Contractor represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina;

WHEREAS, the Contractor intends to engage in the business of cutting fabric components provided at the Lieber Correctional Institution (hereinafter referred to as "Lieber CI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

SCDC shall provide space in an industry facility located at Lieber CI and will refer necessary inmates for potential employment.

ARTICLE 2 Conditions of Occupancy of the Industry Facility:

2.0 General:

The Contractor shall not have the right to sublease, assign, transfer, or enter into any other agreement regarding the occupancy herein granted without the expressed written consent of SCDC.

2.1 The Duties of the Contractor:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AGREEMENT

2646
SVC

THE AGREEMENT is entered into this 14th day of February 2013, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") and its authorized agent William R. Byars, Jr., Director, and Carolina Textiles (hereafter referred to as "Contractor") by its duly authorized agent Brad Grossman, President.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and,

WHEREAS, the Contractor represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina;

WHEREAS, the Contractor intends to engage in the business of cutting fabric components provided at the Lieber Correctional Institution (hereinafter referred to as "Lieber CI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

SCDC shall provide space in an industry facility located at Lieber CI and will refer necessary inmates for potential employment.

ARTICLE 2 Conditions of Occupancy of the Industry Facility:

2.0 General:

The Contractor shall not have the right to sublease, assign, transfer, or enter into any other agreement regarding the occupancy herein granted without the expressed written consent of SCDC.

2.1 The Duties of the Contractor:

APPENDIX A

HOLIDAY SCHEDULE

New Years Day

Martin Luther King's Birthday

President's Day

Confederate Memorial Day

National Memorial Day

Independence Day

Labor Day

Veterans Day

Thanksgiving Day

Day After Thanksgiving

Christmas Eve

Christmas Day

Day After Christmas

replacement cost less fair market value. Consequential or punitive damages shall not be recoverable.

6. Payment for Occupancy: The Contractor shall pay a fixed monthly amount of One (\$1.00) Dollar for occupancy of the premises herein above described.

7. Condition of Property: Upon termination of this agreement, the Contractor will surrender the building, equipment and fixtures belonging to SCDC in the same condition it received it, normal wear and tear and casualty excepted.

8. Hazardous Waste: No hazardous waste shall be generated in the Prison Industries building by the Contractor.

9. Worker Displacement: During term of this agreement, Contractor's civilian workers will not be displaced by inmate workers. SCDC will verify with the S. C. Department of Employment and Workforce annually.

2.2 The Duties of SCDC:

1. Premises to be Occupied: SCDC shall provide space in the industry building at Lieber CI. The occupancy of this area should be consistent with the terms of this agreement regarding work authorized and hours. SCDC will maintain its facility and fixtures in good condition throughout term of contract.

2. Utilities: SCDC shall provide water, electricity, natural gas, and trash removal services and pass through actual cost to Contractor or allow Contractor to install at its own cost, separate meters for calculating payment.

3. Insurance: SCDC will maintain insurance coverage on the building and its property therein as required by the laws of the State of South Carolina.

ARTICLE 3 Conditions Related to Employment of Inmates:

3.0 General:

Contractor shall provide employment for a minimum of 30 inmates working eight (8) hours per day, five (5) days per week. SCDC will provide one civilian supervisor paid from P.I. funds provided, however, Contractor shall pay for any additional staff sufficient to ensure security and supervision on each shift. Contractor shall abide by all SCDC policies and procedures. SCDC shall have the discretion to remove any agent or employee of Contractor from the institution in the event of a violation of any of SCDC's policies and procedures with regard to the institution.

3.1 Duties of Contractor:

SCDC, at its cost, will provide one civilian employee to supervise 30 inmates at Lieber CI. Any additional security supervision provided by SCDC will be passed through to the Contractor on a monthly basis. The Contractor will pay all sums due and owing within fifteen days from receipt of invoice to SCDC, Prison Industries.

1. Training of Inmate Employees: SCDC shall provide initial training after assuming work within the Prison Industries facility.

2. Raw Materials: The Contractor shall provide all raw materials, equipment and component parts for cutting wiping rags from scrap material. All raw materials, personal property, inventory, machinery, equipment and improvements and/or fixtures or other property of any kind or description whatsoever installed or brought into the prison buildings by the Contractor or its employees or agents, shall be at the sole risk of Contractor and neither the State of South Carolina or SCDC or its employees and agents thereof, shall be liable for any damage or loss suffered except as provided in Sections 2.1.4 and 2.1.5 contained herein above. SCDC will provide management and production supervision for all phases of the work. SCDC will allow Contractor's trucks, common carrier and others transporting raw materials, equipment and finished products to and from Lieber CI, reasonable access during normal business hours, subject to the Department's security requirements in Section 3.1.3.

3. Security: The Contractor understands and specifically

agrees that its deliveries, shipments and employees are subject to search before entering or leaving the premises of SCDC.

4. Compliance With Rules and Regulations: The Contractor agrees that it and its employees must comply with all policies and procedures of SCDC and all applicable federal, state, and local laws, ordinances, regulations and accreditation standards.

5. Payment for Inmate Services: SCDC will invoice the Contractor on a monthly basis for inmate labor. The Contractor will pay all sums due and owing within fifteen days of receipt of invoice. Payments shall be made to SC Department of Corrections, Division of Industries account.

3.2 Duties of SCDC:

1. Scope of Work: Prison Industry inmates under the direct and total supervision of SCDC will cut wiping rags from scrap materials according to engineering design and manufacturing specifications developed and provided by the Contractor. It will be the sole responsibility of the Contractor to provide a quality control manual for these operations and to ensure compliance with the terms provided therein.

2. Inmate Laborers: SCDC will provide a stable and available work force of inmates.

3. Screening of Potential Inmate Laborers: SCDC will pre-screen inmates for interview according to the job descriptions submitted.

4. Holidays: The inmates employed in the project may observe holidays as described in Appendix A attached hereto and incorporated herein.

5. Inmate Workers Security: SCDC shall be responsible for the security of the inmate labor force.

3.3 Mutual Duties of the Parties:

1. Bonus Pay: The Contractor and SCDC may mutually

agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by the Contractor.

2. Charge to Contractor: SCDC will charge Contractor \$.10 per pound for processed goods.

3. Compliance with Convict Labor Laws: The Contractor and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law change preventing interstate shipments of goods produced under this agreement, Contractor shall terminate without penalty under this contract.

ARTICLE 4 General Terms and Conditions:

4.1 General:

The Contractor, his/her employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. The Contractor will not hold himself/herself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

1. Period of Performance: The term of this Agreement shall be for one (1) year commencing on the date of the execution of this Agreement and renewed annually in one year increments so long as both parties agree for a total of five (5) years. For the second, third, fourth and fifth year of this agreement, the rate shall be increased on the anniversary date of the agreement by the amount of the state employee salary increase passed by the most recent legislative session. Should both parties not agree upon the increased cost for the upcoming year, this agreement can be terminated.

2. Hold Harmless: The Contractor agrees to protect, defend and hold harmless the State of South Carolina, SCDC or its employees or agents thereof, from any liability or claim for damage, including injury to the Contractor's employees or agents, except where such liability claim is due to negligence of the State of South Carolina, SCDC or employees or agents thereof, arising out of the performance of this contract. The Contractor further agrees to protect, defend and hold harmless the State of South Carolina, SCDC or any employees or agents thereof, for any product liability claims relating to the products produced or services rendered under this contract. The Contractor expressly understands that SCDC or its employees or agents thereof, is not a guarantor of the work performed by the inmate workers referred by SCDC. Inmates shall not be considered employees of Contractor.

3. Notices: All notices regarding the terms of this contract, including terminations, amendments and disputes shall be sent by certified mail to SCDC as follows:

William R. Byars, Jr., Director
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, South Carolina 29221-1787

to the Contractor as follows:

Brad Grossman, President
Carolina Textiles
68 Anderson Road
Walterboro, SC 29488

4. Non-Discrimination in Employment: The Contractor shall not discriminate against any employee inmate worker or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory mental or physical handicap.
5. Noncompliance with Nondiscrimination Requirements: In the event the Contractor fails to comply with the discrimination laws, the contract may be rescinded, canceled or terminated in whole or in part, and the

Contractor may be declared ineligible for further contracts from SCDC. The Contractor shall, however, be given a reasonable time in which to cure the noncompliance.

