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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
Willie D. Franks, Chairman

Appellate Case No. 2026-000914
Panel Case No. 2025-5

In Re: Haren Construction Co., Inc.

Project No. P24-6052-PG
Beaufort-Waddell Mariculture
Maturation Ponds Maintenance – Re-Bid

Paragon Inc. of South Carolina, LLC, Chief Procurement Officer, State Fiscal Accountability Authority, and South Carolina Department of Natural Resources,

of which Paragon Inc. of South Carolina, LLC and Chief Procurement Officer, State Fiscal Accountability Authority are the Appellants/Respondents, South Carolina Department of Natural Resources is the Respondent/Appellant, and Haren Construction Co., Inc. is the Respondent.

**RECORD ON APPEAL
VOLUME THREE**

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Date 10/17/2025

Re: Beaufort - Waddell Mariculture Maturation Pond Maintenance
P24-6052-PG

Determination of non-responsibility – Paragon Inc. of South Carolina LLC.

The South Carolina Department of Natural Resources opened bids for the Beaufort - Waddell Mariculture Maturation Pond Maintenance project on 9/23/2025. Paragon Inc. of South Carolina LLC appeared to have submitted the lowest bids for the project. After careful review of the submitted bid documents and correspondence with SC LLR and OSE the following was determined:

1. Paragon Inc. of South Carolina LLC. does not have a contractor's license under that name. There is no contractor license in the SCLLR database for Paragon Inc. of South Carolina LLC., however there is a license for Paragon Builders owned by the same owner. *
2. Paragon Builders does not have the proper license classifications or subclassifications to act as a sole prime contractor per SCLLR for this project. Paragon Builders has the following licenses BD5, NR5, PB5 and EL5. Of these licenses only EL is applicable, which comprises 17% of the work requiring a SCLLR license. **

Based on the engineer's opinion, estimated cost and scope of work it is determined that the majority of the work (80%) requires licensure under a (WL) Water and Sewer Line license classification.

According to South Carolina Code of Laws:

***SECTION 40-11-370.** License required to use term "licensed contractor"; engaging in construction under assumed name; enforcement of contract.

(B) It is unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this chapter. "Engaging in construction" includes marketing, advertising, using site signs, and submitting contracts. This requirement does not include advertising on vehicles, which may use an abbreviated version of the license name so long as the advertising is not misleading.

****SECTION 40-11-340.** Qualifications for acting as sole prime contractor.

An entity licensed under the classifications or subclassifications in Sections 40-11-410(1), (2), or (3) may act as a sole prime contractor on a project if forty percent or more of the work as measured by the total cost of construction falls under one or more of the licensee's license classifications or subclassifications. An entity licensed under the classifications or subclassifications in Section 40-11-410(4) and (5) may act as sole prime contractor if fifty-one percent or more of the work falls under one or more of the licensee's license classifications or subclassifications.

See Attachment A - Email corresponded from SC LLR regarding WL classification for this project.

SE-370

NOTICE OF INTENT TO AWARD - DESIGN-BID-BUILD CONTRACT

AGENCY: DNR - Department of Natural Resources

PROJECT NAME: Beaufort-Waddell Mariculture Maturation Ponds Maintenance

PROJECT NUMBER: P24-6052-CB

POSTING DATE: 10/20/2025

TO ALL BIDDERS

Unless stayed by protest or canceled, the Agency intends to enter into a contract as noted below. The successful bid will be accepted and the contract formed by execution of the contract documents. All bid bonds remain in effect for the bid acceptance period as provided in Section 4 of the Bid Form, except as otherwise provided in the Instructions to Bidders.

NAME OF BIDDER: Haren Construction Co. Inc

DATE BIDS WERE OPENED: 09/23/2025

BID INFORMATION:

BASE BID AMOUNT: \$5,682,000.00

ALTERNATES:	#1	ACCEPTED	☒	<u>\$525,000.00</u>
	#2	ACCEPTED	☐	<u>\$540,000.00</u>
	#3	ACCEPTED	☐	<u>\$600,000.00</u>

TOTAL BID AMOUNT: \$6,207,000.00

TOTAL CONTRACT AWARD: \$6,207,000.00

(If the Total Contract Award is different from the Total Bid Amount, explain any negotiations that resulted in the change.)

N/A

REMARKS: *(If "No Contract to be Awarded" was entered above, indicate the reason.)*

N/A

Contractor should not incur any costs associated with the contract prior to receipt of a contract from the Agency for execution. Contractor should not perform any work before receipt of the Agency's written Notice to Proceed.

RIGHT TO PROTEST (SC Code 11-35-4210)

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may be entitled to protest. To protest an award, you must (i) submit notice of your intent to protest within seven (7) business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen (15) days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided.

PROTEST - CPO ADDRESS - OSE: Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: protest-ose@mmo.sc.gov, or (b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the email address from which you sent your protest.

Pursuant to Section 11-35-410, documents directly connected to a procurement activity may be available within five days after request. All document requests should be directed to the procuring agency project coordinator. If a protest is pending, the protestant's lawyer may access otherwise unavailable information by applying to the CPO for the issuance of a protective order. Additional information is available at www.procurement.sc.gov/legal.

BY: Jeff Boyer TITLE: Engineer III DATE: 10/17/2025

ACKNOWLEDGED BY OSE PROJECT MANAGER: Perry Derrick DATE: 10/20/2025

NOTICE OF INTENT TO PROTEST

****Date:**** October 27, 2025

TO: Chief Procurement Officer

Office of State Engineer
Construction Office
South Carolina Department of Natural Resources
Email: protest-ose@mmm.sc.gov
Physical Address: 1201 Main Street, Suite 600, Columbia, SC 29201

FROM: Paragon Inc. of South Carolina, LLC

2874 Columbia Road NE
Orangeburg, SC 29118-1902
Telephone: (803) 534-1900
Email: eric@paragonbuilderssc.com
Attention: Eric Byrd, Vice President
RE: Notice of Intent to Protest Award Decision

Project Name: Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid
Project Number: P24-6052-PG
Award Notice Posted: October 20, 2025

I. NOTICE OF INTENT TO PROTEST

Pursuant to South Carolina Code Section 11-35-4210, Paragon Inc. of South Carolina, LLC ("Paragon" or "Protester") hereby submits this Notice of Intent to Protest the South Carolina Department of Natural Resources' ("SCDNR" or "Agency") decision to deem Paragon's bid non-responsive and its intent to award the above-referenced contract to Haren Construction Co. Inc.

This Notice of Intent to Protest is timely submitted within seven (7) business days of the October 20, 2025, award notice posting, as required by Section 11-35-4210.

II. INTERESTED PARTY INFORMATION

Protester:

Paragon Inc. of South Carolina, LLC

SC Contractor's License Numbers: CLG.100190, CLM.111292

Classification(s) & Limits: Building BD5, Plumbing PB5, Electrical EL5

Contact Person:

Eric Byrd, Vice President
2874 Columbia Road NE
Orangeburg, SC 29118-1902
Telephone: (803) 534-1900
Email: eric@paragonbuilderssc.com

Legal Counsel:

James M. Griffin, Esquire
Griffin Humphries LLC
PO Box 999
Columbia, SC 29202
Telephone: 803-744-0800
Email: jgriffin@griffinhumphries.com

III. PROCUREMENT INFORMATION

Awarding Agency: South Carolina Department of Natural Resources
Project: Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid
Project Number: P24-6052-PG
Bid Opening Date: September 23, 2025
Award Notice Date: October 20, 2025
Intended Awardee: Haren Construction Co. Inc.
Award Amount: \$6,207,000.00

IV. PARAGON'S BID INFORMATION

Base Bid Amount: \$5,323,800.00
Alternate #1: \$533,600.00
Alternate #2: \$568,200.00
Alternate #3: \$573,350.00
Status: Deemed "Non-Responsive" by Agency

V. GROUNDS FOR PROTEST (SUMMARY)

Paragon protests the Agency's determination that its bid was non-responsive based on alleged violations of South Carolina Code Sections 40-11-270, 40-11-340, and 40-11-370. Specifically, Paragon contends:

A. Paragon's Plumbing License Covers the Yard Piping Work (Section 40-11-340 Compliance)

Issue: The Agency apparently determined that Paragon's Plumbing License (PB5) does not cover the yard piping installation for non-potable water from the head tower to the fishponds, which constitutes 53% of the project scope.

Paragon's Position:

1. Statutory Coverage: The definition of "Plumbing" under Section 40-11-410(5)(f) explicitly includes:

- "installation, alteration, and repair of all piping, fixtures, and appliances related to water supply"
- "installation of a system of pipes, fittings, fixtures, drains, and all necessary component parts **upon the premises or in a building** to supply water to buildings"
- Work performed "***solely within property lines** and not on public easements or rights-of-way"

2. Project Characteristics Support Plumbing Classification:

- All piping is **within the Beaufort-Waddell property lines
- No work is on public easements or rights-of-way
- The work involves piping systems on the premises to supply water (albeit non-potable) to the fishponds
- The statute does not distinguish between potable and non-potable water for piping within private property
- The exclusion for "municipal or related water supply systems" does not apply to this private aquaculture facility

3. Section 40-11-340 Compliance:

Because Paragon's Plumbing license (PB5) covers 53% of the work, Paragon meets the 40% threshold required under Section 40-11-340 to act as sole prime contractor. Combined with Paragon's Electrical license (EL5) (19%) and Building license BD5) (13%), work not covered under a separate License classification (15%), Paragon is licensed to perform 100% of the total project work.

B. Compliance with Section 40-11-270 (License Classification Requirements)

Paragon holds appropriate licenses in all required classifications:

- Building BD5 – for concrete structures and access work (13%)
- Plumbing PB5 – for yard piping from head tower to ponds (53%)

- Electrical EL5 – for electrical panel replacement and pond wiring (19%)

For the pond liner work (15%), which requires no specific license, Paragon will utilize its Building classification or engage appropriately licensed subcontractors as needed.

C. Compliance with Section 40-11-370 (Business Name)

Issue: The Agency cited Section 40-11-370(B) regarding engaging in construction under a name other than the exact name on the license.

Paragon's Position:

Paragon's bid was submitted under "Paragon Inc. of South Carolina, LLC," which matches its legal business name and contractor license. Any alleged discrepancy is a secondary issue that does not warrant bid rejection, particularly when:

- The entity is properly identified
- All license numbers are correctly provided
- The qualifying party is properly designated
- There is no indication of fraud, misrepresentation, or attempt to circumvent licensing requirements

VI. PREJUDICE TO PARAGON

Paragon will suffer substantial prejudice if the protest is not granted:

1. Financial Harm: Paragon submitted the lowest responsible bid. The difference between Paragon's total bid (\$5,857,400) and the intended award (\$6,207,000) is \$349,600 more than Paragon's total bid.
2. Loss of Business Opportunity: Paragon is a qualified, properly licensed contractor capable of performing this work in accordance with all applicable laws and regulations.
3. Improper Interpretation of Law: The Agency's restrictive interpretation of the Plumbing license definition would improperly exclude legitimate plumbing work from the statutory scope, contrary to legislative intent.
4. Competitive Disadvantage: If this interpretation stands, it would create uncertainty for contractors bidding on similar projects involving water piping systems on private property.

VII. RELIEF REQUESTED

Paragon respectfully requests that the Chief Procurement Officer:

1. Reverse the determination that Paragon's bid is non-responsive.
2. Find that Paragon's Plumbing license (PB5) properly covers the yard piping installation work as defined in Section 40-11-410(5)(f);
3. Find that Paragon meets all requirements of Sections 40-11-270, 40-11-340, and 40-11-370;
4. Determine that Paragon submitted the lowest responsive and responsible bid; and
5. Award the contract to Paragon Inc. of South Carolina, LLC.

VIII. REQUEST FOR DOCUMENTS

Pursuant to Section 11-35-410 and protest procedures, Paragon requests access to the following documents within five (5) days:

1. Complete bid tabulation showing all bids received
2. All documentation related to the responsiveness determination for Paragon's bid
3. All documentation related to the responsiveness determination for the two other bidders (Haren Construction and BRW Construction).
4. Any communications within SCDNR or between other South Carolina State Agencies, legal counsel or personnel regarding license classification interpretation for this project
5. Any legal opinions or guidance sought regarding the plumbing license scope
6. Haren Construction and BRW Construction's license documentation and classifications
7. Any protest or inquiry submitted by any other bidder
8. Complete bid documents submitted by the two other bidders including a copy of the sealed bid envelope.

IX. FORMAL PROTEST TO FOLLOW

This Notice of Intent to Protest will be followed by a formal written protest within fifteen (15) days of the date the award notice was posted (October 20, 2025), as required by Section 11-35-4210.

X. CONSENT TO ELECTRONIC COMMUNICATIONS

By submitting this Notice of Intent to Protest to protest-ose@mmm.sc.gov, Paragon (and any person acting on Paragon's behalf) consents to receive communications regarding this protest (and any related protests) at the email address of Paragon's legal counsel, James M. Griffin at jgriffin@griffinhumphries.com with copies to eric@paragonbuilderssc.com.

XI. CERTIFICATION

The undersigned certifies that the statements contained in this Notice of Intent to Protest are true and accurate to the best of knowledge and belief.

Respectfully submitted this 27th day of October 2025.

PARAGON INC. OF SOUTH CAROLINA, LLC

By:  _____

Eric Byrd, Vice President

2874 Columbia Road NE
Orangeburg, SC 29118-1902
Telephone: (803) 534-1900
Email: eric@paragonbuilderssc.com

XII. CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Intent to Protest has been served via email on this 27th day of October, 2025, to:

****Chief Procurement Officer****

Office of State Engineer

Email: protest-ose@mmm.sc.gov

****South Carolina Department of Natural Resources****

Attention: Jeff Boyer, Engineer III

Email: boyerj@dnr.sc.gov

****Intended Awardee:****

Haren Construction Co. Inc.

[Address and contact information to be obtained from public records]

****Legal Counsel for Protester: ****

James M. Griffin, Esquire

Griffin Humphries LLC

PO Box 999

Columbia, SC 29202

Email: jgriffin@griffinhumphries.com

By: 

Eric Byrd, Vice President

FORMAL PROTEST

Date: November 4, 2025

TO: Chief Procurement Officer Office of State Engineer Construction Office South Carolina
Department of Natural Resources Email: protest-ose@mrnm.sc.gov Physical Address: 1201
Main Street, Suite 600, Columbia, SC 29201

FROM: Paragon Inc. of South Carolina, LLC

2874 Columbia Road NE Orangeburg, SC 29118-1902 Telephone: (803) 534-1900 Email:
eric@paragonbuilderssc.com Attention: Eric Byrd, Vice President

RE: Formal Protest of Award Decision

Project Name: Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid **Project**
Number: P24-6052-PG **Award Notice Posted:** October 20, 2025

I. NOTICE AND TIMELINESS

Pursuant to South Carolina Code Section 11-35-4210, Paragon Inc. of South Carolina, LLC ("Paragon" or "Protester") hereby submits this Formal Protest of the South Carolina Department of Natural Resources' ("SCDNR" or "Agency") decision to deem Paragon's bid non-responsive and to award the above-referenced contract to Haren Construction Co. Inc.

This Formal Protest is timely submitted within fifteen (15) business days of the October 20, 2025, award notice posting, as required by Section 11-35-4210. A Notice of Intent to Protest was timely filed on October 27, 2025.