6. Records, Documents and Reports: The Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect cost of any nature expended in the performance of this agreement. These records shall be subject at all reasonable times for inspection, review or audit by SCDC personnel or other personnel duly authorized by SCDC, the office of the State Auditor and Federal Officials so authorized by law, rules, regulations or contract. Such audit shall be at the expense of the auditing agency. The Contractor shall retain all books, records, documents and other materials relevant to this agreement for five (5) years after termination of the agreement and the authorities described herein above shall have full access to and the right to examine any of said materials during the extended period.
7. Termination: It is understood and agreed that this Agreement shall terminate:
 - a. Upon the written, mutual, agreement of the parties with thirty (30) days written notice;
 - b. Upon the material breach or default of any provision of this Agreement by either party, provided fifteen (15) days written notice of the breach is given to the breaching party by the non-breaching party and the breaching party fails to cure within the fifteen (15) days;
 - c. If Contractor fails to employ a minimum of 30 inmates 8 hours per day, 5 days per week;
 - d. If Section 24-3-310 of the Code of Laws of the State of South Carolina, 1976, as amended, is materially changed, altered, amended, or repealed so as to abrogate this legislation charges with establishing business relationships with private enterprise;
 - e. If federal, state, or local laws change to prevent the shipment of goods produced under this Agreement;
 - f. If Contractor becomes bankrupt and such is not cured within sixty (60) days, insolvent, or makes an assignment for the benefit of creditors, or becomes

subject to the administration of its assets in any kind of voluntary or involuntary creditors proceedings;

- g. If Contractor performs any intentional act which damages the reputation or property of SCDC;
- h. If Contractor loses its corporate charter in its state of incorporation or loses the authority to transact business in the State of South Carolina pursuant to mandate by the Secretary of State of South Carolina, or if Contractor's corporation is dissolved voluntarily or involuntarily;
- i. Failure of Contractor to pay promptly any inmate wages due, hereunder, for a period of fifteen (15) days after written notice from SCDC to Contractor of such default;
- j. At the end of any fiscal year (June 30) after the commencement date of this contract when sufficient appropriations, revenues, income, grants or other funding from whatever sources are not available to SCDC to carry on the purpose of program of SCDC, this sufficiency of funds to be solely determined by the State Budget and Control Board; and
- k. Immediately, in the event that the safety or security of the institution, its personnel or inmates is jeopardized.

Upon termination of the contract, the Contractor shall have thirty (30) days to vacate the facilities of SCDC.

8. Force Majeure: Neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or otherwise for an interruption of service or employment deemed resulting from civil or military authority, from acts of God, riots, war, or any similar or dissimilar cause beyond reasonable control of either party.

9. Governing Law: This contract shall be governed by the laws of the State of South Carolina and venue shall be located in the County of Richland, State of South Carolina.

10. Severability: If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract, which can be given effect without the invalid provision, and to this end, the

provisions of this agreement are to be declared to be severable.

11. All Writings Contained Herein: This agreement contains all the terms and conditions agreed upon by the parties, no other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed binding.

Only the Director of SCDC or his delegate or designee by writing shall have the expressed, implied, or apparent authority to alter, modify or waive any clause or condition in this contract. Furthermore, any alterations, amendment or modification or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Director.

IN WITNESS WHEREOF the parties have executed this contract on the first written herein above.

Witness

John J. Robertson
William R. Byars, Jr.

Witness

William R. Byars, Jr.
Jerry D. Kozlowski

William R. Byars, Jr.
William R. Byars, Jr.,
Director

Brad Grossman
Brad Grossman, President

APPENDIX A

HOLIDAY SCHEDULE

New Years Day
Martin Luther King's Birthday
President's Day
Confederate Memorial Day
National Memorial Day
Independence Day
Labor Day
Veterans Day
Thanksgiving Day
Day After Thanksgiving
Christmas Eve
Christmas Day
Day After Christmas

Amendment Number One:

Attached is a copy of Contract # 2646.

Pursuant to the Service agreement between Carolina Textiles and the South Carolina Department of Corrections dated February 14, 2013, Article 3.3.2 -- Charge of Contractor is hereby revised to read, "SCDC will charge Contractor \$.09 per pound for processed goods". This will be in effect for the balance of the contract ending 2/13/2014.

Upon signatures of both parties, the Amendment is incorporated in this agreement and all other terms and conditions remain the same.

Witness

William R. Byars, Jr., Director

Date

Witness

Danielle Cunningham
March 2013

Brad Grossman
Brad Grossman, President

6/27/13
Date

#2004

ADDENDUM:

Pursuant to the ten year agreement between the South Carolina Department of Corrections and Williams Technologies, Inc. dated September 30, 1998, both parties agree to the following changes:

1. All references in the Agreement to "Williams Technologies," the "Contractor" or "Williams Technologies, Inc." or "Williams" shall mean Caterpillar Remanufacturing Powertrain Services, Inc.
2. The preamble to the Agreement shall be amended so that the phrase "by its duly authorized agent William S. Williams, Chairman" is replaced by the phrase "by its duly authorized agent, "Brad Chambers, President.
3. Section 4.0(3) shall be restated and amended so that notices to the Contractor are sent as follows:

Dean R. Barnes
VP & General Manager
175 McQueen Blvd.
Summerville, S. C. 29483

With a copy to:
Caterpillar, Inc.
100 N.E. Adams Street
Peoria, Illinois 61629
ATTN: General Counsel

4. Section 4.0(6) shall be amended to replace the term "ten (10)" with "five (5)" wherever it appears within this section.

IN WITNESS WHEREOF, the parties have caused this First Amendment to the Agreement to be executed by or duly authorized signatory.

South Carolina Department of Corrections

By: Jon E. Ozmint
Jon Ozmint, Director
7-23-07
Date

APPROVED AS TO FORM
South Carolina Department of Corrections
OFFICE OF GENERAL COUNSEL
DATE 7-23-07

Caterpillar Remanufacturing Powertrain Services, Inc.

By: Brad Chambers
Brad Chambers, President
7-24-07
Date

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as "LCI"); and,

WHEREAS, this agreement is made in the best interest of the State of South Carolina;

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building"), SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be \$ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.

1
A:\SCDC FINAL CONTRACT.doc
August 17, 1998

ARTICLE 2 Conditions of Occupancy of the Industry Facility:

2.0 Environmental:

Williams shall not cause or permit any hazardous substances to be used, stored, generated, or disposed of on or in the premises by Williams, its agents, employees, contractors or invitees, without first obtaining SCDC's written consent. SCDC represents that the premises are substantially free of any known contamination at the commencement of this Agreement, and agrees to the extent permitted by law to indemnify and hold Williams harmless from any damages or claims relating to contamination present on the premises prior to the commencement of this Agreement. If the premises become contaminated in any manner for which Williams is responsible during the term of this Agreement, Williams shall indemnify and hold SCDC harmless from any damages or claims arising during or as a result of Williams' occupancy of the premises and arising as a result of such contamination by Williams. SCDC acknowledges that it has consented to the presence of transmission fluids and oils on the premises.

2.1 The Duties of Williams:

1. Maintenance: Williams shall keep the occupied area clean, neat and tidy, and shall report any damage to the Building structure or material fixtures or unsafe conditions to the appropriate institutional authority. Further, Williams shall be responsible for all maintenance to the Building.

2. Insurance: Williams shall maintain insurance coverage for the Building, and for its equipment, supplies and material located in the Building and related premises against casualty occurrences. Further Williams shall maintain liability insurance coverage on itself, its agents, servants and employees in an amount no less than \$300,000 per person per claim, \$600,000 aggregate. Such Insurance coverage shall name the South Carolina Department of Corrections as an additional insured. Williams shall also maintain Workers Compensation insurance on its employees (which shall not include the prison inmates or other employees of SCDC or the State of South Carolina) in accordance with the laws of the State of South Carolina. Williams shall deliver to SCDC a duly authenticated certificate evidencing such insurance upon executing this agreement and upon each insurance renewal date.

3. Telephone Service: Williams may, with prior approval of SCDC, which will not be unreasonably withheld, install telephones and/or computer lines in the Building, which must be secured at all times in accordance with SCDC guidelines. The cost of installation and maintenance of such telephones will be at Williams's sole expense.

4. Tools, Equipment and Supplies: Williams shall be responsible for providing all necessary tools, equipment, and/or supplies which may be necessary for the performance of the work herein contemplated. Such tools and equipment supplied by Williams may be removed by Williams upon termination of the agreement.

5. Building Modification: Williams shall provide SCDC building plans and specifications, to include equipment installation within six weeks of the

execution of this agreement. Williams shall not make any alterations or improvements to the Building other than those outlined herein above without prior written approval of SCDC which shall not be unreasonably withheld.

6. Waiver of Subrogation: Williams shall be liable for any damages to the Building, and for damages to its equipment, supplies and material located in the Building caused by casualty occurrence, it being understood that Williams shall repair such damages and look to its insurer for reimbursement and shall obtain from its insurer waiver of subrogation rights against SCDC.

7. Loss of Property: All personal property, inventory, equipment, improvements and/or fixtures or other property of any kind or description whatsoever, installed or brought into the area by Williams or Williams' employees or agents (the "Equipment"), shall be at the Williams' sole risk and neither the State of South Carolina, SCDC or any employee or agent thereof, shall be liable for any damage done to or loss of such property or Equipment or loss suffered by the business or occupation of Williams arising from any acts or occurrences whatsoever except where the damage or loss is due to the malicious destruction of Equipment caused by inmates or employees of the State of South Carolina (as reasonably determined by the SCDC). If SCDC is held liable, the loss or damage shall be limited to replacement cost or to the repair cost of damaged or destroyed property whichever is less. Consequential or punitive damages shall not be recoverable.

8. Condition of Property: Upon termination of this agreement, Williams shall remove its Equipment and vacate the premises; or negotiate a new agreement between SCDC and Williams to continue operation of the facility. Williams and SCDC may negotiate a new lease and continue operations. However should the agreement not continue at the end of this lease, SCDC shall take possession of the building.

9. Hazardous Waste: Any hazardous waste generated in the Building by Williams shall be disposed of promptly by Williams at its sole expense according to federal and state regulations.

2.2

1. Premises to be Occupied: SCDC shall provide space for an up to 45,000 sq. ft. Building and related area at LCI. The occupancy of this area should be consistent with the terms of this agreement regarding work authorized and hours. Williams will maintain ~~the~~ ^{the} facility and fixtures in good condition throughout the term of Agreement.

2. Utilities: SCDC shall provide water, electricity, propane or natural gas, and trash removal services and pass through actual cost to Williams for its use of the Building or allow Williams to install at its own cost separate meters for calculating payment.

3. Insurance: Williams will maintain insurance coverage on the Building and its property therein as required by the laws of the State of South Carolina.

4. Supervisory Staff: SCDC shall provide one (1) civilian supervisor to coordinate all activities between SCDC and Williams. Williams shall provide sufficient civilian staff for supervision of work products on each shift. SCDC will provide supervisors satisfactory to Williams and the actual cost of supervision shall be passed through each pay period by SCDC to Williams. Payment of such services shall be paid within fifteen (15) days from receipt of invoice.

ARTICLE 3 Conditions Related to Inmates:

3.0 General:

Williams agrees to provide sufficient work in the facility for SCDC to employ a minimum of 75 inmates working 7.5 hours daily, five days per week. Overtime can be worked if sufficient notice is given to SCDC. Williams and SCDC shall agree upon a schedule of workers to be hired by SCDC such that a minimum of 75 inmates are working 7.5 hours daily, five days per week within six months of the first inmate hiring. SCDC will provide inmate labor upon adequate notice by Williams up to a maximum of 300 inmates. Overall staffing will be agreed upon by both SCDC and Williams. If Williams requests overtime, Williams shall pay for such additional hours at the standard hourly rate and shall bear additional costs of security and supervision, if any, for such overtime.

3.1 Duties of Williams:

Williams shall provide to SCDC job descriptions and personnel procedures. Williams reserves the right to have SCDC remove and replace inmate workers based on job performance, so long as its actions conform with nondiscrimination provisions referenced herein.

1. Training of Inmates: Williams shall be responsible for training of inmates in the disassembly and/or remanufacturing of its product lines and activities related thereto.

2. Scope of Work: Prison Industry inmates under the general oversight of SCDC will disassemble and/or remanufacture Williams' product lines according to engineering design and manufacturing specifications developed and provided by Williams, with Williams providing work product quality supervision, as set forth in Paragraph 2.2(4). It will be the sole responsibility of Williams to provide a quality control manual for these operations and to ensure compliance with the terms provided therein. The requirements contained within the quality control manual must be submitted in writing to Prison Industries for review for institutional safety and security prior to beginning of the assembly operations.

3. Raw Materials: Williams shall provide all raw materials and component parts for work. All raw materials, personal property, inventory, machinery, equipment and improvements and/or fixtures or other property of any kind or description whatsoever installed or brought into the prison buildings by Williams or its employees or agents, shall be at the sole risk of Williams and neither the State of South Carolina or SCDC or its employees and agents thereof, shall be liable for any damage or loss suffered except as provided in Section 2.1.7 contained herein above.

4. Security: Williams understands and specifically agrees that its deliveries, shipments and employees are subject to search before entering or leaving the premises of SCDC.

5. Compliance With Rules and Regulations: Williams agrees that it and its employees must comply with all policies and procedures of SCDC and all applicable federal, state, and local laws, ordinances, regulations and accreditation standards.

6. Payment for Inmate Services: SCDC will invoice Williams on a bimonthly basis for inmate labor. Williams will pay all sums due and owing within fifteen days of receipt of invoice. Payments shall be made to S.C. Department of Corrections, Division of Prison Industries account.

7. Specifications: Williams will assume the responsibility to provide specifications to the Building along with the specifications and layout of production equipment.

8. Training of Williams' Staff: Williams shall make its civilian staff available for training in security concerns by SCDC's training staff.

3.2 Duties of SCDC:

1. Inmate Laborers: SCDC will use its best efforts to provide a stable and available work force of inmates, which shall fulfill Williams's reasonable manpower requests.

2. Screening of Potential Inmate Laborers: Subject to Section 3.1, SCDC will pre-screen, interview and select inmates according to the job descriptions submitted, which shall specify performance criteria for each job.

3. Holidays: The inmates participating in the project will observe holidays as described in Appendix A attached hereto and incorporated herein.

4. Security: At its expense, SCDC shall be responsible for the security of the inmate labor force and the security of Williams's employees and agents.

5. Training of Williams' Staff: SCDC shall train Williams' civilian staff in institutional operational matters.

6. Management and Supervision: SCDC will provide management and supervision of the inmates for all phases of the work.

7. Access.

(a) For maintenance purposes. SCDC will provide access to the premises at reasonable times for maintenance by Williams.

(b) For material handling purposes. SCDC shall provide security clearance and transport (at Williams' request) for trailers bringing raw materials and goods in and out of the premises in a timely fashion. SCDC will allow Williams' trucks, common carrier and others transporting raw materials, equipment and finished products

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC \$4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:

Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

whatsoever and for any purpose whatsoever. None of the above will hold themselves out or claim to be an officer or employee of Williams by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of Williams, including but not limited to, worker's compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

1. Period of Performance: The term of this Agreement shall be for ten (10) years commencing on the date of the execution of this Agreement Two years prior to the end of the term, on Williams' request, SCDC and Williams shall make good faith efforts to negotiate an agreement to continue Williams's use of the premises. In addition, SCDC grants to Williams a right of first refusal to match any bona fide third party offer as to the use of the premises after the termination of this Agreement.

2. Hold Harmless: Williams agrees to protect, defend and hold harmless the State of South Carolina, SCDC or its employees or agents thereof, from any liability or claim for damage, including injury to Williams' employees or agents, except where such liability claim is due to the sole negligence or the intentional acts of the State of South Carolina, SCDC or employees (including inmates) or agents thereof, arising out of the performance of this Agreement. Williams further agrees to protect, defend and hold harmless the State of South Carolina, SCDC or any employees or agents thereof, for any product liability claims relating to the products produced or services rendered under this contract. Williams expressly understands that SCDC or its employees or agents thereof, is not a guarantor of the work performed by the inmate workers referred by SCDC. Inmates shall not be considered employees of Williams.