II. INTERESTED PARTY INFORMATION

Protester: Paragon Inc. of South Carolina, LLC (doing business as "Paragon Builders")

SC Contractor's License Numbers: CLG.100190, CLM.111292

Classification(s) & Limits: Building BD5, Plumbing PB5, Electrical EL5

Contact Person: Eric Byrd, Vice President 2874 Columbia Road NE Orangeburg, SC 29118-1902 Telephone: (803) 534-1900 Email: eric@paragonbuilderssc.com

Legal Counsel: James M. Griffin, Esquire Griffin Humphries LLC PO Box 999 Columbia, SC 29202 Telephone: 803-744-0800 Email: jgriffin@griffinhumphries.com

III. PROCUREMENT INFORMATION

Awarding Agency: South Carolina Department of Natural Resources **Project:** Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid **Project Number:** P24-6052-PG
Bid Opening Date: September 23, 2025 **Award Notice Date:** October 20, 2025 **Intended Awardee:** Haren Construction Co. Inc. **Award Amount:** \$6,207,000.00

IV. PARAGON'S BID INFORMATION

Legal Entity Name: Paragon Inc. of South Carolina, LLC **Trade/DBA Name:** Paragon Builders
Business Address: 2874 Columbia Road, Orangeburg, SC (Orangeburg County) **Federal Tax ID:** 58-2486021

Bid Amounts:

- Base Bid Amount: \$5,323,800.00
- Alternate #1: \$533,600.00
- Alternate #2: \$568,200.00
- Alternate #3: \$573,350.00

Status: Deemed "Non-Responsive" by Agency

V. GROUNDS FOR PROTEST

Paragon protests the Agency's determination that its bid was non-responsive based on alleged violations of South Carolina Code Sections 40-11-270, 40-11-340, and 40-11-370. The Agency's determination is erroneous, arbitrary, and contrary to law. Specifically, Paragon contends:

A. Compliance with Section 40-11-270 (License Requirements)

Issue: The Agency allegedly found Paragon's bid non-responsive due to licensing deficiencies.

Paragon's Position:

Paragon holds all licenses necessary to perform the work as bid:

1. **General Contractor License CLG.100190** - authorizes Building-BD5 and Nonstructural Renovation-NR5 work with the following group limitations:
 - Group #5: Unlimited
 - Expiration: 10/31/2026
2. **Mechanical Contractor License CLM.111292** - authorizes Packaged Equipment-PK5, Plumbing-PB5, and Electrical-EL5 work with the following group limitations:
 - Group #5: Unlimited
 - Expiration: 10/31/2027

The work components of this project include:

- **Building work (BD5)** - covered by General Contractor License CLG.100190 at 13% of Total Project
- **Plumbing work (PB5)** - covered by Mechanical Contractor License CLM.111292 at 53% of total project
- **Electrical work (EL5)** - covered by Mechanical Contractor License CLM.111292 at 19% of total project
- **Pond liner work (15%)** - requires no specific license; Paragon will utilize its Building classification or engage appropriately licensed subcontractors as needed

Paragon's total bid of \$5,857,400 (including alternate #1) falls well within the unlimited group limitations of both licenses.

Supporting Documentation: See Exhibits A (General Contractor License CLG.100190) and B (Mechanical Contractor License CLM.111292).

B. Compliance with Section 40-11-340 (Subcontracting)

Issue: The Agency may have concerns regarding Paragon's ability to properly subcontract portions of the work.

Paragon's Position:

Paragon's licensing structure fully authorizes it to self-perform the major components of this work or to engage licensed subcontractors for specialized portions. Section 40-11-340 permits licensed general contractors to subcontract work to appropriately licensed specialty contractors. Paragon's approach is entirely consistent with this statutory framework and standard industry practice.

For the pond liner work, which represents 15% of the project and requires no specific contractor license under South Carolina law, Paragon may either:

- Perform the work under its Building-BD5 classification, or
- Engage appropriately licensed subcontractors as needed

This flexibility is expressly contemplated by South Carolina's contractor licensing statutes and regulations.

C. Compliance with Section 40-11-370 (Business Name)

Issue: The Agency cited Section 40-11-370(B) regarding engaging in construction under a name other than the exact name on the license.

Paragon's Position:

Paragon's bid was submitted under "Paragon Inc. of South Carolina, LLC," which is the exact legal name of the business entity and matches the Licensee/Legal Name on Paragon's contractor license application to the South Carolina Department of Labor, Licensing and Regulation (LLR).

Critical Distinction: While LLR issued the physical license documents under Paragon's trade name "Paragon Builders," the underlying legal entity holding both licenses is correctly identified as "Paragon Inc. of South Carolina, LLC." This is confirmed by:

1. **License Application (DOC 165)** - submitted in the name of "Paragon Inc. of South Carolina, LLC" with DBA "Paragon Builders" (See Exhibit C)
2. **License Records** - Both licenses (CLG.100190 and CLM.111292) are legally held by and issued to Paragon Inc. of South Carolina, LLC, even though the physical license certificates display the trade name
3. **Bid Submission** - Paragon's bid used the exact legal entity name that holds the licenses

Any alleged discrepancy between the legal entity name and the trade name displayed on the physical license certificates is a secondary, administrative matter that does not warrant bid rejection, particularly when:

- The entity is properly identified in the bid documents
- All license numbers are correctly provided
- The qualifying party is properly designated
- There is no indication of fraud, misrepresentation, or attempt to circumvent licensing requirements

Section 40-11-370(B) is intended to prevent unlicensed entities from fraudulently conducting business under someone else's license or misrepresenting their licensed status. That concern is wholly absent here. Paragon is the properly licensed entity, correctly identified itself, and submitted accurate license information.

The Agency's interpretation would improperly elevate form over substance and penalize a contractor for a ministerial variance between the legal entity name on its application and the trade name on its license certificate—a variance created by LLR's own administrative practices, not by any action or omission of Paragon.

D. Statutory Construction and Legislative Intent

South Carolina's contractor licensing statutes are designed to:

1. Protect the public by ensuring that construction work is performed by qualified, licensed contractors
2. Establish minimum standards for competency and financial responsibility
3. Prevent fraud and misrepresentation in the construction industry

Paragon fully satisfies each of these objectives. The Agency's restrictive interpretation would:

- **Improperly exclude legitimate plumbing work from the statutory scope** - contrary to the plain meaning of Section 40-11-410(5)(f) defining "plumbing" to include water distribution piping
- **Create uncertainty for contractors bidding on projects involving water piping systems on private property** - discouraging competition
- **Penalize contractors for administrative variances** between legal entity names and trade names on license certificates, even when the contractor is properly licensed and identified

VI. PREJUDICE TO PARAGON

Paragon will suffer substantial and irreparable prejudice if this protest is not granted:

1. Financial Harm

Paragon submitted the lowest responsible bid at \$5,857,400 (base bid plus alternate #1). The difference between Paragon's total bid and the intended award amount of \$6,207,000 is **\$349,600 more** than Paragon's total bid. This represents a significant financial loss to both Paragon and the State of South Carolina.

2. Loss of Business Opportunity

Paragon is a qualified, properly licensed contractor capable of performing this work in accordance with all applicable laws and regulations. Denying Paragon this contract opportunity based on erroneous legal interpretations unjustly deprives Paragon of legitimate business.

3. Reputational Harm

A determination of "non-responsiveness" carries significant negative implications for Paragon's professional reputation and may affect future bidding opportunities, despite Paragon's full compliance with all licensing requirements.

4. Competitive Disadvantage

If the Agency's restrictive interpretation of the Plumbing license definition stands, it would create uncertainty for contractors bidding on similar projects involving water piping systems on private property, potentially discouraging competition and increasing costs to public agencies.

VII. RELIEF REQUESTED

Paragon respectfully requests that the Chief Procurement Officer:

1. **Reverse** the determination that Paragon's bid is non-responsive;
2. **Find** that Paragon's Plumbing license (PB5) properly covers the yard piping installation work as defined in Section 40-11-410(5)(f);

3. **Find** that Paragon's bid was submitted in the proper legal name "Paragon Inc. of South Carolina, LLC," which is the legal entity that holds both contractor licenses CLG.100190 and CLM.111292;
4. **Find** that Paragon meets all requirements of Sections 40-11-270, 40-11-340, and 40-11-370;
5. **Determine** that Paragon submitted the lowest responsive and responsible bid; and
6. **Award** the contract to Paragon Inc. of South Carolina, LLC.

VIII. REQUEST FOR DOCUMENTS

Pursuant to Section 11-35-4210 and established protest procedures, Paragon requests access to the following documents within five (5) business days:

1. Complete bid tabulation showing all bids received
2. All documentation related to the responsiveness determination for Paragon's bid, including:
 - o Internal memoranda
 - o Email communications
 - o Evaluation notes
 - o Legal analysis or opinions
3. All documentation related to the responsiveness determination for the two other bidders (Haren Construction and BRW Construction)
4. Any communications within SCDNR or between other South Carolina State Agencies, legal counsel, or personnel regarding license classification interpretation for this project
5. Any legal opinions or guidance sought regarding the plumbing license scope under Section 40-11-410(5)(f)
6. Haren Construction and BRW Construction's license documentation and classifications
7. Any protest or inquiry submitted by any other bidder
8. Complete bid documents submitted by the two other bidders, including copies of sealed bid envelopes
9. All communications between SCDNR and LLR regarding licensing requirements for this project
10. Any determinations, rulings, or guidance from LLR regarding whether plumbing licenses cover yard piping installation work

IX. LEGAL ARGUMENT

A. South Carolina's Competitive Bidding Statutes Favor Acceptance of Low Bids

South Carolina law strongly favors competitive bidding and acceptance of the lowest responsive and responsible bid. The South Carolina Consolidated Procurement Code requires that "[a]n award shall be made with reasonable promptness by written notice to that responsible bidder whose bid will be most advantageous to the State." S.C. Code Ann. § 11-35-1520(5).

A bid should be deemed "non-responsive" only when there is a material deviation from the solicitation requirements that gives the bidder an unfair competitive advantage or otherwise compromises the integrity of the competitive bidding process. Minor irregularities or technicalities that do not affect the substance of the bid should be waived.

B. Paragon's Licenses Authorize All Work Contemplated by the Project

The plain language of Section 40-11-410(5)(f) defines "Plumbing" which includes the installation, replacement, alteration, and repair of all plumbing...when performed solely within property lines...and the installation, alteration, and repair of all piping, fixtures, and appliances, relating to water supply." This definition clearly encompasses the water distribution work in this project, which involves installation of piping systems for mariculture ponds.

The Agency's apparent interpretation—that plumbing licenses do not cover any piping work outside building walls on private property—is:

1. **Contrary to the statute's plain language**, which specifically addresses and includes water distribution piping
2. **Internally inconsistent**, as it would render the phrase "installation...of all piping, fixtures, and appliances relating to water supply" meaningless if all outside piping were categorically excluded
3. **Inconsistent with industry practice** and the reasonable expectations of licensed plumbing contractors
4. **Contrary to legislative intent** to establish clear scope boundaries for licensed trades

Moreover, Paragon's General Contractor license (Building-BD5) provides additional authority to perform this work or to engage appropriately licensed subcontractors.

C. The Business Name Issue Does Not Warrant Bid Rejection

Section 40-11-370(B) states: "No person may engage in the business of contracting in a name other than that shown on the license unless the name is properly registered pursuant to applicable law."

Here, Paragon's bid was submitted in the name "Paragon Inc. of South Carolina, LLC"—the exact legal entity name that:

- Holds both contractor licenses
- Is shown on the license application submitted to LLR
- Is properly registered with the South Carolina Secretary of State

The fact that LLR's physical license certificates display Paragon's trade name "Paragon Builders" rather than the legal entity name is an administrative matter within LLR's control, not Paragon's. Paragon cannot be penalized for LLR's administrative practices.

Section 40-11-370(B) is intended to prevent fraud and misrepresentation—situations where an unlicensed entity attempts to operate under a licensed contractor's name, or where a contractor misrepresents its identity to circumvent licensing requirements. Neither situation exists here.

Courts consistently hold that procurement statutes should be construed to promote competition and achieve the best value for public agencies, not to exclude qualified bidders based on technical irregularities that do not affect the substance of the procurement.

D. Applicable Legal Standards

South Carolina courts have established that:

1. **Procurement regulations should be construed liberally to favor competition** and should not be used to exclude responsible bidders except where necessary to protect the integrity of the procurement process
2. **Substantial compliance is sufficient** where strict compliance would serve no meaningful purpose and the public interest is not compromised
3. **Minor irregularities or immaterial variances** in bids should be waived when they do not provide a competitive advantage or prejudice other bidders
4. **Administrative interpretations that contradict statutory language** or frustrate legislative intent are not entitled to deference

E. Public Policy Considerations

Awarding this contract to Paragon serves important public policy objectives:

1. **Fiscal Responsibility:** Paragon submitted the lowest qualified bid, saving South Carolina taxpayers \$349,600
2. **Competitive Procurement:** Rejecting Paragon's bid based on erroneous legal interpretations discourages competition and increases costs
3. **Fair Treatment of Qualified Contractors:** Paragon holds all necessary licenses and has demonstrated its qualifications; the Agency's interpretation imposes arbitrary barriers to participation
4. **Consistency and Predictability:** Contractors need clear, consistent rules regarding licensing requirements; the Agency's restrictive interpretation creates uncertainty

X. CONCLUSION

Paragon Inc. of South Carolina, LLC is a fully qualified, properly licensed contractor that submitted the lowest responsible bid for this project. The Agency's determination of non-responsiveness is based on erroneous interpretations of South Carolina's contractor licensing statutes that contradict the plain language of those statutes and frustrate their intended purpose.

Paragon respectfully requests that this protest be granted, that Paragon's bid be deemed responsive and responsible, and that the contract be awarded to Paragon as the lowest qualified bidder.

XI. CONSENT TO ELECTRONIC COMMUNICATIONS

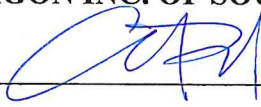
By submitting this Formal Protest to protest-ose@mrnm.sc.gov, Paragon (and any person acting on Paragon's behalf) consents to receive communications regarding this protest (and any related protests) at the email address of Paragon's legal counsel, James M. Griffin at jgriffin@griffinhumphries.com with copies to eric@paragonbuilderssc.com.

XII. CERTIFICATION

The undersigned certifies that the statements contained in this Formal Protest are true and accurate to the best of knowledge and belief.

Respectfully submitted this 4th day of November, 2025.

PARAGON INC. OF SOUTH CAROLINA, LLC

By:  Eric Byrd, Vice President

2874 Columbia Road NE Orangeburg, SC 29118-1902 Telephone: (803) 534-1900 Email: eric@paragonbuilderssc.com

ATTORNEY FOR PROTESTER:

James M. Griffin, Esquire Griffin Humphries LLC PO Box 999 Columbia, SC 29202 Telephone: 803-744-0800 Email: jgriffin@griffinhumphries.com

EXHIBITS

Exhibit A: General Contractor License CLG.100190

Exhibit B: Mechanical Contractor License CLM.111292

Exhibit C: Contractor License Application (DOC 165) showing Paragon Inc. of South Carolina, LLC as Licensee/Legal Name with DBA Paragon Builders

Exhibit D: Notice of Intent to Protest (filed October 27, 2025)

Ex. A

Paragon Builders General Contractor License
Expiration Date 10-31-2026

*** THIS LICENSE EXPIRES ON 10/31/2026 ***

VERIFY the **QUALIFYING PARTY** ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or email) within **15 business days** for your license to remain **Active**. Failure to notify the board of a qualifier loss will result in immediate **license cancellation** and disciplinary action.

BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES. DO NOT TEAR CARD IN HALF.

35

PARAGON BUILDERS
PO BOX 2058
ORANGEBURG SC 29116-2058

LICENSE#: CLG.100190

South Carolina Department of Labor, Licensing and Regulation
Contractor's Licensing Board
GENERAL CONTRACTOR

PARAGON BUILDERS
2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

licensed to practice in the 2-letter Classification(s) and Group# listed below:

Building-BD5, Nonstructural Renovation-NR5

INITIAL ISSUE DATE: 01/07/1999

LICENSE EXPIRATION DATE: 10/31/2026

(If above license has "Limited Building-LB", work is limited to 3 stories in height)

GENERAL CONTRACTOR

LICENSE#: CLG.100190

EXPIRATION DATE: 10/31/2026

PARAGON BUILDERS

Qualifier(s): DEQUINCEY S EDWARDS, STEPHON EDWARDS

Licensee's Group# Limitation Per Job/Project (i.e., BD2 = Group 2):

Group #1 - \$100,000 Group #2 - \$400,000 Group #3 - \$1,000,000

Group #4 - \$3,000,000 Group #5 - \$Unlimited

M. Monica W. Sutton
Board Executive

WARNING - THIS DOCUMENT CONTAINS SECURITY FEATURES LISTED ON REVERSE SIDE

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION

CONTRACTOR'S LICENSING BOARD

LICENSE#: CLG.100190

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

GENERAL CONTRACTOR

for each Classification and Group Limitation listed below:

(If this license has a "Limited Building-LB" classification, work is limited to 3 stories in height)

Building-BD5, Nonstructural Renovation-NR5

LICENSE NUMBER: CLG.100190

Initial License Date: 01/07/1999

EXPIRATION DATE: 10/31/2026

Qualifying Party(s): DEQUINCEY S EDWARDS, STEPHON EDWARDS

Group Limitation Per Job (i.e. BD2 = Group 2):

Group #1 - \$100,000 Group #4 - \$3,000,000

Group #2 - \$400,000 Group #5 - \$Unlimited

Group #3 - \$1,000,000

M. Monica W. Sutton
Board Executive

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business on their behalf. ***

Ex. B

Paragon Builders Mechanical Contractor License
Expiration Date 10-31-2025

*** THIS LICENSE EXPIRES ON 10/31/2025 ***

FY the **QUALIFYING PARTY** ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or em in **15 business days** for your license to remain **Active**. Failure to notify the board of a qualifier loss will result in immediate **license cancellation** and disciplinary action

THIS IS A 2-PART POCKETCARD - FOLD CARD IN HALF - DO NOT CUT OR TEAR CARD IN HALF
BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES

LICENSE#: CLM.111292

CCG 1055888

South Carolina Department of Labor, Licensing and Regulation

Contractor's Licensing Board

MECHANICAL CONTRACTOR

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

licensed to practice in the 2-letter Classification(s) and Group# listed below:

PK5, PB5, EL5, STEPHON EDWARDS, ERIC BYRD, 121268, -74603

LICENSE EXPIRATION DATE: 10/31/2025

(If this license has a "Limited Building-LB", work is limited to 3 stories in height)

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf.***

MECHANICAL CONTRACTOR 1055888

LICENSE#: CLM.111292 - EXPIRES: 10/31/2025

PARAGON BUILDERS

Initial Issue Date: 04/28/2010 - Expiration Date: 10/31/2025
Qualifier(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS
HAMPTON

Group Limitations Per Job/Project (i.e. AC2 = Group 2):

Group #1 - \$35,000 Group #2 - \$100,000

Group #3 - \$200,000 Group #4 - \$400,000

Group #5 - \$Unlimited

M. Veronica W. Fulton
Board Executive

DO NOT PEEL CARD FROM A CORNER

To remove card from backing

- Bend form back from the outside edge
- Pull card off backing

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
CONTRACTOR'S LICENSING BOARD

CCG 1055888

LICENSE#: CLM.111292

LICENSE#: CLM.111292

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

MECHANICAL CONTRACTOR

for each Classification and Group Limitation listed below:

PK5, PB5, EL5, STEPHON EDWARDS, ERIC BYRD, 121268, -74603

LICENSE NUMBER:CLM.111292

Initial License Date:.....04/28/2010

EXPIRATION DATE:.....10/31/2025

Group Limitations Per Job (i.e. AC2 = Group 2):

Group #1 - \$35,000 Group #3 - \$200,000

Group #2 - \$100,000 Group #4 - \$400,000

Group #5 - \$Unlimited

Qualifying Party(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS HAMPTON

M. Veronica W. Fulton
Board Executive

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf.***

Paragon Builders Mechanical Contractor License
Expiration Date 10-31-2027

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf. ***

*** THIS LICENSE EXPIRES ON 10/31/2027 ***

VERIFY the **QUALIFYING PARTY** ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or email) within **15 business days** for your license to remain **Active**. Failure to notify the board of a qualifier loss will result in immediate **license cancellation** and disciplinary action.

BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES. DO NOT TEAR CARD IN HALF.

35
PARAGON BUILDERS
PO BOX 2058
ORANGEBURG SC 29116-2058

LICENSE#: CLM.111292

South Carolina Department of Labor, Licensing and Regulation
Contractor's Licensing Board
MECHANICAL CONTRACTOR

PARAGON BUILDERS
2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

licensed to practice in the 2-letter Classification(s) and Group# listed below:
Packaged Equipment-PK5, Plumbing-PB5, Electrical-EL5

INITIAL ISSUE DATE: 04/28/2010
LICENSE EXPIRATION DATE: 10/31/2027

MECHANICAL CONTRACTOR

LICENSE#: CLM.111292

EXPIRATION DATE: 10/31/2027

PARAGON BUILDERS

Qualifier(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS HAMPTON

Licensee's Group# Limitation Per Job/Project (i.e., EL2 = Group 2):

Group #1 - \$35,000 Group #2 - \$100,000 Group #3 - \$200,000
Group #4 - \$400,000 Group #5 - \$Unlimited

Nelly J. Davis
Program Director

WARNING - THIS DOCUMENT CONTAINS SECURITY FEATURES LISTED ON REVERSE SIDE

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION

CONTRACTOR'S LICENSING BOARD

LICENSE#: CLM.111292

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

MECHANICAL CONTRACTOR

for each Classification and Group Limitation listed below:

Packaged Equipment-PK5, Plumbing-PB5, Electrical-EL5

LICENSE NUMBER: CLM.111292

Initial License Date: 04/28/2010

EXPIRATION DATE: 10/31/2027

Qualifying Party(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS HAMPTON

Group Limitation Per Job (i.e., EL2 = Group 2):

Group #1 - \$35,000 Group #2 - \$100,000
Group #3 - \$200,000 Group #4 - \$400,000
Group #5 - \$Unlimited

Nelly J. Davis
Program Director

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business on their behalf. ***

Ex. C

Mechanical Contractor's Application

is application form is used for:

- New license, including a business with a new name and Federal ID number, or a new type of business (Corporation, LLC, LLP, etc.).
- Reinstate a lapsed license.

not use this application if you need to revise a license, such as increasing the license group limitation, or name change with the same Federal ID number and type of business you need to complete the General and Mechanical Contractor Revision Application (Doc 180).

omit the following with your application:

- The license fee is \$350. Fees are non-refundable. License fee in the form of a check or money order made payable to SCCLB. A returned check fee of up to \$30, or an amount specified by law, may be assessed on all returned funds. NO CASH IS ACCEPTED.
- Verification to conduct business in SC from the SC Secretary of State (not required for a sole proprietorship).
- Financial Statement or Surety Bond supporting the requested group limitation.
- Completed PQP /QP Initial Application(s) (Doc 168) for individuals who are not currently certified by the Board or have a certification that has been inactive for more than four years **or** completed PQP/QP Revision Application (Doc 181) to add an active PQP/QP certification or a certification that has been inactive for less than four years.

Completed applications may be submitted to the Board at PO Box 11329, Columbia, SC 29211, by email to act.clb@llr.sc.gov, or delivered in person at 110 Centerview Dr., Columbia, SC 29210.

APPLICANT INFORMATION

Individual or company listed in this section will be designated as the "License Holder." You must sign contracts, apply for permits, conduct business, and advertise in this name only. (See SC Code of Laws Section 40-11-20, 130, 240 and 370(B))

Licensee/Legal Name: Paragon Inc. of South Carolina, LLC

Doing Business As (DBA) Name: Paragon Builders

Business Phone: 803-534-1900 Email (required): eric@paragonbuilderssc.com

Business Address: 2874 Columbia Rd, Orangeburg SC County: Orangeburg
Physical street address, City, State and Zip Code

Alternate Address (if different from above): Same

Business Tax ID or SSN: 58-2466031 Website: www.paragonbuilderssc.com

Is the licensee/entity listed above a current or previous SC Contractor?

☐ YES ☐ NO

If yes, license number: _____

Is this a reinstatement application?

☐ YES ☐ NO

Is this a name change or form of business change?

☐ YES ☐ NO

Mechanical Contractor's Revision Application



South Carolina Department of Labor, Licensing and Regulation
South Carolina Contractor's Licensing Board
110 Centerview Dr. • Columbia • SC • 29210
P.O. Box 11329 • Columbia • SC • 29211
Phone: 803-896-4686 • Contact.CLB@llr.sc.gov • Fax: 803-896-4814
llr.sc.gov/clb

GENERAL AND MECHANICAL CONTRACTOR REVISION APPLICATION (DOC. 180)

NOTE: Find your specific instructions on the previous page (i.e. "Change of Licensing Group", "Change of Business Name or Address", etc.). The instructions will let you know which sections of the application you need to complete. You may disregard all other sections of the application not mentioned in your instructions. **All applicants must complete sections A, E and F.**

Completed applications may be submitted to the Board at PO Box 11329, Columbia, SC 29211, by email to contact.clb@llr.sc.gov, or delivered in person at 110 Centerview Dr., Columbia, SC 29210.

REQUESTED ACTION

Indicate the reason for your application below. All applicants must complete the applicable sections and attestation at the end of this application.

☐ Name Change ☐ Address Change ☐ Owner/Officer Change ☒ License Group Change

SECTION A

LICENSEE INFORMATION (as it currently appears on your license card)

ALL applicants must complete this section.

Licensee/Legal Name: Paragon Inc. of South Carolina, LLC

Doing Business As (DBA) Name: Paragon Builders License # M.111292

Business Phone: 803-534-1900 Email (required): stephon@paragonbuilderssc.com

Business Address: 2874 Columbia Road, Orangeburg, SC 29118 County: Orangeburg
Physical street address, City, State and Zip Code

Mailing Address (if different from above): POB 2058, Orangeburg, SC 29116

Federal Tax ID or SSN: 58-2466031 Website: www.paragonbuilderssc.com

SECTION B

CHANGE OF BUSINESS NAME OR ADDRESS (physical or mailing)

ONLY complete this section if you need to change your business name, corporate structure, address, or other contact information. Attach amended charter or the Secretary of State Articles of Amendment if this is a corporate name change. If your name, Federal ID No. or corporate structure has changed more than 15 business days ago, **do not** complete this form; you must submit a new [General and Mechanical Contractor Initial Application \(Doc 165\)](#).

New Business Name: _____

Doing Business As (DBA) Name: _____

Business Phone: _____ Email (required): _____

Business Address: _____ County: _____
Physical street address, City, State and Zip Code

Mailing Address (if different from above): _____

Website: _____

Type of Business:

Corporations, LLCs, LLPs, or LPs must submit a Federal Tax ID number and a SC Secretary of State Certificate of Existence.

- ☐ Sole Proprietorship ☐ Domestic/Foreign Corporation ☐ Partnership
☐ Limited Liability Partnership ☒ Limited Liability Company

State of incorporation or organization: SC

SECTION C

CHANGE OF OWNERS OR OFFICERS

ONLY complete this section if there has been a change in the Licensee's ownership or corporate leadership. Provide the name, title, and date of birth and percent of business ownership of each owner, officer, partner, and/or member of the Licensee. Attach a separate sheet if necessary.

Name: _____ **Title:** _____

% Ownership: _____ **Date of Birth:** _____

Name: _____ **Title:** _____

% Ownership: _____ **Date of Birth:** _____

Name: _____ **Title:** _____

% Ownership: _____ **Date of Birth:** _____

Name: _____ **Title:** _____

% Ownership: _____ **Date of Birth:** _____

Name: _____ **Title:** _____

% Ownership: _____ **Date of Birth:** _____

SECTION D

CHANGE OF LICENSING GROUP

ONLY complete this section if you wish to change your licensing group limit. Select the group for increase and attach the appropriate financial documentation or surety bond. Please indicate the method for which you are qualifying for the new licensing group limit. Additional information about financial group limits can be found on the Board's website.

Groups 1 and 2 – (submit one)

- Owner Prepared financial statement with an affidavit of accuracy, [Document #172](#); or
- [Surety Bond Form for General Contractors](#) / [Surety Bond Form for Mechanical Contractors](#)

Groups 3 and 4 – (submit one)

- Financial statement compiled by a licensed CPA in accordance with GAAP, including all disclosures required by GAAP or
- [Surety Bond Form for General Contractors](#) / [Surety Bond Form for Mechanical Contractors](#)

Group 5 – (submit one)

- An audited balance sheet prepared by a licensed CPA in accordance with GAAP, including all disclosures required by GAAP; or
- [Surety Bond Form for General Contractors](#) / [Surety Bond Form for Mechanical Contractors](#)

Requested Group Limit:

☐ Group 1 ☐ Group 2 ☐ Group 3 ☐ Group 4 ☒ Group 5

Qualifying for Requested Group Limit by:

☐ Net Worth ☐ Working Capital ☒ Surety Bond

What type of financial documentation are you submitting with your application?

☐ Audited Balance Sheet ☐ Reviewed Financial Statement ☐ Compiled Financial Statement
☐ [Owner Prepared Financial Statement \(Doc 172\)](#) ☐ Surety Bond

SECTION E

BACKGROUND QUESTIONS

ALL applicants must complete this section. Answer all questions below. If you answer "Yes" to any of the questions, you are required to complete and submit the [Explanatory Statement of Yes Answers - Doc. 142](#).

1. Since your last renewal or application with the Board, has this entity or any owner, officer, partner, or member been convicted, pled guilty or nolo contendere in the US or foreign country of a felony or the offense of forgery, embezzlement, obtain money under false pretenses, theft, extortion, or conspiracy to defraud or other like offense?

☐ YES ☒ NO

If yes, in addition to [Doc 142](#), a criminal background check must be provided from the state in which the conviction occurred along with the court disposition and any other pertinent documentation. For South Carolina criminal background reports contact SLED at www.sled.sc.gov. Out-of-state applicants may submit a state-issued report, or any report generated by an accredited agency on PBSA's website found here: thepbsa.org/. All criminal background reports must not be older than thirty (30) days from the date of application.

2. Since your last renewal or application with the Board, has this entity or any owner, officer, partner, or member had a professional license or certificate denied, suspended, revoked or otherwise been disciplined in any state or jurisdiction, including South Carolina? ☐ YES ☒ NO

If yes, in addition to [Doc 142](#), official documentation related to the relevant disciplinary action must be provided.