To the fullest extent permitted by law, the State of South Carolina and SCDC agree to protect, defend and hold harmless Williams, its directors, officers, employees and agents from any liability or claim for damage, including injury to employees or agents of the State of South Carolina or SCDC, or the inmates at LCI, except where such liability claim is due to the sole negligence or the intentional acts of Williams or employees or agents thereof, arising out of the performance of this Agreement, including but not limited to claims for workers compensation or other compensation related to such injury. For all purposes, inmates shall be considered to be employees of SCDC. Should Williams be held liable for Workers Compensation as to the inmates and should SCDC or the state of South Carolina be unable to fulfill its obligations under this paragraph, Williams shall have the right to immediately re-negotiate the labor costs set forth in Paragraph 3.3.1 of this Agreement, to reflect the change in Williams' costs.

3. Notices: All notices regarding the terms of this Agreement, including terminations, amendments and disputes shall be sent by certified mail to SCDC as follows:

Michael W. Moore, Director
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, South Carolina 29221-1787

to Williams as follows:

Williams Technologies
P. O. Box 1548
211 Farmington Road
Summerville, SC 29484-1548
ATTN: Jeffrey W. Anderson, President

Copy: The W.W. Williams Company
835 West Goodale Boulevard
Columbus, Ohio 43212
ATTN: Jean A. Patrick, Executive Vice President

4. Non-Discrimination in Employment: Neither SCDC nor Williams shall discriminate against any inmate worker or applicant because of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory mental or physical handicap, which does not impair the inmate's or applicant's ability to perform the duties of his job, with or without reasonable accommodation or pose a danger to himself or others.

5. Noncompliance with Nondiscrimination Requirements: In the event Williams fails to comply with the discrimination laws, the Agreement may be rescinded, canceled or terminated in whole or in part, and Williams may be declared ineligible for further contracts from SCDC. Williams shall, however, be given a reasonable time in which to cure the noncompliance.

6. Records, Documents and Reports: Williams shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect cost of any nature expended in the performance of this agreement. These records shall be subject at all reasonable times for inspection, review or audit by SCDC personnel or other personnel duly authorized by SCDC, the office of the State Auditor and Federal Officials so authorized by law, rules regulations or contract such audit shall be at the expense of the auditing agency. Williams shall retain all books, records, documents and other materials relevant to this agreement for ten (10) years and the authorities described herein above shall have full access to and the right to examine any of said materials during the extended period.

Only the Director of SCDC or his delegated designee by writing shall have the expressed, implied, or apparent authority to alter, modify or waive any clause or condition in this Agreement. Furthermore, any alterations, amendment or modification or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the Director.

7. Termination: It is understood and agreed that this Agreement shall terminate:

- a. Upon the written, mutual, agreement of the parties;
- b. Upon the material breach or default of any provision of this Agreement by either party, provided thirty (30) days written notice of the breach is given to the breaching party by the non-breaching party and the breaching party fails to cure within the thirty (30) days;
- c. (i) If Williams fails to employ a minimum of 75 inmates for a period of period of thirty (30) consecutive days; or

8
A:\SCDC FINAL CONTRACT.doc
August 17, 1998

- (ii) if SCDC fails to provide a minimum of 75 inmates for a period of thirty (30) consecutive days;
- d. If Section 24-3-310 of the Code of Laws of the State of South Carolina, 1976, as amended, or the interpretation thereof is materially changed, altered, amended, or repealed so as to abrogate this legislation charged with establishing business relationships with private industry;
- e. If federal, state, or local laws or the interpretation of such laws (including any provision of Chapter 24 of the Code of Laws of the State of South Carolina) change to prevent the shipment of goods produced under this Agreement or change so that there is a material alteration in the terms of this Agreement;
- f. If Williams becomes bankrupt and such is not cured within sixty (60) days, insolvent, or makes an assignment for the benefit of creditors, or becomes subject to the administration of its assets in any kind of voluntary or involuntary creditors proceedings;
- g. If Williams performs any intentional act which damages the reputation or property of SCDC and Williams does not cure such damage with thirty days of notice thereof;
- h. If Williams loses its corporate charter in its state of incorporation or loses the authority to transact business in the State of South Carolina pursuant to mandate by the Secretary of State of South Carolina, or if Williams' corporation is dissolved voluntarily or involuntarily and Williams does not cure such defect within thirty days of notice thereof;
- i. Failure of Williams to pay promptly to SCDC any inmate wages due or supervision pass through costs hereunder for a period of fifteen (15) days after written notice from SCDC to Williams of such default; or
- j. At the end of any fiscal year (June 30) after the commencement date of this Agreement when sufficient appropriations, revenues, income, grants, or other funding from whatever source are not available to SCDC to carry on the purpose of program of SCDC, this sufficiency of funds to be solely determined by the State Budget and Control Board;

Upon early termination of the Agreement due to SCDC's breach or default, change in the law or an insufficiency of State funding for this Agreement, Williams shall have one hundred eighty (180) days to cease operations and vacate the premises. Upon early termination of the Agreement due to Williams' breach or default, Williams shall have one hundred and eighty (180) days to cease operations and vacate the premises. In the event of an early termination of this Agreement for any reason whatsoever, SCDC's obligation to provide a work force and Williams' obligation to provide and pay for work for a minimum number of inmates shall cease as of the date of cessation of operations. Upon any such termination, the parties will cooperate to effect the purposes of Sections 2.1.8, 3.1.6 and 3.3.1.

In the event of any termination of this Agreement under Sections 4.0.7(c)(ii), (d), (e), or (j) above or Section 4.0.9, prior to the end of the ten (10) year term of this Agreement, SCDC hereby agrees

on behalf of the State of South Carolina to pay to Williams the remaining value of the Building, on an equal monthly basis beginning as of the month following Williams' vacation of the premises through the end of the ten (10) year term. The monthly payment amount shall equal the cost of the Building, as documented by Williams per Article 1, above, divided by 120 (the number of months of the term of this Agreement).

8. Immediate Suspension. This Agreement shall be suspended immediately in the event that the safety or security of the institution, its personnel or inmates is jeopardized by Williams, its agents or employees, and shall remain inoperative until such time as the condition no longer exists.

9. Government compliance. SCDC warrants that it complies with all federal, state and local laws, Executive Orders, rules, regulations and ordinances which may be applicable to the performance of its obligations under this Agreement, including but not limited to Chapter 24 of the Code of Laws of the State of South Carolina (including federal certification of the private sector/prison industries program), the Fair Labor Standards Act, regulations of the U.S. Department of Labor and equal opportunity clauses applicable to government contracts, and will provide certification of such compliance if requested. If for any reason SCDC is not in compliance, Williams may terminate this Agreement, cease operations and vacate the premises in accordance with the final paragraph of Section 4.7.7, above.

10. Force Majeure: Neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or otherwise for an interruption of service or employment deemed resulting from civil or military authority, from acts of God, riots, war, or any similar or dissimilar cause beyond reasonable control of either party.

11. Governing Law: This Agreement shall be governed by the laws of the State of South Carolina and venue shall be located in the County of Richland, State of South Carolina.

12. Severability: If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are to be declared to be severable.

13. All Writings Contained Herein: This agreement contains all the terms and conditions agreed upon by the parties, no other understandings oral or otherwise, regarding the subject matter of this agreement shall be deemed binding.

14. Successors and Assigns. The provisions hereof will inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties have executed this Agreement on the first written herein above.

Witness

Sam D. O'Kelle
John A. [Signature]

[Signature]
Michael W. Moore, Director

[Signature]
Robert C. Rhodes

William S. Williams
William S. Williams, Chairman
Williams Technologies, Inc.