3. Since your last renewal or application with the Board, does this entity or any owner, officer, partner, or member have any unresolved complaints or charges pending before any professional licensing board in South Carolina or any other state or jurisdiction? ☐ YES ☒ NO

If yes, in addition to [Doc 142](#), official documentation related to the relevant disciplinary action must be provided.

4. Since your last renewal or application with the Board, does this entity or any owner, officer, partner, or member have any outstanding monetary judgments related to construction, or have any bankruptcies? ☐ YES ☒ NO

If yes, in addition to [Doc 142](#), official documentation related to the monetary judgments, including the order of judgment or final disposition, and bankruptcies, as well as any payment plans that have been established to satisfy construction related monetary judgments, must be provided.

SECTION F

ATTESTATION

ALL applicants must complete this section.

I certify that the information and statements contained herein are true, accurate, and complete. I understand that the provision of false or inaccurate information may result in the cancellation or denial of a license issued pursuant to this application and may be subject to civil and criminal proceedings. I agree that all information in this application may be verified and investigated. I have read and am familiar with the South Carolina Contractor's Licensing Board Practice Act and hereby agree to abide by such laws.

Owner/Officer/Partner/Member Name (Print): Stephon Edwards

Signature: 

Title Owner

Date 8/28/2024

PRIVACY DISCLOSURE

South Carolina Law requires that every individual who applies for an occupational or professional license provide a social security number for use in the establishment, enforcement and collection of child support obligations and for reporting to certain databanks established by law. Failure to provide your social security number for these mandatory purposes will result in the denial of your licensure application. Social security numbers may also be disclosed to other governmental regulatory agencies and for identification purposes to testing providers and organizations involved in professional regulation. Your social security number will not be released for any other purpose not provided for by law.

Other personal information collected by the Department for the licensing boards it administers is limited to such personal information as is necessary to fulfill a legitimate public purpose. The South Carolina Freedom of Information Act ensures that the public has a right to access appropriate records and information possessed by a government agency. Therefore, some personal information on the application may be subject to public scrutiny or release. The Department collects and disseminates personal information in compliance with The South Carolina Freedom of Information Act, the South Carolina Family Privacy Protection Act, and other applicable privacy laws and regulations. Additionally, the Department shares certain information on the application with other governmental agencies for various governmental purposes, including research and statistical services.



South Carolina Department of Labor, Licensing and Regulation
South Carolina Contractor's Licensing Board
110 Centerview Dr. • Columbia • SC • 29210
P.O. Box 11329 • Columbia • SC • 29211
Phone: 803-896-4686 • Contact:CLB@llr.sc.gov • Fax: 803-896-4814
llr.sc.gov/clb

SURETY BOND FOR MECHANICAL CONTRACTORS

BOND NUMBER: L272743-2227

KNOW ALL MEN BY THESE PRESENTS that we

Paragon Builders

, as Principal and

Lexington National Insurance Corporation

, a Surety Company

authorized to do business in the State of South Carolina, as Surety, its successors, assigns, and legal representatives are held and firmly bound unto the South Carolina Contractor's Licensing Board, State of South Carolina and any person or business sustaining damage within the terms of this bond for payment, as Obligee in the sum of Three Hundred Thousand Dollars (\$300,000.00) lawful money of the United States of America per License Term. We bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. This bond is in lieu of providing a financial statement showing a minimum net worth or working capital as required in S.C. Code Ann. §40-11-260.

WHEREAS, the above bonded Principal has applied to the South Carolina Contractor's Licensing Board pursuant to Section 40-11-10 *et seq.* of the 1976 Code of Laws of South Carolina, as amended (the Act), to be granted an authorization to engage in the following construction groups with the following bond amounts:

- ☐ Group 1 Mechanical Contractor (\$7,000)
- ☐ Group 2 Mechanical Contractor (\$15,000)
- ☐ Group 3 Mechanical Contractor (\$30,000)
- ☐ Group 4 Mechanical Contractor (\$60,000)
- ☒ Group 5 Mechanical Contractor (\$300,000)

WHEREAS, the above bonded Principal is required in Section 40-11-262 of the Act to furnish the Board with a good and sufficient surety as one method of complying with one of the conditions upon which the authorization is granted.

NOW, THEREFORE, if the Principal, in compliance with 40-11-262, does not engage in an act or omission constituting a breach of construction contract or a contract for the furnishing of labor, materials, or professional services for construction undertaken by the Principal, or does not commit any unlawful act or omission in performing construction, then this obligation shall be void; otherwise it is to remain in full force and effect.

This bond is in full force and effect as to the above statutory, regulatory and procedural obligations of the Principal from 8/22/2024 through 10/31/2025 unless renewed by continuation certificate; however, the Surety or the Principal shall have the right to cancel this bond at any time by filing written notice with the South Carolina Contractor's Licensing Board and the applicable party of its intention to so cancel, giving at least thirty (30) days' notice prior to the effective date of the cancellation. This provision, however, shall not operate to relieve, release or discharge the Surety from any liability already accrued or which shall accrue before the expiration of the thirty (30) day period.

Regardless of the number of years this bond may remain in force or the number of claims against this bond, the aggregate liability of the Surety for any and all claims, suits or actions under this bond shall not exceed the sum of Three Hundred Thousand Dollars (\$ 300 ,000.00) for any License Term. Each License Term is a twenty-four month period beginning on November 1 and ending on October 31.

The Surety shall provide the board with written notice of any payment made in good faith under the Bond within thirty (30) days of such payment. No right of action shall accrue upon or by reason of this bond to or for the use or benefit of anyone whatsoever other than the Board or any person sustaining loss or damage within the terms of this bond for payment.

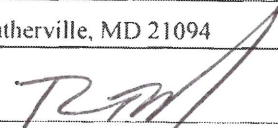
Witness our hands and seal this 22nd day of August, 20 24.

Name and Address of Surety Company (Print)

Lexington National Insurance Corporation

PO Box 6098

Lutherville, MD 21094

By: 

Signature of Surety (Attorney-in-Fact)
Tyler Turnbull

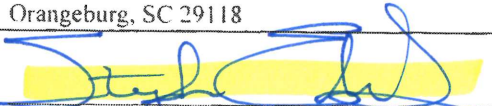
Power of Attorney (attach document)

Name and Address of Principal (Print)

Paragon Builders

2874 Columbia Road

Orangeburg, SC 29118

By: 

Signature of Principal

To report a claim with regard to this bond, submit a claim on the form approved by the Board to the claim address below:

(Print) Lexington National Insurance Corporation

PO Box 6098

Lutherville, MD 21094

POWER OF ATTORNEY

Lexington National Insurance Corporation

Lexington National Insurance Corporation, a corporation duly organized under the laws of the State of Florida and having its principal administrative office in Baltimore County, Maryland, does hereby make, constitute and appoint:

Tyler Turnbull, Beverly Ivey, Della Case, Brett Branton,
Brendan Coale, Matthew Rose, Scott Pelin

as its true and lawful attorney-in-fact, each in their separate capacity, with full power and authority to execute, acknowledge, seal and deliver on its behalf as surety any bond or undertaking of \$6,000,000 or less. This Power of Attorney is void if used for any bond over that amount.

This Power of Attorney is granted under and by authority of the following resolutions adopted by the Board of Directors of the Company on February 15, 2018:

Be it Resolved, that the CEO, President or any Vice-President shall be and is hereby vested with full power and authority to appoint suitable persons as Attorney-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on the behalf of the Company, to execute, acknowledge and deliver any and all bonds, contracts, or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any all notices and documents cancelling or terminating the Company's liability thereunder and any such instruments so executed by any Attorney-in Fact shall be binding upon the Company as if signed by the CEO, President and sealed by the Corporate Secretary.

RESOLVED further, that the signature of the CEO, President or any Vice-President of LEXINGTON NATIONAL INSURANCE CORPORATION may be affixed by facsimile to any power of attorney, and the signature of the Secretary or any Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of such power, or any such power or certificate bearing such facsimile signature or seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed with respect to any bond to which it is attached continue to be valid and binding upon the Company.

IN WITNESS WHEREOF, the Company have caused this instrument to be signed and their corporate seal to be hereto affixed.



Ronald A. Frank, CEO



State of Maryland
County of Harford County, SS:

Before me, a notary public, personally appeared, Ronald A. Frank, CEO of Lexington National Insurance Corporation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under the PENALTY of PERJURY under the laws of the State of Maryland that the foregoing paragraph is true and correct.

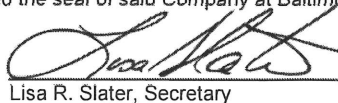
WITNESS my hand and official seal.

Commission Expires: 05/23/24


Notary

I, Lisa R. Slater, Secretary of Lexington National Insurance Corporation, do hereby certify that the above and foregoing is true and correct copy of a Power of Attorney, executed by said company, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Company at Baltimore, Maryland this 17th day of January, 2024.


Lisa R. Slater, Secretary

Attached to bond signed this 22nd day of August, 2024

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

PARAGON, INC. OF SOUTH CAROLINA, LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on April 30th, 1999, with a duration that is at will, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

**Given under my Hand and the Great
Seal of the State of South Carolina this
27th day of December, 2007.**

A handwritten signature in cursive script that reads "Mark Hammond".

Mark Hammond, Secretary of State

*** THIS LICENSE EXPIRES ON 10/31/2025 ***

VERIFY the **QUALIFYING PARTY** ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or email) within **15 business days** for your license to remain **Active**. Failure to notify the board of a qualifier loss will result in immediate **license cancellation** and disciplinary action.

THIS IS A 2-PART POCKETCARD - FOLD CARD IN HALF - DO NOT CUT OR TEAR CARD IN HALF
BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES

CCG 1053518

CCG 1053518

LICENSE#: CLM.111816

South Carolina Department of Labor, Licensing and Regulation
Contractor's Licensing Board
MECHANICAL CONTRACTOR

PAUL R GILLETTE
DBA: GILLETTE PLUMBING
2874 COLUMBIA ROAD
ORANGEBURG SC 29118

Licensed to practice in the 2-letter Classification(s) and Group# listed below:
Plumbing-PB2

LICENSE EXPIRATION DATE: 10/31/2025

(If this license has a "Limited Building-LB", work is limited to 3 stories in height)

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf. ***

MECHANICAL CONTRACTOR
LICENSE#: CLM.111816 - EXPIRES: 10/31/2025
PAUL R GILLETTE
DBA: GILLETTE PLUMBING
Initial Issue Date: 09/02/2011 - Expiration Date: 10/31/2025
Qualifier(s): **PAUL R GILLETTE**

Group Limitations Per Job/Project (i.e. AC2 = Group 2):
Group #1 - \$35,000 Group #2 - \$100,000
Group #3 - \$200,000 Group #4 - \$400,000
Group #5 - \$Unlimited

Meronica W. Fulton
Board Executive

DO NOT PEEL CARD FROM A CORNER

To remove card from backing

- **Bend** form back from the **outside edge**
- **Pull** card off backing

Paul R Gillette
Owner Qualifier

CCG 1053518

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
CONTRACTOR'S LICENSING BOARD

LICENSE#: CLM.111816

LICENSE#: CLM.111816

PAUL R GILLETTE
DBA: GILLETTE PLUMBING
2874 COLUMBIA ROAD
ORANGEBURG SC 29118

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

MECHANICAL CONTRACTOR

for each Classification and Group Limitation listed below:

Plumbing-PB2

LICENSE NUMBER:CLM.111816
Initial License Date:09/02/2011
EXPIRATION DATE:10/31/2025

Group Limitations Per Job (i.e. AC2 = Group 2):
Group #1 - \$35,000 Group #3 - \$200,000
Group #2 - \$100,000 Group #4 - \$400,000
Group #5 - \$Unlimited

Qualifying Party(s): PAUL R GILLETTE

Meronica W. Fulton
Board Executive

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf. ***

*** THIS LICENSE EXPIRES ON 10/31/2025 ***

VERIFY the **QUALIFYING PARTY** ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or email) within **15 business days** for your license to remain **Active**. Failure to notify the board of a qualifier loss will result in immediate **license cancellation** and disciplinary action.

THIS IS A 2-PART POCKETCARD - FOLD CARD IN HALF - DO NOT CUT OR TEAR CARD IN HALF
BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES

LICENSE#: CLM.111292

CCG 1055888

South Carolina Department of Labor, Licensing and Regulation
Contractor's Licensing Board

MECHANICAL CONTRACTOR

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

licensed to practice in the 2-letter Classification(s) and Group# listed below:

PK5, PB5, EL5, STEPHON EDWARDS, ERIC BYRD, 121268, -74603

LICENSE EXPIRATION DATE: 10/31/2025

(If this license has a "Limited Building-LB", work is limited to 3 stories in height)

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf. ***

MECHANICAL CONTRACTOR
LICENSE#: CLM.111292 - EXPIRES: 10/31/2025

PARAGON BUILDERS

Initial Issue Date: 04/28/2010 - Expiration Date: 10/31/2025

Qualifier(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS HAMPTON

Group Limitations Per Job/Project (i.e. AC2 = Group 2):

Group #1 - \$35,000 Group #2 - \$100,000

Group #3 - \$200,000 Group #4 - \$400,000

Group #5 - \$Unlimited

Monica W. Fulton
Board Executive

DO NOT PEEL CARD FROM A CORNER

To remove card from backing

- **Bend form back from the outside edge**
- **Pull card off backing**

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
CONTRACTOR'S LICENSING BOARD

CCG 1055888

LICENSE#: CLM.111292

LICENSE#: CLM.111292

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

MECHANICAL CONTRACTOR

for each Classification and Group Limitation listed below:

PK5, PB5, EL5, STEPHON EDWARDS, ERIC BYRD, 121268, -74603

LICENSE NUMBER:CLM.111292

Initial License Date:04/28/2010

EXPIRATION DATE:10/31/2025

Group Limitations Per Job (i.e. AC2 = Group 2):

Group #1 - \$35,000 Group #3 - \$200,000

Group #2 - \$100,000 Group #4 - \$400,000

Group #5 - \$Unlimited

Qualifying Party(s): JONATHAN FERGUSON, PAUL R GILLETTE, RODGERS HAMPTON

Monica W. Fulton
Board Executive

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business in their behalf. ***

*** THIS LICENSE EXPIRES ON 10/31/2026 ***

VERIFY the **QUALIFYING PARTY** ("Qualifier") name(s) on this license is accurate. If a Qualifier ceases to serve this license, you must notify the board in writing (mail or email) within **15 business days** for your license to remain **Active**. Failure to notify the board of a qualifier loss will result in immediate **license cancellation** and disciplinary action.

BOTH PARTS OF THIS POCKETCARD MUST BE PRESENTED TO CONDUCT BUSINESS AT ALL TIMES. DO NOT TEAR CARD IN HALF.