APPROVED
South Carolina Department of Corrections
GENERAL COUNSEL

DATE: 7-8-98 [Signature]



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 17, 2002

The Honorable Mike Fair
Chairman, Corrections & Penology Committee
The Senate of South Carolina
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Fair:

You have asked us to outline the applicable federal and state law governing the payment of inmates who perform "certain service work for private sector entities at wage levels below the federal minimum wage." By way of background, you state the following:

[c]urrently, S.C. Code 24-3-430 provides for certain service work to be performed for private sector entities if certain conditions are met. Among those conditions is the requirement that inmates be paid no less than the prevailing wage for work of a similar nature in the private sector. The language mirrors the requirements of the Prison Industries Enhancement Program pursuant to the United States Justice Assistance Act of 1984.

In reviewing the operations of Department of Corrections (SCDC) Prison Industries Division last year, the General Counsel for SCDC realized that the agency was operating outside the authority and requirements of S.C. Code 24-3-430 in that inmates were being paid less than the prevailing wage for work performed for private companies. Several binding contracts were in place, which would require renegotiation in order to meet the Code.

So as to avoid the closure of the programs, the agency sought and was granted temporary authority through Budget Proviso 37.31 to continue the operation at a wage rate less than the prevailing.

Currently, I am examining the propriety of allowing the utilization of inmate labor to perform work for private businesses at a wage rate below the prevailing or even the minimum, as established by federal law for civilian employees. Would you kindly review both state and federal laws and regulations relative to use of inmate labor and fair trade practices, and advise me as to the legality of inmates performing

work for private companies at a less than minimum wage, as established by federal laws?

Law / Analysis

Congress authorized the Prison Industry Enhancement (PIE) program through the Justice System Improvement Act of 1979. Pub. L. No. 96-157, § 827. As has been explained in a scholarly article regarding PIE,

[t]he PIE program brings the private sector into prison industry by exempting certified correctional agencies from legislative restrictions on the transportation and sale of prison made goods in interstate commerce provided that prisoners are paid minimum wage and certain other criteria are met The program additionally authorizes deductions of up to eighty percent of gross wages for taxes, room and board, family support, and victim compensation

Misrahi. "Factories With Fences: An Analysis of the Prison Industry Enhancement Certification Program In Historical Perspective," 33 Am.Cr.L.Rev. 411 (Winter 1996). The PIE program "provides limited deregulation of federal prohibitions affecting both the movement of state prison-made goods in interstate commerce and the ability to use prison labor in government contracts in excess of \$10,000" The program does not repeal the longstanding Ashurst-Sumners Act first enacted in 1935, see, 49 Stat. 494 (1935) (now codified at 18 U.S.C. § 1761, Ashurst-Sumners is the federal law which prohibits, with certain exceptions, prison-made goods being transported in interstate commerce). However, the federal law authorizing the PIE program "does negate its [Ashurst-Sumners] application to certain certified prison industries." Id. at 419. The purpose and theory of PIE

... is to remedy the historical concerns of free labor competition and inmate exploitation associated with private sector involvement in prison industry by treating the convict laborer the same as a free worker The program seeks to provide meaningful work for inmates, thereby reducing inmate idleness, increasing job skills, and providing an opportunity for rehabilitation As a result of the success of the program, Congress had gradually expanded the number of allowable certifications from seven to fifty All prison-made products of every state may now, in theory, legally enter the stream of interstate commerce

The PIE program was originally authorized in 1979, revised in 1984 under the Justice Assistance Act, Pub. L. No. 96-157, § 827, and amended again by the Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789. Misrahi, Id.

In order to be certified as a PIE program, a prison industry must do all of the following:

- pay offenders the prevailing wage in the free market or the minimum wage, whichever is higher;
- provide a financial contribution to victim's compensation or victim's assistance programs;
- consult with organized labor and local businesses that might be affected by the industry prior to start-up;
- provide assurance that inmate labor will not displace workers in the free society;
- provide for worker's compensation;
- provide assurance that offender participation in the program is voluntary and that the workers agree to specific deductions from wages;
- involve the private sector.

Id. The program is intended to provide a strong financial incentive for the State. The goals are to seek to generate goods and services that produce income so that offenders can make a contribution to society, defray their own costs, support their families and aid crime victims. Id.

In 1995, the General Assembly enacted legislation, now codified in § 24-3-430, which authorizes South Carolina's participation in the federal PIE program. As you note, the State legislation closely parallels the federal enabling statute governing PIE. Section 24-3-430 provides as follows:

(A) The Director of the Department of Corrections may establish a program involving the use of inmate labor by a nonprofit organization or in private industry for the manufacturing and processing of goods, wares, or merchandise or the provision of services or another business or commercial enterprise considered by the director to enhance the general welfare of South Carolina. No violent offender shall be afforded the opportunity to perform labor for nonprofit organizations if such labor is outside the confines of a correctional institution. Inmates participating in such labor shall not benefit in any manner contradictory to existing statutes.

(B) The director may enter into contracts necessary to implement this program. The contractual agreements may include rental or lease agreements for state buildings or portions of them on the grounds of an institution or a facility of the Department of Corrections and provide for reasonable access to and egress from the building to establish and operate a facility.

October 17, 2002

(C) An inmate may participate in the program established pursuant to this section only on a voluntary basis and only after he has been informed of the conditions of his employment.

(D) No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.

(E) Inmate participation in the program may not result in the displacement of employed workers in the State of South Carolina and may not impair existing contracts for services.

(F) Nothing contained in this section restores, in whole or in part, the civil rights of an inmate. No inmate compensated for participation in the program is considered an employee of the State.

(G) No inmate who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public Law 90-351 is eligible for unemployment compensation upon termination from the program.

(H) The earnings of an inmate authorized to work at paid employment pursuant to this section must be paid directly to the Department of Corrections and applied as provided under Section 24-3-40. (emphasis added).

It is evident that the touchstone of the PIE program is that inmates participating therein must be paid the prevailing wage. Courts have interpreted the Congressional legislation authorizing the Prison Industries Enhancement program (PIE) as requiring those projects certified thereunder by the Bureau of Justice to insure that inmates are paid either minimum wage or the prevailing local rate for their work. In this regard, for example, the Court in McMaster v. State of Minn., 30 F.3d 976 (8th Cir. 1994) concluded that, pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219, prison inmates are generally not required to be paid minimum wage because they are not "employees" of the state or prison within the meaning of the FLSA. In addition, the Court held that inmates do not possess a private right of action to enforce the Ashurst-Sumners Act. One of the purposes of the FLSA, concluded the Court, is the protection of competition. Thus, Congress has enacted Ashurst-Sumners Act, 18 U.S.C. § 1761-1762 (which prohibits shipping prison-made goods in interstate commerce) to effectuate this important purpose. To that end, noted the Court, only in very limited circumstances are there exceptions to Ashurst-Sumners. One of these exceptions is the PIE program. The Court described how PIE represents an exception to Ashurst-Sumners:

Ashurst-Sumners prevents the shipment of prison-made goods in interstate commerce, thus avoiding the problem of unfair competition based on cheap labor. However, Ashurst-Sumners provides two exceptions to its prohibitions: (1) any goods which are produced for use by federal or state governments; and (2) goods

produced as part of a designated pilot project in which inmate workers are paid prevailing wages. § 1761(b)-(c). The government exception was part of the original enactment in 1935; the prevailing wage exception, known as the Justice System Improvement Act, was added in 1979.

The very existence of these exceptions indicates that Congress did not intend for inmates to be covered by the FSLA. If Congress intended for prisoners to be covered by the FSLA, then the entire Ashurst-Sumners Act would be unnecessary; if all inmate workers made minimum wage, there would be no need to protect private businesses from unfair competition.

30 F.3d at 979. Therefore, the Court held, the prevailing wage need not be paid to all inmates. However, as the Court recognized, federal law mandates that the prevailing wage must be paid to inmates who participate in the PIE program.