35

PARAGON BUILDERS
PO BOX 2058
ORANGEBURG SC 29116-2058

LICENSE#: CLG.100190

South Carolina Department of Labor, Licensing and Regulation
Contractor's Licensing Board
GENERAL CONTRACTOR

PARAGON BUILDERS
2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

licensed to practice in the 2-letter Classification(s) and Group# listed below:

Building-BD5, Nonstructural Renovation-NR5

INITIAL ISSUE DATE: 01/07/1999

LICENSE EXPIRATION DATE: 10/31/2026

(If above license has "Limited Building-LB", work is limited to 3 stories in height)

GENERAL CONTRACTOR

LICENSE#: CLG.100190

EXPIRATION DATE: 10/31/2026

PARAGON BUILDERS

Qualifier(s): DEQUINCEY S EDWARDS, STEPHON EDWARDS

Licensee's Group# Limitation Per Job/Project (i.e., BD2 = Group 2):

Group #1 - \$100,000 Group #2 - \$400,000 Group #3 - \$1,000,000

Group #4 - \$3,000,000 Group #5 - \$Unlimited

M. Monica W. Fulton
Board Executive

WARNING - THIS DOCUMENT CONTAINS SECURITY FEATURES LISTED ON REVERSE SIDE

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION

CONTRACTOR'S LICENSING BOARD

LICENSE#: CLG.100190

PARAGON BUILDERS

2874 COLUMBIA ROAD
ORANGEBURG SC 29118-1902

Has been qualified by the laws of the State of South Carolina and is duly entitled to practice as a:

GENERAL CONTRACTOR

for each Classification and Group Limitation listed below:

(If this license has a "Limited Building-LB" classification, work is limited to 3 stories in height)

Building-BD5, Nonstructural Renovation-NR5

LICENSE NUMBER: CLG.100190

Initial License Date: 01/07/1999

EXPIRATION DATE: 10/31/2026

Qualifying Party(s): DEQUINCEY S EDWARDS, STEPHON EDWARDS

Group Limitation Per Job (i.e. BD2 = Group 2):

Group #1 - \$100,000 Group #4 - \$3,000,000

Group #2 - \$400,000 Group #5 - \$Unlimited

Group #3 - \$1,000,000

M. Monica W. Fulton
Board Executive

*** It is at the discretion of this licensee to designate any employee of their company to pull permits and conduct business on their behalf. ***

Ex. D

Notice of Intent to Protest
(filed October 27, 2025)

October 27, 2025

VIA ELECTRONIC MAIL (protest-ose@mmo.sc.gov)

Office of State Engineer

Attn: Chief Procurement Officer for Construction

South Carolina Department of Natural Resources

1201 Main Street, Suite 600

Columbia, SC 29201

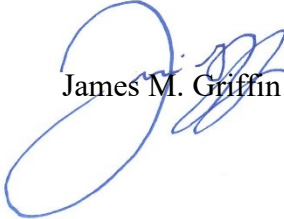
Re: Notice of Intent to Protest by Paragon Inc. of South Carolina LLC
Project Name: Beaufort-Wadell Mariculture
Maturation Ponds Maintenance – Re- Bid
Project Number: P24-6052-PG

Dear Sir:

Please find attached a Notice of Intent to Protest the bid award in the above referenced project number that I am submitting on behalf of my client Paragon Inc. of South Carolina LLC.

If you require any additional information, please feel free to contact me at 803-744-0800.

Sincerely,


James M. Griffin

cc: Eric Byrd (eric@paragonbuilderssc.com)

NOTICE OF INTENT TO PROTEST

****Date:**** October 27, 2025

TO: Chief Procurement Officer

Office of State Engineer

Construction Office

South Carolina Department of Natural Resources

Email: protest-ose@mmm.sc.gov

Physical Address: 1201 Main Street, Suite 600, Columbia, SC 29201

FROM: Paragon Inc. of South Carolina, LLC

2874 Columbia Road NE

Orangeburg, SC 29118-1902

Telephone: (803) 534-1900

Email: eric@paragonbuilderssc.com

Attention: Eric Byrd, Vice President

RE: Notice of Intent to Protest Award Decision

Project Name: Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid

Project Number: P24-6052-PG

Award Notice Posted: October 20, 2025

I. NOTICE OF INTENT TO PROTEST

Pursuant to South Carolina Code Section 11-35-4210, Paragon Inc. of South Carolina, LLC ("Paragon" or "Protester") hereby submits this Notice of Intent to Protest the South Carolina Department of Natural Resources' ("SCDNR" or "Agency") decision to deem Paragon's bid non-responsive and its intent to award the above-referenced contract to Haren Construction Co. Inc.

This Notice of Intent to Protest is timely submitted within seven (7) business days of the October 20, 2025, award notice posting, as required by Section 11-35-4210.

II. INTERESTED PARTY INFORMATION

Protester:

Paragon Inc. of South Carolina, LLC

SC Contractor's License Numbers: CLG.100190, CLM.111292

Classification(s) & Limits: Building BD5, Plumbing PB5, Electrical EL5

Contact Person:

Eric Byrd, Vice President
2874 Columbia Road NE
Orangeburg, SC 29118-1902
Telephone: (803) 534-1900
Email: eric@paragonbuilderssc.com

Legal Counsel:

James M. Griffin, Esquire
Griffin Humphries LLC
PO Box 999
Columbia, SC 29202
Telephone: 803-744-0800
Email: jgriffin@griffinhumphries.com

III. PROCUREMENT INFORMATION

Awarding Agency: South Carolina Department of Natural Resources
Project: Beaufort-Waddell Mariculture Maturation Ponds Maintenance - Re-Bid
Project Number: P24-6052-PG
Bid Opening Date: September 23, 2025
Award Notice Date: October 20, 2025
Intended Awardee: Haren Construction Co. Inc.
Award Amount: \$6,207,000.00

IV. PARAGON'S BID INFORMATION

Base Bid Amount: \$5,323,800.00
Alternate #1: \$533,600.00
Alternate #2: \$568,200.00
Alternate #3: \$573,350.00
Status: Deemed "Non-Responsive" by Agency

V. GROUNDS FOR PROTEST (SUMMARY)

Paragon protests the Agency's determination that its bid was non-responsive based on alleged violations of South Carolina Code Sections 40-11-270, 40-11-340, and 40-11-370. Specifically, Paragon contends:

A. Paragon's Plumbing License Covers the Yard Piping Work (Section 40-11-340 Compliance)

Issue: The Agency apparently determined that Paragon's Plumbing License (PB5) does not cover the yard piping installation for non-potable water from the head tower to the fishponds, which constitutes 53% of the project scope.

Paragon's Position:

1. Statutory Coverage: The definition of "Plumbing" under Section 40-11-410(5)(f) explicitly includes:

- "installation, alteration, and repair of all piping, fixtures, and appliances related to water supply"
- "installation of a system of pipes, fittings, fixtures, drains, and all necessary component parts **upon the premises or in a building** to supply water to buildings"
- Work performed "***solely within property lines** and not on public easements or rights-of-way"

2. Project Characteristics Support Plumbing Classification:

- All piping is **within the Beaufort-Waddell property lines
- No work is on public easements or rights-of-way
- The work involves piping systems on the premises to supply water (albeit non-potable) to the fishponds
- The statute does not distinguish between potable and non-potable water for piping within private property
- The exclusion for "municipal or related water supply systems" does not apply to this private aquaculture facility

3. Section 40-11-340 Compliance:

Because Paragon's Plumbing license (PB5) covers 53% of the work, Paragon meets the 40% threshold required under Section 40-11-340 to act as sole prime contractor. Combined with Paragon's Electrical license (EL5) (19%) and Building license BD5) (13%), work not covered under a separate License classification (15%), Paragon is licensed to perform 100% of the total project work.

B. Compliance with Section 40-11-270 (License Classification Requirements)

Paragon holds appropriate licenses in all required classifications:

- Building BD5 – for concrete structures and access work (13%)
- Plumbing PB5 – for yard piping from head tower to ponds (53%)

- Electrical EL5 – for electrical panel replacement and pond wiring (19%)

For the pond liner work (15%), which requires no specific license, Paragon will utilize its Building classification or engage appropriately licensed subcontractors as needed.

C. Compliance with Section 40-11-370 (Business Name)

Issue: The Agency cited Section 40-11-370(B) regarding engaging in construction under a name other than the exact name on the license.

Paragon's Position:

Paragon's bid was submitted under "Paragon Inc. of South Carolina, LLC," which matches its legal business name and contractor license. Any alleged discrepancy is a secondary issue that does not warrant bid rejection, particularly when:

- The entity is properly identified
- All license numbers are correctly provided
- The qualifying party is properly designated
- There is no indication of fraud, misrepresentation, or attempt to circumvent licensing requirements

VI. PREJUDICE TO PARAGON

Paragon will suffer substantial prejudice if the protest is not granted:

1. Financial Harm: Paragon submitted the lowest responsible bid. The difference between Paragon's total bid (\$5,857,400) and the intended award (\$6,207,000) is \$349,600 more than Paragon's total bid.
2. Loss of Business Opportunity: Paragon is a qualified, properly licensed contractor capable of performing this work in accordance with all applicable laws and regulations.
3. Improper Interpretation of Law: The Agency's restrictive interpretation of the Plumbing license definition would improperly exclude legitimate plumbing work from the statutory scope, contrary to legislative intent.
4. Competitive Disadvantage: If this interpretation stands, it would create uncertainty for contractors bidding on similar projects involving water piping systems on private property.

VII. RELIEF REQUESTED

Paragon respectfully requests that the Chief Procurement Officer:

1. Reverse the determination that Paragon's bid is non-responsive.
2. Find that Paragon's Plumbing license (PB5) properly covers the yard piping installation work as defined in Section 40-11-410(5)(f);
3. Find that Paragon meets all requirements of Sections 40-11-270, 40-11-340, and 40-11-370;
4. Determine that Paragon submitted the lowest responsive and responsible bid; and
5. Award the contract to Paragon Inc. of South Carolina, LLC.

VIII. REQUEST FOR DOCUMENTS

Pursuant to Section 11-35-410 and protest procedures, Paragon requests access to the following documents within five (5) days:

1. Complete bid tabulation showing all bids received
2. All documentation related to the responsiveness determination for Paragon's bid
3. All documentation related to the responsiveness determination for the two other bidders (Haren Construction and BRW Construction).
4. Any communications within SCDNR or between other South Carolina State Agencies, legal counsel or personnel regarding license classification interpretation for this project
5. Any legal opinions or guidance sought regarding the plumbing license scope
6. Haren Construction and BRW Construction's license documentation and classifications
7. Any protest or inquiry submitted by any other bidder
8. Complete bid documents submitted by the two other bidders including a copy of the sealed bid envelope.

IX. FORMAL PROTEST TO FOLLOW

This Notice of Intent to Protest will be followed by a formal written protest within fifteen (15) days of the date the award notice was posted (October 20, 2025), as required by Section 11-35-4210.

X. CONSENT TO ELECTRONIC COMMUNICATIONS

By submitting this Notice of Intent to Protest to protest-ose@mmm.sc.gov, Paragon (and any person acting on Paragon's behalf) consents to receive communications regarding this protest (and any related protests) at the email address of Paragon's legal counsel, James M. Griffin at jgriffin@griffinhumphries.com with copies to eric@paragonbuilderssc.com.

XI. CERTIFICATION

The undersigned certifies that the statements contained in this Notice of Intent to Protest are true and accurate to the best of knowledge and belief.

Respectfully submitted this 27th day of October 2025.

PARAGON INC. OF SOUTH CAROLINA, LLC

By: _____



Eric Byrd, Vice President

2874 Columbia Road NE
Orangeburg, SC 29118-1902
Telephone: (803) 534-1900
Email: eric@paragonbuilderssc.com

XII. CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Intent to Protest has been served via email on this 27th day of October, 2025, to:

****Chief Procurement Officer****

Office of State Engineer

Email: protest-ose@mmm.sc.gov

****South Carolina Department of Natural Resources****

Attention: Jeff Boyer, Engineer III

Email: boyerj@dnr.sc.gov

****Intended Awardee:****

Haren Construction Co. Inc.

[Address and contact information to be obtained from public records]

****Legal Counsel for Protester: ****

James M. Griffin, Esquire

Griffin Humphries LLC

PO Box 999

Columbia, SC 29202

Email: jgriffin@griffinhumphries.com

By:  _____

Eric Byrd, Vice President

RECEIVED

Apr 09 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
Willie D. Franks, Chairman

Case No. 2025-5

IN RE: Haren Construction Co., Inc.

South Carolina Department of Natural Resources
Project No. P24-6052- PG
Beaufort-Waddell Mariculture
Maturation Ponds Maintenance – Re-Bid

Paragon Inc. of South Carolina, LLCAppellant

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Paragon Inc. of South Carolina, LLC d/b/a Paragon Builders ("Paragon") hereby appeals to the South Carolina Court of Appeals from:

1. The Order of the South Carolina Procurement Review Panel dated March 13, 2026, reversing the November 19, 2025, decision of the Chief Procurement Officer for Construction and reinstating DNR's non-responsibility determination against Paragon in connection with Project No. P24-6052-PG, Beaufort-Waddell Mariculture Maturation Ponds Maintenance – Re-Bid; and
2. The Order of the South Carolina Procurement Review Panel dated April 6, 2026, denying Paragon's Motion to Reconsider the March 13, 2026, Order.

Both Orders were issued by the South Carolina Procurement Review Panel, Willie D. Franks,
Chairman, Columbia, South Carolina.

Respectfully submitted,

GRIFFIN HUMPHRIES LLC

By: s/ James M. Griffin

James M. Griffin, SC Bar No. 9995
8906 Two Notch Road, Suite 200
P.O. Box 999 (29202)
Columbia, South Carolina 29223
Telephone: 803-744-0800
jgriffin@griffinhumphries.com

Attorney for Paragon Inc. of South Carolina, LLC

Columbia, South Carolina
April 9, 2026

RECEIVED

Apr 09 2026

SC Court of Appeals

Exhibit 1

March 13, 2026 Order

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
In Re: Haren Construction Co., Inc.)
Project No. P24-6052-PG)
Beaufort-Waddell Mariculture)
Maturation Ponds Maintenance – Re-Bid)
_____)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

ORDER

Case No. 2025-5

RECEIVED
Apr 09 2026
SC Court of Appeals

I. INTRODUCTION

This matter comes before the South Carolina Procurement Review Panel (Panel) on the appeal by Haren Construction Co., Inc. (Haren) from the November 19, 2025, decision of the Chief Procurement Officer for Construction (CPO). The CPO sustained the protest filed by Paragon Inc. of South Carolina, LLC (Paragon) in connection with Project No. P24-6052-PG, the Beaufort-Waddell Mariculture Maturation Ponds Maintenance (Project), and remanded the procurement to the South Carolina Department of Natural Resources (DNR). PRP000015.

Although the parties raise several issues concerning licensing classifications, statutory exclusions, protest sufficiency, and scope of review, the dispositive question is whether DNR’s non-responsibility determination was clearly erroneous, arbitrary, capricious, or contrary to law under S.C. Code Ann. § 11-35-2410(A).

Upon de novo review of the administrative record, the parties’ briefs, and the applicable law, the Panel concludes that DNR’s determination was not clearly erroneous, arbitrary, capricious, or contrary to law. The CPO’s decision is therefore reversed.

Haren was represented by D. Gregory Placone, Esquire, and P. Nicholas Nybo, Esquire, of Hudson Lambert Parrott, LLC; the CPO by Manton M. Grier, Jr., Esquire, Assistant General Counsel for the State Fiscal Accountability Authority (SFAA); Paragon by

James M. Griffin, Esquire, of Griffin Humphries LLC; and DNR by Susan O. Porter, Esquire, General Counsel for DNR.