Likewise, in Harker v. State Use Industries, 990 F.2d 131 (4th Cir. 1993), the Fourth Circuit, ruled that inmates are not covered "employees" under the FSLA and thus are not entitled to minimum wage under that Act. The Court, however, further commented that the Ashurst-Sumners Act provides for the PIE program exception to its requirement that inmate-made goods not be placed in interstate commerce. Noting that the Ashurst-Sumners Act "criminalizes the transport of prison-made goods in interstate competition in ... those situations in which prison labor threatens competition," 990 F.2d at 133, the Fourth Circuit observed that there are certain exceptions to this prohibition because these situations "pose no threat to fair competition." Id. at 134. In addition to prison-made goods for use by federal, state and local governments, the Harker Court described the PIE exception to Ashurst-Sumners this way:

... Ashurst-Sumners exempts the transport of goods produced under the Bureau of Justice Assistance's Private Sector/Prison Industry Enhancement Certification Program. 18 U.S.C. § 1761(c)(1). The Program requires that inmates be paid at least the prevailing local rate for their work, with the FSLA minimum wage as a floor. Id. at § 1761(c)(2); see also 50 Fed. Reg. 12661 (March 29, 1985). This exemption creates a quid pro quo that allows prison-made goods to enter the open market when manufacturers have paid inmates at least the minimum wage to ensure that no unfair competition occurs. Under Harker's interpretation of the FSLA, this Program would be altogether superfluous because the minimum wage already would be paid to inmates, thus eliminating any need for Congress to have ever offered a quid pro quo to manufacturers to avoid unfair competition.

990 F.2d at 134. Thus, federal case law recognizes that Congress intended to provide the PIE program as a clear exception to federal law which provides that prison inmates need not be paid the minimum wage.

The Honorable Mike Fair

Page 6

October 17, 2002

In 1999, the Bureau of Justice issued Guidelines for State participation in the PIE program. Under the heading "Mandatory Program Criteria for PIECP Participation," the Guidelines discuss at length the wage which must be paid inmates as part of the federal PIE criteria. There, it is stated:

- (A) Section 1761(c) requires that the PIECP wage amount be set exclusively in relation to the amount of pay received by similarly situated non-inmate workers. In deriving the appropriate PIECP wage 18 U.S.C. 1761(c)(2) does not allow other cost variables to be taken into consideration, such as unique expenses incurred as a result of undertaking production within the prison environment. (emphasis added).

Federal Register: April 7, 1999 (Volume 69, Number 66), pages 17000-17014, 17009-10.

Thus, it is quite evident that the relevant federal statutes, the case law interpreting those statutes, as well as Bureau of Justice Guidelines issued pursuant to those enactments mandate that inmates participating in the PIE program must be paid at least the prevailing wage. As the Bureau of Justice's most recent Guidelines emphasize, "PIECP inmate workers must receive wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed." Guidelines, supra at p. 17009. Section 24-3-430 (D) likewise requires that "[n]o inmate participating in the program may earn less than the prevailing wage for work of a similar nature in the private sector." Accordingly, both federal and state law make this wage requirement mandatory.

On its face, the federal statute authorizing the PIE program applies to "goods, wares, or merchandise manufactured, produced or mined by convicts or prisoners" See, 18 U.S.C.A. § 1761 (c). As noted above, this provision constitutes an exception to the Ashurst-Sumners Act. You have advised that Subsection (c) of § 1761 is being interpreted in South Carolina as inapplicable to so-called "service contracts." Pursuant to such interpretation, you note that the requirement that inmates performing work on such "services contracts" need not be paid the prevailing wage. Your concern is that, as a result of this interpretation, the PIE program is being severely undermined by this so-called "loophole."

We agree with your concerns. It is clear that there is no prohibition in the federal PIE program for service industries' participation therein. Indeed, the Bureau of Justice Guidelines note that while service industries "were not a threat to the private sector in 1935 and thus, were not included within the scope of the Ashurst-Sumners prohibition, a number of service industries have elected to comply with the PIECP requirements." Guidelines, supra at 17002.

More significantly, and unrelated to federal PIE requirements, state law makes it clear that there is no such legal "loophole" in South Carolina. Section 24-3-430(A) provides that "[t]he Director of the Department of Corrections may establish a program involving the use of inmate labor by a nonprofit organization or in private industry for the manufacturing and processing of goods, wares or merchandise or the provision of services or another business or commercial enterprise

The Honorable Mike Fair
Page 7
October 17, 2002

considered by the director to enhance the general welfare of South Carolina." (emphasis added). Moreover, Subsection (D) of § 24-3-430 requires that "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector."

Thus, state law requires that "the provision of services" by inmates who otherwise meet the requirements of § 24-3-430 must be paid the prevailing wage. As I understand it, "service" work is work which does not result in the manufacture or production of an item that is sold on the open market by the South Carolina Department of Corrections and does not involve work done for the benefit of other public sector entities.

Of course, as with the interpretation of any statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 253 S.C. 46, 358 S.E.2d 697 (1987). An enactment should be given a reasonable and practical construction, consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). Words used therein should be given their plain and ordinary meaning. First South Sav. Bank, Inc. v. Gold Coast Associates, 301 S.C. 158, 390 S.E.2d 486 (Ct. App. 1990).

Moreover, the full effect must be given to each part of the statute, and in the absence of ambiguity, words must not be added or taken from the statute. Home Bldg. & Loan Assn. v. City of Sptg., 185 S.C. 313, 194 S.E. 139 (1938). Any interpretation which would render parts of the statute as mere surplusage is to be avoided. Bruner v. Smith, 188 S.C. 75, 198 S.E. 184 (1938).

It should be noted that § 24-3-430 was enacted in 1995, while the Ashurst-Sumners Act, which contains the phrase "goods, wares, or merchandise," was a product of the 1930s. At the time the Legislature enacted § 24-3-430, the service industry in this country had become just as important to the American economy as manufacturing or production. Recognition of that fact is obviously one reason the General Assembly included the broad language "the provision of services" in § 24-3-430. To read that provision out of state law is, in our view, simply incorrect. It is clear that, provided the other requirements of § 24-3-430 are met, the Legislature intended "service contracts" to be so included. Inmates participating in the performance of service contracts for private industry as provided in § 24-3-430 thus must be paid the prevailing wage.

This conclusion is in accord with a Memorandum by the Department of Corrections' General Counsel (dated March 23, 2001) which you have provided. In that detailed and very helpful Memorandum, the General Counsel advises as follows:

1. The advice that you or your staff may have previously received from my Office concerning prison industry service work was substantially effected by numerous statutory changes in this area in 1993, and by the passage of Section 24-3-430 of the S.C. Code on Laws of July 1, 1995.

The Honorable Mike Fair

Page 8

October 17, 2002

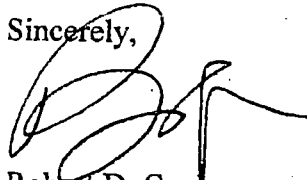
2. SCDC may operate a prison industry service program, but inmates who work in such programs must do so voluntarily, must be paid the prevailing wage for their work, and the work may not result in the displacement of employed workers in the State nor impair existing contracts for services. In other words, if we chose to operate a prison industry service program, we must do so in conformance with Section 24-3-430 of the S.C. Code of Laws.

3. Inmates who work in prison industry service programs must have their wages received by SCDC, with such wages affected and distributed in accordance with Section 24-3-40 of the S.C. Code of Laws. This means that inmate wages for prison industry service work must be handled as other prison industry wages are handled and distributed.

4. Where existing prison industry service programs are in place, SCDC should begin to comply with the above provisions immediately.

I agree that Section 24-3-430 is mandatory and must be followed.

Sincerely,



Robert D. Cook

Assistant Deputy Attorney General

RDC/an

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

arren Gerome Scott,

233182,

Appellant,

vs.,

South Carolina Department,

of Corrections,

Respondents.

Docket # 23-00683

Grievance # ALC-0197-23

The Honorable Deborah Brooks Durden

Appellant's Original

Brief

Appellant - Pro-se

Darren G. Scott # 233182

Allendale Correctional Inst.

1057 Revolutionary Trail

Fairfax, South Carolina

29827

Cover Page

EXHIBIT #

CASE # 2024-001892 - Scott, V. SCDC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Darren Gerome Scott,
Appellant.
vs.
South Carolina Department
of Corrections.
Respondents.

Docket # 23-00683
Grievance # ~~ALC~~ 0197-23
Honorable Deborah Brooks Durden
Appellant's Original
Brief

This matter is before the South Carolina Administrative Law Court (ALC) or (court) pursuant to the Notice of Appeal of Darren Gerome Scott (Appellant) an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Respondents).
At this time Appellant respectfully submits this Original Brief, on matters contain in the notice of Appeal.

STATEMENT OF THE ISSUES ON APPEAL

Can the Department/Respondents continue to violate nearly component of the guidelines legislative intent behind the statutes governing (PI) (PPI) Prison Industries 24-3-430(D), by failing to pay Appellant prevailing wages?

Was the Department/Respondents final decision in excess of Constitutional Statutory Authority, clear error of law & arbitrary capricious?

Did the Respondents deprived Appellant of his due-process, interest of property rights by failure to pay prevailing wages for service rendered?

Can Appellant's Grievance fall within the (2) two fold exceptions?

Can the Actions from the Respondents fall under Malfeasance, Misfeasance, and Nonfeasance?

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC) pursuant to Request to Staff/Kiosk request to legal # 23-03168059 on July 06, 2023, response from Author # 067394 on July 07, 2023, Directing Appellant to submit a (1) one step Grievance to the Grievance Office, which was submitted on July 07, 2023 Received in Grievance office on July 10, 2023. Please Note: There was no warden's response on the step (1) Grievance. The respondent opted to submit a memo on July 10, 2023, stating that "due to the nature of your appeal, it has been forwarded to the step (2) two level of appeal process. Please refer to the attached prevailing wage Memo provided by SCDC's Office of General Counsel/Inmate Grievance Branch. For additional information regarding your appeal, see → (Ex. #23-94) However, Appellant properly served his Notice of Appeal that is before the (ALC) According to the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2008), an "inmate must file and serve a notice of appeal upon specific parties within thirty days of receipt of written notice of Department's final decision" Id. at 377, 527 S.E.2d at 754. SCALC Rule 59 further provides that the notice of appeal from the final decision to be heard by the Administrative Law Court shall be filed with the court and a copy served on each party including the agency, within thirty (30) days of receipt of the decision from which the appeal is taken. SCDC's Respondent's Final Decision was on Oct. 25, 2023, and, received by Appellant on Oct. 31, 2023. On Nov. 19, 2023 Appellant sent the notice of Appeal to the following by placing said Documents Notice of Appeal to: Ms. Cheron Hess, the Administrative Coordinator/Agency-Office of General Counsel (SCDC) 444-Broad River Road, Columbia, South Carolina 29221, with a copy of the Final Decision attached. The Clerk's office, the South Carolina Administrative Law Court, 1205 Pendleton Street, #224 Columbia, SC, 29201, with a copy of the Final Decision attached Postage pre-paid, therefore this court has Jurisdiction to hear Appellant's appeal.

ARGUMENT A

Can the Department / Respondent Continue to Violate nearly every Component of the guidelines legislative intent behind the Statutes governing (PI)(PPI) Prison Industries 24-3-430(D) by Failing to pay Appellant prevailing wages?

The legislature Created this Section - 24-3-430-24-3-430(D) as a safeguard to prevent inmates from becoming a cheaper alternative to their counterparts in the private realm.

The primary rule of Statutory Construction is to ascertain and give effect to the intent of the General Assembly, see → Anderson v. South Carolina Election Comm, 397 S.C. 551, 556, 725 S.E.2d 704, 707 (2012), see → Beaufort Cnty v. S.C. State Election Comm, 395 S.C. 366, 718 S.E.2d 432 (2011), Hodges v. Rainey, 341 S.C. 79 533 S.E.2d 578 (2000) and Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65 476 S.E.2d 690 (1996).

Summary of personal work / participation, History to briefly outline the details:

Between August 2011 to November 2018 Appellant participated in the (PI)(PPI) Prison Industries program / service operated at Lieber Correctional Institution.

During this time Appellant performed work / Labor for the private sector "Caterpillar - Transmissions Heavy equipment & Carolina Textile - Rag Plant" also at Lieber Corrections Inst. Appellant performed functions as an Electrical-helper, Forklift Operator, as well as other functions.

Appellant's pay was (40¢) an hour, see ex-# 23-209, when the prevailing rate / wage was \$11.19 for Forklift operators, and \$13.27 for Electrical helpers in (2011).

This was an regrettable abdication of the Controlling statutes that refer to Ann 24-3-430(D) (emphasis added) as it directly address the rate / wage of inmate wages.

Please see Torrence v. South Carolina Dept. of Corrections, (2021)

wage required by law. The States Certiorari was denied Aug. 3, 2022 posted Aug. 4, 2022 requiring the respondents to determine the prevailing wage for the remaining years of Torrence's labor. Also see Appellant's Certificates, #23-04 #23-0

There are Several Separate precedent that has addressed inmate wage claims within the context of Section 24-3-430(D) see → South Carolina Dept of Corr. v. Carrette, 387 S.C. 640, 646, S.E.2d 18, 21 (let. App. 2016)

Findings Sections 24-3-315 & and 24-3-430(D) Compel the Department / Respondents to ensure inmates workers who are employed / participate under these Sections receive the same pay-rate and employment conditions as their non-inmate peers.

Appellant's pay-rate of 40¢ created an impermissible and

ARGUMENT (A) CONTINUES...

unfair advantage for Appellant, and Violated the Components of the guidelines legislative intent behind the statutory-statutes of 24-3-430. Anderson, state ("in construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect") Note 24-3-430 has (8) components A, B, C, D, E, F, G, and H. The respondent has complied with most of the components of the statute except ~~(D)~~ (D), as for (D) 24-3-430-D Subsection 1 section provides, "No inmate participating in the program may earn less than the prevailing wages for work of a similar nature in the private sector."

Please note that, Respondent also took out per room board, Victims Fund, see Exhibit # 23-101

ARGUMENT B

Was the Department's/Respondents Final Decision in excess of Constitutional Statutory Authority, clear error of law & arbitrary Capricious?

The Fundamental legal principle clearly embodied in the law was not followed in this case, also the Department's/Respondents Final decision, was not proportionate to the rules, and in violation of policy, they have erroneously ignored the issue of prevailing wages.

The Final decision was done without concern for what is fair or right. The Respondents have never tried to compensate, negotiate, settle, prevent, or compromise in this action, the respondents known or should have known that they have been, and still are violating Statutory Authority, in their decision not to pay Appellant his prevailing wages, 24-3-450(D).

It is a cardinal rule of Statutory Construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 535 S.E. 2d 578, 581 (2000), State v. Martin, 293 S.C. 46, 358 S.E. 2d 697 (1987). When a Statute's terms are clear and unambiguous on their face, there is no room for Statutory Construction and a Court must apply the statute according to its literal meaning, see Carolina Power & Light Co. v. City of Bennettville, 314 S.C. 137, 139, 442 S.E. 2d 177, 179 (1994).

and words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the Statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E. 2d 899 (1998).

Therefore, recognizing the Constitutional Statutory Authority requirement set forth in 24-3-430(D) Mandating that the respondent's pay Appellant prevailing wages.

It becomes apparent that the respondents has utilized an unlawful mode of procedure/policy not allowed under Section 24-3-430(D).

Therefore, the respondents Final decision is in excess of Constitutional Statutory Authority, and is a clear error of law, & arbitrary Capricious.

ARGUMENT (C)

Did the Respondents deprive Appellant of his due-process, interest of property rights by failure to pay prevailing wages for services rendered?

Appellant states that the respondents denial of paying prevailing wages, and money owed for services rendered has created a liberty interests of his property rights, there was no due-process for respondents failure in accordance with the statutes of 24-3-430 A-H.

The Respondents have never heeded the warning of the statute of 24-3-430 A-H, they continued operations, that, (1) the respondents promulgated created implemented or possessed responsibility for continued operation of 24-3-430, Knowly or should have known that (2) caused the Appellant Constitutional harm and (3) acted with the state of mind required to establish the alleged Constitutional deprivation.

Respondents failure to pay Appellant prevailing wages has created a statutory right.

Appellant performed duties/ labor as an Electrician helper and forklift-operator to whom in a private sector would make more than \$40.4 an hour without question. Please see exhibit # 23-209. This is far from being in accordance with the prevailing wage statute for participating in the (PI) (PPI) prison industries services/program.

Statute 24-3-430- section (D) provides "No inmate participating in the (PI) program may earn less than the prevailing wages for work of a similar nature in the private sector."

Please note that section (D) is for the benefit of the inmate/ Appellant.

ARGUMENT (D)

Can Appellant's Grievance Fall within the (2) Two Folds of exceptions?