II. BACKGROUND

On August 12, 2025, DNR issued an advertisement and solicitation documents for the Project, including bidder instructions, specifications, and drawings defining the scope of work. PRP000062; PRP000084; PRP000192; PRP000470.

The solicitation describes renovation of hatchery infrastructure on DNR property, including rehabilitation of rearing ponds, replacement of piping networks, modifications to an existing head tower, site electrical systems, and related improvements. PRP000062; PRP000084; PRP000192.

The solicitation did not designate a specific contractor license classification for the prime contractor. However, the bid form required bidders to identify the entity performing electrical work under the Electrical (EL) license designation pursuant to the subcontractor listing requirements. PRP000105-106.

Paragon, which holds a Mechanical Contractor license with a Plumbing (PB) subclassification, submitted the apparent low responsive bid. PRP000063. During its responsibility review, DNR contacted personnel associated with the Contractor's Licensing Board within the South Carolina Department of Labor, Licensing and Regulation (LLR), who declined to provide a classification determination and advised that licensing questions should be directed to the local building official responsible for reviewing the Project's plans. PRP000070-73. DNR also reviewed contractor licensure information associated with Paragon's bid and noted that the bid was submitted under the name Paragon Inc. of South Carolina, LLC, while the contractor license in the LLR database was issued to Paragon

Builders. PRP000066. DNR relied on the engineer of record's opinion of cost and allocation of project costs by license classification contained in the administrative record. The estimate separated licensed construction work from non-licensed project costs, including contractor overhead and profit, insurance and bonds, engineering during construction, and third-party inspections. PRP000074. Based on that review, DNR issued a written determination dated October 17, 2025, concluding that Paragon was non-responsible – and therefore ineligible for award – because it did not satisfy the contractor licensing requirements of Title 40 of the South Carolina Code. PRP000066.

Paragon protested the determination, asserting that most of the Project fell within its PB subclassification, that the Project was not a municipal water supply system, that DNR had not properly quantified work outside its classification, and that the discrepancy between its legal and trade names was a mere ministerial variance. PRP000024. The CPO reviewed the protest.

On November 19, 2025, the CPO sustained the protest, concluding that the licensing issue presented a legal question, that the PB subclassification encompassed the work described in the solicitation, and that DNR had not sufficiently supported its sole prime determination. PRP000015.

Haren, which holds a General Contractors-Public Utility license with a Water and Sewer Lines (WL) subclassification, timely appealed. PRP000001. The parties initially agreed that the appeal could be resolved on the written record. After DNR raised jurisdictional and procedural issues in its response brief and limited reply briefing was permitted, no party requested a hearing, and the Panel proceeded on the written record.

On February 25, 2026, the Panel deliberated and reached its decision in this matter. Due to the unique technical nature of mariculture infrastructure and the difficulty of applying specialized Title 40 contractor subclassifications to the Project's scope, the Panel designated this matter as complex pursuant to S.C. Code Ann. § 11-35-4410(5), which requires the Panel to record its determination within thirty days.

III. FINDINGS OF FACT

After consideration of the entire record, the Panel finds the following facts:

1. DNR issued the solicitation for the Project. PRP000062; PRP000079.
2. Paragon submitted the apparent low responsive bid. PRP000063.
3. DNR's written determination stated that Paragon Inc. of South Carolina, LLC did not hold a contractor license under that name in the LLR database and that a contractor license was issued to Paragon Builders, identified by DNR as being "owned by the same owner." PRP000066. The administrative record also includes applications submitted to LLR that identify Paragon Inc. of South Carolina, LLC, doing business as Paragon Builders. PRP000040; PRP000042.
4. DNR's written determination relied upon the engineer's opinion of cost and allocation of project costs by license classification in concluding that eighty percent of the Project required WL licensure. PRP000066. The administrative record also includes the engineer's allocation supporting that conclusion. PRP000074.
5. Although Paragon asserted a different percentage allocation in its protest, the administrative record contains no competing engineering estimate or line-item cost analysis demonstrating that DNR's allocation was factually unsupported or artificially structured. PRP000026; PRP000074.

IV. APPLICABLE LAW

A. Standard of Review

Responsibility determinations under the Procurement Code are “final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law.” S.C. Code Ann. § 11-35-2410(A). Although appeals to the Panel are conducted de novo – allowing the Panel to make its own findings of fact and conclusions of law – its review of such determinations remains subject to this statutory limitation. *See* S.C. Code Ann. § 11-35-4410(1). The Panel has recently applied this standard when reviewing procurement determinations. *See In re U.S. Facilities, Inc.*, Case No. 2025-1, at 5 (S.C. Procurement Rev. Panel May 19, 2025); *In re Schindler Elevator Corp.*, Case No. 2024-5, at 9 (S.C. Procurement Rev. Panel Sept. 19, 2024).

An administrative decision is arbitrary and capricious if it lacks a rational basis or is made without adequate determining principles. As the Court of Appeals has explained, a decision is arbitrary if it is “without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.” *Blackmon v. S.C. Dep’t of Health & Envtl. Control*, 441 S.C. 342, 353, 893 S.E.2d 578, 584 (Ct. App. 2022). Courts reviewing administrative decisions do not substitute their discretion for that of the agency in matters committed to agency expertise. The South Carolina Supreme Court has cautioned that otherwise “[j]udicial discretion in a non-judicial field would be substituted for that of the appropriate administrative agency. This we cannot do.” *Guerard v. Whitner*, 276 S.C. 521, 523, 280 S.E.2d 539, 540 (1981).

In accordance with this principle of deference, judicial review of factual determinations made in the administrative process is limited. “As to factual issues, judicial review of administrative agency orders is limited to a determination of whether the order is supported by substantial evidence.” *Murphy v. S.C. Dep’t of Health & Envtl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 194 (2012). “Substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached to justify its action.” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Moreover, “[t]he mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.” *Rhame v. Charleston Cnty. Sch. Dist.*, 415 S.C. 162, 167, 781 S.E.2d 151, 154 (Ct. App. 2015).

Under the substantial evidence standard, the reviewing body does not reweigh technical evidence or resolve competing expert judgments but determines only whether the agency’s decision has a rational evidentiary basis in the record. Courts reviewing administrative decisions “need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion.” *Schwiers v. S.C. Dep’t of Health & Envtl. Control*, 429 S.C. 43, 49, 837 S.E.2d 730, 733 (Ct. App. 2019).

Panel precedent likewise recognizes that responsibility determinations are made by the procuring agency. The Panel has explained that “[t]he responsibility inquiry is delegated to the procuring agency and the Panel takes the position that review of this issue is limited to whether the procuring officer’s determination was clearly erroneous, arbitrary, capricious, or contrary to law.” *In re Value Options*, Case No. 2001-7, at 7 (S.C. Procurement Rev. Panel

Aug. 3, 2001). The Panel has further recognized that the party challenging such determinations bears the burden of proof. *Id.* at 7; *see also U.S. Facilities, Inc.*, at 5; *Schindler Elevator Corp.*, at 9.

B. Statutory Interpretation

When interpreting a statute, “[courts] must give the words in a statute their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute’s operation, and when the words are unambiguous, [courts] must apply their literal meaning.” *Davis v. S.C. Dep’t of Corr.*, 444 S.C. 138, 150, 906 S.E.2d 569, 575 (2024). If the language is clear, courts apply the statute according to its plain meaning.

Where statutory language does not resolve the issue presented, courts may defer to an agency’s interpretation when the statute is ambiguous. As the South Carolina Supreme Court explained, “[i]f the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to the agency’s interpretation of the statute or regulation, assuming the interpretation is worthy of deference.” *Kiawah Dev. Partners II v. S.C. Dep’t of Health & Envtl. Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014).

This deference reflects the institutional role of administrative agencies. Courts defer to agencies “because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations.” *Kiawah Dev. Partners II*, 411 S.C. at 34. At the same time, agency deference does not permit an interpretation that conflicts with the statute itself. The Supreme Court has explained that courts will reject an agency’s interpretation “where the plain language of a statute is contrary to the agency’s interpretation.” *Davis*, 444 S.C. at 150.

C. Responsibility Determinations

Under the South Carolina Consolidated Procurement Code, the State must determine the responsibility of bidders and offerors before awarding a contract. Section 11-35-1810(1) provides that “[r]esponsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.” Section 11-35-1410(8) defines a “responsible bidder or offeror” as “a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.”

When a protest challenges a bidder’s ability to perform work required by the solicitation, the issue concerns responsibility rather than responsiveness. As the Panel explained, when the State examines “the bidder’s ability to perform, the state is no longer determining responsiveness of the bid, but deciding the responsibility of the bidder.” *In re Brantley Constr. Co.*, Case No. 1999-3, at 3 (S.C. Procurement Rev. Panel June 25, 1999). Because the ability to lawfully perform the work required by the solicitation is part of a bidder’s legal capacity to perform the contract, questions concerning applicable contractor licensing requirements may properly arise during a procuring agency’s responsibility determination.

When a responsibility determination requires application of a statute administered by another state agency, the procuring agency must apply that statute in evaluating bidder responsibility. In a procurement protest, however, the relevant inquiry is not whether the reviewing body would independently interpret that statute, but whether the procuring agency’s

application of the statute lacked a rational basis or was contrary to law under § 11-35-2410(A).

D. Sole Prime Contractor Requirements

South Carolina law establishes specific licensing requirements for entities acting as sole prime contractors on construction projects. Section 40-11-340 provides:

An entity licensed under the classifications or subclassifications in Sections 40-11-410(1), (2), or (3) may act as a sole prime contractor on a project if forty percent or more of the work as measured by the total cost of construction falls under one or more of the licensee's license classifications or subclassifications. An entity licensed under the classifications or subclassifications in Section 40-11-410(4) and (5) may act as sole prime contractor if fifty-one percent or more of the work falls under one or more of the licensee's license classifications or subclassifications.
S.C. Code Ann. § 40-11-340.

Because sole prime eligibility under § 40-11-340 depends on the portion of a project's total construction cost falling within a contractor's license classifications, the categorization of project work for licensing purposes bears directly on a bidder's legal capacity to perform the contract. Under the Procurement Code, responsibility determinations must be based on a bidder's capacity to meet the terms of the contract. S.C. Code Ann. § 11-35-1810.

Accordingly, determining whether the work required by a solicitation falls within a particular contractor license classification is part of the procuring agency's responsibility determination. Such determinations are "final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A).

E. Relevant License Subclassifications

Section 40-11-410 identifies numerous classifications and subclassifications of construction work. Two subclassifications are relevant here. Section 40-11-410(3)(c) describes the WL subclassification as:

“Water and Sewer Lines” which includes construction work on water mains, water service lines, water storage tanks, sewer mains, sewer lines, lift stations, pumping stations and appurtenances to water storage tanks, lift stations, pumping stations, pavement patching, backfill, and erosion control as a part of construction, and which includes connection at the building of all lines to the appropriate lines contained in commercial structures, installation and repair of a project involving manholes, the laying of pipe for storm drains and sewer mains, all necessary connections, and excavation and backfilling, and concrete work incidental thereto.

Contractors in this license subclassification in license groups three, four, and five may install fire protection sprinkler system underground mains to a flanged outlet 1’-0” above the finished floor in compliance with National Fire Protection Association Standard 24. However, shop drawings must be submitted and approved by the State Fire Marshal with a copy of the approved drawings going to the licensed fire sprinkler contractor. Flushing and testing certificates must be delivered to the authority having jurisdiction and the performing licensed fire sprinkler contractor performing. General contractors in this license subclassification may not engage in water and sewer line work from the right-of-way to a residential structure unless the entity is a subcontractor to a licensee holding a plumbing subclassification. S.C. Code Ann. § 40-11-410(3)(c).

Section 40-11-410(5)(f) describes the PB subclassification as:

“Plumbing” which includes the installation, replacement, alteration, and repair of all plumbing including solar water heating when performed solely within property lines and not on public easements or rights-of-way except to make connections to water meters or sewer taps as allowed by the utility owner; and the installation, alteration, and repair of all piping, fixtures, and appliances related to water supply, including pressure vessels and tanks, and excluding municipal or related water supply systems; venting and sanitary drainage systems for all fluid and semi-fluid and organic wastes; roof leaders; water-conditioning equipment; piping and equipment for swimming pools; and installation of a system of pipes, fittings, fixtures, drains, and all necessary component parts upon the premises or in a building to supply water to buildings and to convey sewage or other waste products from buildings. If this equipment is gas-fired, the necessary gas lines may be installed under this subclassification used in connection with this subclassification. Plumbing contractors in license groups three, four, and five are not required to be licensed under Chapter 45, Title 23 to install standpipe systems, including water hose connections, water hose cabinets, and related branch lines if the water hoses do not supply water to automatic fire protection sprinklers. S.C. Code Ann. § 40-11-410(5)(f).

V. DISCUSSION AND CONCLUSIONS OF LAW

Before addressing the parties' arguments, the Panel begins by noting the scope of its review. Although appeals to the Panel are conducted de novo, responsibility determinations remain subject to the standard of review set forth in § 11-35-2410(A). The Panel therefore does not decide which contractor license classification it would independently select, but whether DNR's determination lacked a rational basis or was contrary to law. With that framework in mind, the Panel addresses the issues presented.

A. Licensing

DNR determined that Paragon was non-responsible under the contractor licensing requirements applicable to the Project. DNR's determination referenced a discrepancy between the name appearing on Paragon's bid and the contractor license listed in the LLR database. PRP000066. The administrative record includes applications submitted to LLR that identify Paragon Inc. of South Carolina, LLC, doing business as Paragon Builders. The Panel therefore does not treat the name variation as affecting bidder responsibility. PRP000040; PRP000042.

The central dispute, however, concerns whether the Project could be performed under the PB subclassification or the WL subclassification. The contractor license subclassifications identified in § 40-11-410 describe broad categories of construction work and do not, as applied to this mariculture infrastructure, compel a single classification as a matter of law. The administrative record reflects that applying these subclassifications to specialized facilities is not always straightforward.

The Project involves an integrated seawater distribution system serving the hatchery facility, including a head tower, underground distribution piping, and outlet structures

connecting multiple ponds. PRP000062; PRP000068; PRP000192. Although some components resemble work typically performed under a PB subclassification, DNR determined that the Project concerns the installation and rehabilitation of a broader water distribution system supporting the facility's operations. Notably, S.C. Code Ann. § 40-11-410(3)(c) provides that the WL subclassification includes construction work involving water and sewer lines, pumping stations, pipe laying, manholes, necessary connections, and incidental concrete work. The Project plans reflect a complex piping network and integrated pumping components, along with manholes and utility vault structures connecting the maturation ponds' distribution system. PRP000068; PRP000301; PRP000413; PRP000470; PRP000476. DNR reasonably concluded that these functional infrastructure elements correspond to the pumping stations, water lines, and manholes contemplated by the WL subclassification. Because the Project's core utility involves the distribution of seawater through these components, DNR's selection of the WL classification is supported by the statute's plain language.

The CPO concluded that § 40-11-410 permits the Project to be performed under a PB subclassification, but the statute does not require that classification. Courts interpret statutes according to their plain language, and where the language does not definitively resolve the issue, agencies may apply the statute to the facts before them. *See Davis*, 444 S.C. at 145; *Kiawah Dev. Partners II*, 411 S.C. at 33.

Deference is warranted where the dispute concerns the technical application of licensing categories to specialized mariculture infrastructure. Under *Kiawah*, the Panel recognizes that DNR possesses the expertise necessary to evaluate the technical nature of the Project's intake and distribution systems. The mere possibility that the PB subclassification

could have been selected does not render DNR's actual determination clearly erroneous under § 11-35-2410(A). The relevant inquiry is not whether the Panel would have selected the same classification, but whether DNR's determination had a rational basis. Because DNR's determination that eighty percent of the Project required WL licensure aligns with the components described in § 40-11-410(3)(c) and reflects the agency's technical expertise, it had a rational basis and was not clearly erroneous, arbitrary, capricious, or contrary to law.

B. Sole Prime Contractor Determination

DNR further determined that Paragon could not serve as the sole prime contractor because the predominant portion of the Project required WL licensure for sole prime eligibility. Section 40-11-340 establishes the percentage thresholds governing sole prime eligibility. A contractor may serve as sole prime only if the applicable percentage threshold is satisfied – forty percent of the project's total construction cost for WL work and fifty-one percent for PB work. The statute ensures that the prime contractor holds licensure covering the predominant portion of the project's construction work. Because Paragon holds a PB license and not a WL license, its eligibility turns on whether DNR reasonably classified the Project as predominantly WL.

Responsibility determinations fall within the discretion of the procuring agency, and state agencies possess broad authority to make such procurement judgments. *Value Options*, at 6. The party challenging such a determination bears the burden of proving it was clearly erroneous, arbitrary, capricious, or contrary to law. *Id.* at 7; *see also U.S. Facilities, Inc.*, at 7; *Schindler Elevator Corp.*, at 9.

In evaluating Paragon's eligibility to serve as sole prime contractor, DNR relied on the engineer's design estimate and itemized cost allocation indicating that eighty percent of the

Project required WL licensure. PRP000066; PRP000074. This allocation significantly exceeds both the forty percent threshold applicable to WL work and the fifty-one percent threshold applicable to PB work. The administrative record contains no competing engineering estimate or technical analysis demonstrating that DNR's allocation lacked a rational basis or was artificially structured. Although Paragon asserted a different percentage allocation in its protest, it did not submit independent engineering analysis contradicting the agency's estimate. PRP000026. The engineer's estimate therefore provides a rational evidentiary basis for DNR's determination.

Under the substantial evidence standard governing administrative review, a reviewing body does not reweigh technical evidence or substitute its judgment for competing expert evaluations. *See Murphy*, 396 S.C. at 639; *Lark*, 276 S.C. at 135; *Rhame*, 415 S.C. at 167. The inquiry is whether the agency's determination is supported by evidence from which reasonable minds could reach the same conclusion. Because DNR relied on a professional engineering estimate contained in the administrative record, its determination that Paragon did not satisfy the statutory requirements for sole prime eligibility is supported by substantial evidence.

C. Substitution of Judgment by the CPO

By selecting a different licensing classification, the CPO substituted his judgment for that of the procuring agency. The Procurement Code does not permit such substitution. Because DNR's determination was supported by substantial evidence and reflected a reasoned application of the governing statutes, the CPO exceeded his scope of review.

D. Scope of Holding

Because the Panel resolves the appeal based on the merits of DNR's determination that the portion of the Project requiring WL licensure exceeded the statutory thresholds for sole prime eligibility, it need not address additional arguments raised by the parties. The Panel emphasizes the limited nature of its holding. This Order does not determine that WL licensure was the only possible classification for the Project. Rather, the Panel holds only that DNR's determination was not clearly erroneous, arbitrary, capricious, or contrary to law.

VI. ORDER

For the foregoing reasons:

1. The CPO's November 19, 2025, protest decision is **REVERSED**.
2. DNR's determination that Paragon is non-responsible is **REINSTATED**.
3. This matter is **REMANDED** to DNR for further action consistent with this

Order and the South Carolina Consolidated Procurement Code.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: _____



Willie D. Franks, Chairman

March 13, 2026
Columbia, South Carolina

RECEIVED

Apr 09 2026

SC Court of Appeals

Exhibit 2

April 6, 2026 Order

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
In Re: Haren Construction Co., Inc.)
)
Project No. P24-6052-PG)
Beaufort-Waddell Mariculture)
Maturation Ponds Maintenance – Re-Bid)
_____)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

ORDER DENYING
MOTIONS TO RECONSIDER

Case No. 2025-5

RECEIVED

Apr 09 2026

SC Court of Appeals

I. INTRODUCTION

This matter is before the Panel on the following post-order filings: Motions to Reconsider filed by the Chief Procurement Officer for Construction (CPO), Paragon Inc. of South Carolina, LLC (Paragon), and the South Carolina Department of Natural Resources (DNR), and an Objection to Motions to Reconsider filed by Haren Construction Co., Inc. (Haren).

Because the motions fail on their merits, the Panel need not decide whether it possesses authority to reconsider its Order, and the motions are denied.

II. BACKGROUND AND PROCEDURAL HISTORY

The Panel issued its Order on March 13, 2026, reversing the CPO's November 19, 2025, decision, and affirming DNR's determination that Paragon was non-responsible.

On March 23, 2026, the parties filed the post-order motions and objection. On March 25, 2026, the Panel issued a procedural order permitting responses. The CPO, DNR, and Haren filed responses on April 1, 2026. Paragon filed no response. The Panel has considered all timely submissions.

The motions challenge the Panel's application of the standard of review and its treatment of the licensing issues, and the responses do not materially expand or alter those issues. DNR's motion does not challenge the outcome but raises arguments concerning the scope of review and issue preservation.

III. DISCUSSION

The Panel has considered the arguments in the post-order filings. Those filings do not establish that the Panel's Order dated March 13, 2026, was contrary to law or reflects any error in the Panel's interpretation of the licensing subclassifications at issue.

The Panel first conducted a de novo review of the CPO's decision and independently determined that the relevant statutory provisions, as applied to the Project, do not mandate a single license subclassification as a matter of law. The Panel then determined that, under S.C. Code Ann. § 11-35-2410(A), DNR's selection among legally permissible subclassifications was not clearly erroneous, arbitrary, capricious, or contrary to law, and that the record demonstrated a rational basis for that determination. See Order dated March 13, 2026, at 11-14. To the extent the Order referenced DNR's technical expertise, that discussion pertained to DNR's selection of license subclassifications for the Project, not the Panel's interpretation of those statutes. Having concluded that DNR's determination was not contrary to law, the Panel could not and did not substitute its judgment for that of DNR. The Panel's review of DNR's determination was limited to the statutory standard. Because the governing statutes do not compel a single license subclassification, the Panel was not required to select one.

Consistent with that conclusion, the Panel recognized that the license subclassifications do not, on their face, resolve the Project's unique technical nature. In this context, those subclassifications permit more than one reasonable interpretation. The Panel's determination is supported by the absence of any competing engineering estimate or line-item cost analysis showing that DNR's cost allocation by license subclassification was factually unsupported or artificially structured (Order at 4). This analysis reflects the Panel's independent application of the governing statutes to the record rather than any deference to DNR's interpretation of law.

The arguments advanced by the CPO and Paragon largely restate positions already considered and rejected by the Panel and do not establish that the Panel misapprehended applicable law, overlooked material facts, or committed error warranting reconsideration.

DNR requested specific rulings regarding the scope of Paragon's protest and the name variation on Paragon's bid. The Panel determined that the name variation did not affect bidder responsibility, as set forth in its Order dated March 13, 2026, and did not limit the scope of its review. Even if the scope were limited, it would not alter the outcome.

The Panel has considered the motions, Haren's objection, and the responses filed. These submissions provide no basis to modify the Panel's Order dated March 13, 2026. Any argument not expressly addressed has been considered and is either redundant or without merit.

IV. CONCLUSION

The post-order motions are denied. The Panel's Order dated March 13, 2026, remains unchanged.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: Willie D. Franks
Willie D. Franks, Chairman

April 6, 2026
Columbia, South Carolina

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Apr 09 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
Willie D. Franks, Chairman

Case No. 2025-5

IN RE: Haren Construction Co., Inc.

South Carolina Department of Natural Resources
Project No. P24-6052- PG
Beaufort-Waddell Mariculture
Maturation Ponds Maintenance – Re-Bid

Paragon Inc. of South Carolina, LLCAppellant

PROOF OF SERVICE

I, Jaime Harmon, legal assistant at Griffin Humphries LLC, attorneys for the Appellant, located at 8906 Two Notch Road, Suite 200, Columbia, South Carolina 29223, hereby certify that on April 9, 2026, I have served all counsel in this action a copy of the **Notice of Appeal** by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

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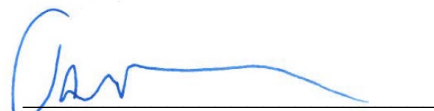
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Jaime Harmon

Columbia, South Carolina
April 9, 2026

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Apr 13 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
Willie D. Franks, Chairman

Case No. 2025-5

IN RE: Haren Construction, Co., Inc.

South Carolina Department of Natural Resources
Project No. P24-6052-PG
Beaufort-Waddel Mariculture
Maturation Ponds Maintenance – Re-Bid

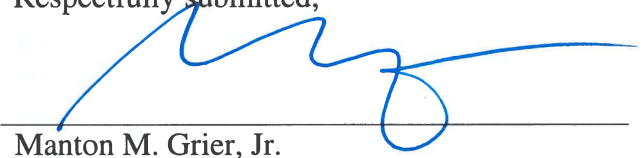
Chief Procurement Officer, State Fiscal Accountability Authority.....Appellant

NOTICE OF APPEAL

The Chief Procurement Officer (CPO) joins Paragon Inc. of South Carolina, LLC in appealing (a) the Order of the South Carolina Procurement Review Panel dated March 13, 2026, and (b) the Order of the South Carolina Procurement Panel dated March dated April 6, 2026, denying the CPO's Motion to Reconsider. Appellant received written notice of those orders on the dates listed above.

[signature on the following page]

Respectfully submitted,



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ATTORNEYS FOR THE CHIEF
PROCUREMENT OFFICER

Columbia, South Carolina

April 13, 2026

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
In Re: Haren Construction Co., Inc.)
Project No. P24-6052-PG)
Beaufort-Waddell Mariculture)
Maturation Ponds Maintenance – Re-Bid)
_____)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

ORDER

Case No. 2025-5

RECEIVED
Apr 13 2026
SC Court of Appeals

I. INTRODUCTION

This matter comes before the South Carolina Procurement Review Panel (Panel) on the appeal by Haren Construction Co., Inc. (Haren) from the November 19, 2025, decision of the Chief Procurement Officer for Construction (CPO). The CPO sustained the protest filed by Paragon Inc. of South Carolina, LLC (Paragon) in connection with Project No. P24-6052-PG, the Beaufort-Waddell Mariculture Maturation Ponds Maintenance (Project), and remanded the procurement to the South Carolina Department of Natural Resources (DNR). PRP000015.

Although the parties raise several issues concerning licensing classifications, statutory exclusions, protest sufficiency, and scope of review, the dispositive question is whether DNR’s non-responsibility determination was clearly erroneous, arbitrary, capricious, or contrary to law under S.C. Code Ann. § 11-35-2410(A).

Upon de novo review of the administrative record, the parties’ briefs, and the applicable law, the Panel concludes that DNR’s determination was not clearly erroneous, arbitrary, capricious, or contrary to law. The CPO’s decision is therefore reversed.

Haren was represented by D. Gregory Placone, Esquire, and P. Nicholas Nybo, Esquire, of Hudson Lambert Parrott, LLC; the CPO by Manton M. Grier, Jr., Esquire, Assistant General Counsel for the State Fiscal Accountability Authority (SFAA); Paragon by

James M. Griffin, Esquire, of Griffin Humphries LLC; and DNR by Susan O. Porter, Esquire, General Counsel for DNR.

II. BACKGROUND

On August 12, 2025, DNR issued an advertisement and solicitation documents for the Project, including bidder instructions, specifications, and drawings defining the scope of work. PRP000062; PRP000084; PRP000192; PRP000470.

The solicitation describes renovation of hatchery infrastructure on DNR property, including rehabilitation of rearing ponds, replacement of piping networks, modifications to an existing head tower, site electrical systems, and related improvements. PRP000062; PRP000084; PRP000192.

The solicitation did not designate a specific contractor license classification for the prime contractor. However, the bid form required bidders to identify the entity performing electrical work under the Electrical (EL) license designation pursuant to the subcontractor listing requirements. PRP000105-106.

Paragon, which holds a Mechanical Contractor license with a Plumbing (PB) subclassification, submitted the apparent low responsive bid. PRP000063. During its responsibility review, DNR contacted personnel associated with the Contractor's Licensing Board within the South Carolina Department of Labor, Licensing and Regulation (LLR), who declined to provide a classification determination and advised that licensing questions should be directed to the local building official responsible for reviewing the Project's plans. PRP000070-73. DNR also reviewed contractor licensure information associated with Paragon's bid and noted that the bid was submitted under the name Paragon Inc. of South Carolina, LLC, while the contractor license in the LLR database was issued to Paragon

Builders. PRP000066. DNR relied on the engineer of record's opinion of cost and allocation of project costs by license classification contained in the administrative record. The estimate separated licensed construction work from non-licensed project costs, including contractor overhead and profit, insurance and bonds, engineering during construction, and third-party inspections. PRP000074. Based on that review, DNR issued a written determination dated October 17, 2025, concluding that Paragon was non-responsible – and therefore ineligible for award – because it did not satisfy the contractor licensing requirements of Title 40 of the South Carolina Code. PRP000066.

Paragon protested the determination, asserting that most of the Project fell within its PB subclassification, that the Project was not a municipal water supply system, that DNR had not properly quantified work outside its classification, and that the discrepancy between its legal and trade names was a mere ministerial variance. PRP000024. The CPO reviewed the protest.

On November 19, 2025, the CPO sustained the protest, concluding that the licensing issue presented a legal question, that the PB subclassification encompassed the work described in the solicitation, and that DNR had not sufficiently supported its sole prime determination. PRP000015.

Haren, which holds a General Contractors-Public Utility license with a Water and Sewer Lines (WL) subclassification, timely appealed. PRP000001. The parties initially agreed that the appeal could be resolved on the written record. After DNR raised jurisdictional and procedural issues in its response brief and limited reply briefing was permitted, no party requested a hearing, and the Panel proceeded on the written record.

On February 25, 2026, the Panel deliberated and reached its decision in this matter. Due to the unique technical nature of mariculture infrastructure and the difficulty of applying specialized Title 40 contractor subclassifications to the Project's scope, the Panel designated this matter as complex pursuant to S.C. Code Ann. § 11-35-4410(5), which requires the Panel to record its determination within thirty days.

III. FINDINGS OF FACT

After consideration of the entire record, the Panel finds the following facts:

1. DNR issued the solicitation for the Project. PRP000062; PRP000079.
2. Paragon submitted the apparent low responsive bid. PRP000063.
3. DNR's written determination stated that Paragon Inc. of South Carolina, LLC did not hold a contractor license under that name in the LLR database and that a contractor license was issued to Paragon Builders, identified by DNR as being "owned by the same owner." PRP000066. The administrative record also includes applications submitted to LLR that identify Paragon Inc. of South Carolina, LLC, doing business as Paragon Builders. PRP000040; PRP000042.
4. DNR's written determination relied upon the engineer's opinion of cost and allocation of project costs by license classification in concluding that eighty percent of the Project required WL licensure. PRP000066. The administrative record also includes the engineer's allocation supporting that conclusion. PRP000074.
5. Although Paragon asserted a different percentage allocation in its protest, the administrative record contains no competing engineering estimate or line-item cost analysis demonstrating that DNR's allocation was factually unsupported or artificially structured. PRP000026; PRP000074.