The 1st First Fold. Appellant's grievance falls within the Fold of Adkins v. South Carolina Dept. of Corrections, 360 S.C. 413, 602 S.E. 2d 51 (2004), 24-1-295, 24-3-430, and 24-3-315.

It states, we hold inmates may file an inmate grievance to protest Doc's failure to pay wages in accordance with the Companion case - Wicker v. South Carolina Dept. of Corrections, 365 S.C. 421, 602 S.E. 2d 56 (2004), WL 1877944 (2004) also see Torrence v. South Carolina Dept. of Corrections, 433 S.C. 633, 861 S.E. 2d 36 (2001).

However, The Respondent's stated on the 2nd step Grievance that it was untimely, under the (2) year new policy that came into effect Sept. 1, 2023. Please see 1st step Grievance dated July 7, 2023.

In any event, the respondent's can not just make rules, orders, or procedure, that can take precedent over Statutory Law, 24-3-430, which is always controlling. See → S.C. Constitution Article 1, 4, and State v. Cottingham, 77 S.E. 2d 897, 224 S.C. 181 (1953).

The Second Fold. Respondent's reviewing the (15) day payroll issue, under paragraph 13.1 Id. at 418-20, 782 S.E. 2d at 760-61. However Appellant's grievance applies to the challenging of State policy and procedures invoking the prevailing wage statute involve a topic governed by Statute and thus, an expression of the legislature's policy on inmate pay, Id. at 420, 782 S.E. 2d at 761. Also see - Torrence v. S.C. Dept. of Corrections, 433 S.C. 633, 861 S.E. 2d 36 (2001).

ARGUMENT (E)

Can the Actions from the Respondents Fall under Malfeasance, Misfeasance, and Non-feasance?

On October 17, 2002 Assistant Deputy Attorney General Mr. Robert D. Cook, sent a Letter to the Honorable Mike Fair, Chairman of the Corrections & Penology Committee the Senate of South Carolina, as his letter states that "The General Counsel for SCDC realized that the agency was operating outside the authority and requirements of S.C. Code 24-3-430 in that inmates were being paid less than the prevailing wages for work performed for private companies. Several binding contracts were in place, which would require renegotiation in order to meet the Code." Please see WL-31728841 (S.C.A.G.) Oct. 17, 2002. Accordingly, both Federal and State law make this wage requirement mandatory. Furthermore, failure to pay Appellant prevailing wages constitutes "Malfeasance". The Commission as by a public official of a wrongful or unlawful act involving or affecting the performance of one's duties. "Misfeasance". The performance of a lawful action in an illegal or improper manner, or "Nonfeasance" failure to act, failure to perform their job/duties, of what the legislative intent behind the Statutes governing (PIP) (PI) prison Industries Services programs 24-3-430. As the Department, Staff, Official & Respondents are mandated to carry out these legislative policies, Statutes and procedures.

Conclusion

The Appellant would ask that this court would hold the respondents in this case liable for prevailing wages, their actions in this case, to hold their agents, insurers, successors, their insurance reserve fund, their heirs, executors, administrators, employers, employees, of the South Carolina Department of Corrections (SCDC) / (Agency), principals, liability, actions, causes of actions claims, demands, damages costs, loss of services, loss of tax wages, loss of wages, expenses and compensation in any way growing out of services rendered of prevailing wages from 08-01-2011 to 05-03-2019 for participation in (PI) (PPI) (PIS) prison industries service program, any and all know and unknow loss of wages of every kind and nature sustained by or hereafter resulting to the respondents or any person or persons for whom the respondents is acting as executor, insurers administrator or guardian from the incident which occurred on or about 08-01-2011 to 05-03-2019 being set forth more fully in this case #23-C0683, Docket Grievance #ALC-0197-23, styled as Darren Gerome Scott 233182, vs. South Carolina Department of Corrections (SCDC), any and all damage, loss of wages of any and all kind connection with this case.

WHEREFORE, Appellant respectfully Request that this court would remand this case back to the respondents and ordering them to calculate by the ESC, DEU, or OES, prevailing wages in accordance - For / Pay to Appellant, for service rendered.

Respectfully Submitted

This 10th day of Jan. 2024
Fairfax, South Carolina

Darren G. Scott
Appellant Prose

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Darren Gerome Scott,
Appellant.

VS.

South Carolina Department
of Corrections,
Respondent's.

Certificate
of
Service

Docket # 23-0683
Grievance # ALC-017-23

I, Appellant, Darren G. Scott scide # 233182, do hereby certify that a copy & original-copy of the foregoing documents, Appellant's original Brief, with exhibits attached, was, this date, served upon the following individuals by placing a copy of the same in the institution's mail room to his or her last known address, postage prepared, as follows:

Original copy:

The Honorable Deborah Brooks Duden
Administrative Law Court
1205 Pendleton Street, #224
Columbia, South Carolina
29201

copy:

Ms. Cheron Hess Administrative
Coordinator for Agency
Office of General Counsel (scs)
4444 Broad River Road
Columbia, South Carolina
29221

This 18th day of Jan. 2024
County of Fairfax, SC.

I hereby Certify,

Darren Gerome Scott 233182
Allendale Correctional Inst.
1057 Revolutionary Trail
Fairfax South Carolina
29827

TABLE OF AUTHORITIES

Page 41

Adkins V. South Carolina Dept. of Corrections, 366 S.C. 413, 602 S.E.2d 51 (2004).

Al Shabazz V. State, 338 S.C. 364, 527 S.E.2d 742 (2000).

Anderson V. South Carolina Election Com'n, 397 S.C. 551, 556, 725 S.E.2d 704, 707 (2012).

Auto Auction of Lexington, Inc. V. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996).

Beaufort Cnty V. S.C. State Election, 395 S.C. 366, 718 S.E.2d 432 (2011).

Bryant V. City of Charleston, 295 S.C. 408, 368 S.E.2d 897 (1998).

Carolina Power & Light Co. V. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994).

Hodges V. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000).

South Carolina Dept. of Corr. V. Carrette, 387 S.C. 640, 646 S.E.2d 18, 21 (Ct. 2010).

State V. Cottingham, 77 S.E.2d 897, 224 S.C. 181 (1953).

State V. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987).

Torrence V. South Carolina Dept. of Corrections, 433 S.C. 633, 861 S.E.2d 36 (2001).

Torrence V. South Carolina Dept. of Corrections, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021).

Wicker V. South Carolina Dept. of Corrections, 365 S.C. 421, 602 S.E.2d 56 (2004).

SEALC Rule 59 - Court RULE

SC Constitution Article I § 4.

Id. at 377, 527 S.E.2d at 754

Statutes authorities 24-3-430 & 24-3-430(D).

WL-31728841 - S.C.A.G.

Exhibits

Exhibit # 23-04
Exhibit # 23-05
Exhibit # 23-101
Exhibit # 23-209
Exhibit # 23-709

Cheron Hess [REDACTED]

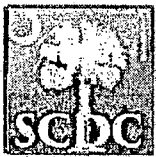
From: Katherine Klein [REDACTED]
Sent: Wednesday, April 10, 2024 12:05 PM
To: Joseph Shakibanasab [REDACTED]
Cc: Cheron Hess [REDACTED]; Kensey Evans [REDACTED]; Dottie Koenig [REDACTED]; Richard Hodgkiss [REDACTED]; Barton Vincent [REDACTED]
Subject: DARREN GEROME SCOTT (00233182)

Inmate **DARREN GEROME SCOTT** (00233182) worked as a Mechanic Helper from 07/21/2011 – 09/27/2018 and 09/30/2018 - 05/27/2019 according to SCDC electronic records. From 07/07/2011 – 05/06/2019 he was assigned to Lieber Correctional Institution and worked in either the Traditional or Service programs as there was not a PIECP program at Lieber.

Kathe

Katherine Klein

Support Services & Industries
[REDACTED]



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
South, Service, and Stewardship

This e-mail message is confidential. It may contain information that is privileged or subject to other confidentiality requirements and exemptions from disclosure under applicable law. It is intended solely for the use of the intended recipient. If you are not the intended recipient, notify sender immediately. Any distribution or copying of this communication is strictly prohibited.