IV. APPLICABLE LAW

A. Standard of Review

Responsibility determinations under the Procurement Code are “final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law.” S.C. Code Ann. § 11-35-2410(A). Although appeals to the Panel are conducted de novo – allowing the Panel to make its own findings of fact and conclusions of law – its review of such determinations remains subject to this statutory limitation. *See* S.C. Code Ann. § 11-35-4410(1). The Panel has recently applied this standard when reviewing procurement determinations. *See In re U.S. Facilities, Inc.*, Case No. 2025-1, at 5 (S.C. Procurement Rev. Panel May 19, 2025); *In re Schindler Elevator Corp.*, Case No. 2024-5, at 9 (S.C. Procurement Rev. Panel Sept. 19, 2024).

An administrative decision is arbitrary and capricious if it lacks a rational basis or is made without adequate determining principles. As the Court of Appeals has explained, a decision is arbitrary if it is “without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.” *Blackmon v. S.C. Dep’t of Health & Envtl. Control*, 441 S.C. 342, 353, 893 S.E.2d 578, 584 (Ct. App. 2022). Courts reviewing administrative decisions do not substitute their discretion for that of the agency in matters committed to agency expertise. The South Carolina Supreme Court has cautioned that otherwise “[j]udicial discretion in a non-judicial field would be substituted for that of the appropriate administrative agency. This we cannot do.” *Guerard v. Whitner*, 276 S.C. 521, 523, 280 S.E.2d 539, 540 (1981).

In accordance with this principle of deference, judicial review of factual determinations made in the administrative process is limited. “As to factual issues, judicial review of administrative agency orders is limited to a determination of whether the order is supported by substantial evidence.” *Murphy v. S.C. Dep’t of Health & Envtl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 194 (2012). “Substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached to justify its action.” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Moreover, “[t]he mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.” *Rhame v. Charleston Cnty. Sch. Dist.*, 415 S.C. 162, 167, 781 S.E.2d 151, 154 (Ct. App. 2015).

Under the substantial evidence standard, the reviewing body does not reweigh technical evidence or resolve competing expert judgments but determines only whether the agency’s decision has a rational evidentiary basis in the record. Courts reviewing administrative decisions “need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion.” *Schwiers v. S.C. Dep’t of Health & Envtl. Control*, 429 S.C. 43, 49, 837 S.E.2d 730, 733 (Ct. App. 2019).

Panel precedent likewise recognizes that responsibility determinations are made by the procuring agency. The Panel has explained that “[t]he responsibility inquiry is delegated to the procuring agency and the Panel takes the position that review of this issue is limited to whether the procuring officer’s determination was clearly erroneous, arbitrary, capricious, or contrary to law.” *In re Value Options*, Case No. 2001-7, at 7 (S.C. Procurement Rev. Panel

Aug. 3, 2001). The Panel has further recognized that the party challenging such determinations bears the burden of proof. *Id.* at 7; *see also U.S. Facilities, Inc.*, at 5; *Schindler Elevator Corp.*, at 9.

B. Statutory Interpretation

When interpreting a statute, “[courts] must give the words in a statute their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute’s operation, and when the words are unambiguous, [courts] must apply their literal meaning.” *Davis v. S.C. Dep’t of Corr.*, 444 S.C. 138, 150, 906 S.E.2d 569, 575 (2024). If the language is clear, courts apply the statute according to its plain meaning.

Where statutory language does not resolve the issue presented, courts may defer to an agency’s interpretation when the statute is ambiguous. As the South Carolina Supreme Court explained, “[i]f the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to the agency’s interpretation of the statute or regulation, assuming the interpretation is worthy of deference.” *Kiawah Dev. Partners II v. S.C. Dep’t of Health & Envtl. Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014).

This deference reflects the institutional role of administrative agencies. Courts defer to agencies “because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations.” *Kiawah Dev. Partners II*, 411 S.C. at 34. At the same time, agency deference does not permit an interpretation that conflicts with the statute itself. The Supreme Court has explained that courts will reject an agency’s interpretation “where the plain language of a statute is contrary to the agency’s interpretation.” *Davis*, 444 S.C. at 150.

C. Responsibility Determinations

Under the South Carolina Consolidated Procurement Code, the State must determine the responsibility of bidders and offerors before awarding a contract. Section 11-35-1810(1) provides that “[r]esponsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.” Section 11-35-1410(8) defines a “responsible bidder or offeror” as “a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.”

When a protest challenges a bidder’s ability to perform work required by the solicitation, the issue concerns responsibility rather than responsiveness. As the Panel explained, when the State examines “the bidder’s ability to perform, the state is no longer determining responsiveness of the bid, but deciding the responsibility of the bidder.” *In re Brantley Constr. Co.*, Case No. 1999-3, at 3 (S.C. Procurement Rev. Panel June 25, 1999). Because the ability to lawfully perform the work required by the solicitation is part of a bidder’s legal capacity to perform the contract, questions concerning applicable contractor licensing requirements may properly arise during a procuring agency’s responsibility determination.

When a responsibility determination requires application of a statute administered by another state agency, the procuring agency must apply that statute in evaluating bidder responsibility. In a procurement protest, however, the relevant inquiry is not whether the reviewing body would independently interpret that statute, but whether the procuring agency’s

application of the statute lacked a rational basis or was contrary to law under § 11-35-2410(A).

D. Sole Prime Contractor Requirements

South Carolina law establishes specific licensing requirements for entities acting as sole prime contractors on construction projects. Section 40-11-340 provides:

An entity licensed under the classifications or subclassifications in Sections 40-11-410(1), (2), or (3) may act as a sole prime contractor on a project if forty percent or more of the work as measured by the total cost of construction falls under one or more of the licensee's license classifications or subclassifications. An entity licensed under the classifications or subclassifications in Section 40-11-410(4) and (5) may act as sole prime contractor if fifty-one percent or more of the work falls under one or more of the licensee's license classifications or subclassifications.
S.C. Code Ann. § 40-11-340.

Because sole prime eligibility under § 40-11-340 depends on the portion of a project's total construction cost falling within a contractor's license classifications, the categorization of project work for licensing purposes bears directly on a bidder's legal capacity to perform the contract. Under the Procurement Code, responsibility determinations must be based on a bidder's capacity to meet the terms of the contract. S.C. Code Ann. § 11-35-1810.

Accordingly, determining whether the work required by a solicitation falls within a particular contractor license classification is part of the procuring agency's responsibility determination. Such determinations are "final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A).

E. Relevant License Subclassifications

Section 40-11-410 identifies numerous classifications and subclassifications of construction work. Two subclassifications are relevant here. Section 40-11-410(3)(c) describes the WL subclassification as:

“Water and Sewer Lines” which includes construction work on water mains, water service lines, water storage tanks, sewer mains, sewer lines, lift stations, pumping stations and appurtenances to water storage tanks, lift stations, pumping stations, pavement patching, backfill, and erosion control as a part of construction, and which includes connection at the building of all lines to the appropriate lines contained in commercial structures, installation and repair of a project involving manholes, the laying of pipe for storm drains and sewer mains, all necessary connections, and excavation and backfilling, and concrete work incidental thereto.

Contractors in this license subclassification in license groups three, four, and five may install fire protection sprinkler system underground mains to a flanged outlet 1’-0” above the finished floor in compliance with National Fire Protection Association Standard 24. However, shop drawings must be submitted and approved by the State Fire Marshal with a copy of the approved drawings going to the licensed fire sprinkler contractor. Flushing and testing certificates must be delivered to the authority having jurisdiction and the performing licensed fire sprinkler contractor performing. General contractors in this license subclassification may not engage in water and sewer line work from the right-of-way to a residential structure unless the entity is a subcontractor to a licensee holding a plumbing subclassification. S.C. Code Ann. § 40-11-410(3)(c).

Section 40-11-410(5)(f) describes the PB subclassification as:

“Plumbing” which includes the installation, replacement, alteration, and repair of all plumbing including solar water heating when performed solely within property lines and not on public easements or rights-of-way except to make connections to water meters or sewer taps as allowed by the utility owner; and the installation, alteration, and repair of all piping, fixtures, and appliances related to water supply, including pressure vessels and tanks, and excluding municipal or related water supply systems; venting and sanitary drainage systems for all fluid and semi-fluid and organic wastes; roof leaders; water-conditioning equipment; piping and equipment for swimming pools; and installation of a system of pipes, fittings, fixtures, drains, and all necessary component parts upon the premises or in a building to supply water to buildings and to convey sewage or other waste products from buildings. If this equipment is gas-fired, the necessary gas lines may be installed under this subclassification used in connection with this subclassification. Plumbing contractors in license groups three, four, and five are not required to be licensed under Chapter 45, Title 23 to install standpipe systems, including water hose connections, water hose cabinets, and related branch lines if the water hoses do not supply water to automatic fire protection sprinklers. S.C. Code Ann. § 40-11-410(5)(f).

V. DISCUSSION AND CONCLUSIONS OF LAW

Before addressing the parties' arguments, the Panel begins by noting the scope of its review. Although appeals to the Panel are conducted de novo, responsibility determinations remain subject to the standard of review set forth in § 11-35-2410(A). The Panel therefore does not decide which contractor license classification it would independently select, but whether DNR's determination lacked a rational basis or was contrary to law. With that framework in mind, the Panel addresses the issues presented.

A. Licensing

DNR determined that Paragon was non-responsible under the contractor licensing requirements applicable to the Project. DNR's determination referenced a discrepancy between the name appearing on Paragon's bid and the contractor license listed in the LLR database. PRP000066. The administrative record includes applications submitted to LLR that identify Paragon Inc. of South Carolina, LLC, doing business as Paragon Builders. The Panel therefore does not treat the name variation as affecting bidder responsibility. PRP000040; PRP000042.

The central dispute, however, concerns whether the Project could be performed under the PB subclassification or the WL subclassification. The contractor license subclassifications identified in § 40-11-410 describe broad categories of construction work and do not, as applied to this mariculture infrastructure, compel a single classification as a matter of law. The administrative record reflects that applying these subclassifications to specialized facilities is not always straightforward.

The Project involves an integrated seawater distribution system serving the hatchery facility, including a head tower, underground distribution piping, and outlet structures

connecting multiple ponds. PRP000062; PRP000068; PRP000192. Although some components resemble work typically performed under a PB subclassification, DNR determined that the Project concerns the installation and rehabilitation of a broader water distribution system supporting the facility's operations. Notably, S.C. Code Ann. § 40-11-410(3)(c) provides that the WL subclassification includes construction work involving water and sewer lines, pumping stations, pipe laying, manholes, necessary connections, and incidental concrete work. The Project plans reflect a complex piping network and integrated pumping components, along with manholes and utility vault structures connecting the maturation ponds' distribution system. PRP000068; PRP000301; PRP000413; PRP000470; PRP000476. DNR reasonably concluded that these functional infrastructure elements correspond to the pumping stations, water lines, and manholes contemplated by the WL subclassification. Because the Project's core utility involves the distribution of seawater through these components, DNR's selection of the WL classification is supported by the statute's plain language.

The CPO concluded that § 40-11-410 permits the Project to be performed under a PB subclassification, but the statute does not require that classification. Courts interpret statutes according to their plain language, and where the language does not definitively resolve the issue, agencies may apply the statute to the facts before them. *See Davis*, 444 S.C. at 145; *Kiawah Dev. Partners II*, 411 S.C. at 33.

Deference is warranted where the dispute concerns the technical application of licensing categories to specialized mariculture infrastructure. Under *Kiawah*, the Panel recognizes that DNR possesses the expertise necessary to evaluate the technical nature of the Project's intake and distribution systems. The mere possibility that the PB subclassification

could have been selected does not render DNR's actual determination clearly erroneous under § 11-35-2410(A). The relevant inquiry is not whether the Panel would have selected the same classification, but whether DNR's determination had a rational basis. Because DNR's determination that eighty percent of the Project required WL licensure aligns with the components described in § 40-11-410(3)(c) and reflects the agency's technical expertise, it had a rational basis and was not clearly erroneous, arbitrary, capricious, or contrary to law.

B. Sole Prime Contractor Determination

DNR further determined that Paragon could not serve as the sole prime contractor because the predominant portion of the Project required WL licensure for sole prime eligibility. Section 40-11-340 establishes the percentage thresholds governing sole prime eligibility. A contractor may serve as sole prime only if the applicable percentage threshold is satisfied – forty percent of the project's total construction cost for WL work and fifty-one percent for PB work. The statute ensures that the prime contractor holds licensure covering the predominant portion of the project's construction work. Because Paragon holds a PB license and not a WL license, its eligibility turns on whether DNR reasonably classified the Project as predominantly WL.

Responsibility determinations fall within the discretion of the procuring agency, and state agencies possess broad authority to make such procurement judgments. *Value Options*, at 6. The party challenging such a determination bears the burden of proving it was clearly erroneous, arbitrary, capricious, or contrary to law. *Id.* at 7; *see also U.S. Facilities, Inc.*, at 7; *Schindler Elevator Corp.*, at 9.

In evaluating Paragon's eligibility to serve as sole prime contractor, DNR relied on the engineer's design estimate and itemized cost allocation indicating that eighty percent of the

Project required WL licensure. PRP000066; PRP000074. This allocation significantly exceeds both the forty percent threshold applicable to WL work and the fifty-one percent threshold applicable to PB work. The administrative record contains no competing engineering estimate or technical analysis demonstrating that DNR's allocation lacked a rational basis or was artificially structured. Although Paragon asserted a different percentage allocation in its protest, it did not submit independent engineering analysis contradicting the agency's estimate. PRP000026. The engineer's estimate therefore provides a rational evidentiary basis for DNR's determination.

Under the substantial evidence standard governing administrative review, a reviewing body does not reweigh technical evidence or substitute its judgment for competing expert evaluations. *See Murphy*, 396 S.C. at 639; *Lark*, 276 S.C. at 135; *Rhame*, 415 S.C. at 167. The inquiry is whether the agency's determination is supported by evidence from which reasonable minds could reach the same conclusion. Because DNR relied on a professional engineering estimate contained in the administrative record, its determination that Paragon did not satisfy the statutory requirements for sole prime eligibility is supported by substantial evidence.

C. Substitution of Judgment by the CPO

By selecting a different licensing classification, the CPO substituted his judgment for that of the procuring agency. The Procurement Code does not permit such substitution. Because DNR's determination was supported by substantial evidence and reflected a reasoned application of the governing statutes, the CPO exceeded his scope of review.

D. Scope of Holding

Because the Panel resolves the appeal based on the merits of DNR's determination that the portion of the Project requiring WL licensure exceeded the statutory thresholds for sole prime eligibility, it need not address additional arguments raised by the parties. The Panel emphasizes the limited nature of its holding. This Order does not determine that WL licensure was the only possible classification for the Project. Rather, the Panel holds only that DNR's determination was not clearly erroneous, arbitrary, capricious, or contrary to law.

VI. ORDER

For the foregoing reasons:

1. The CPO's November 19, 2025, protest decision is **REVERSED**.
2. DNR's determination that Paragon is non-responsible is **REINSTATED**.
3. This matter is **REMANDED** to DNR for further action consistent with this

Order and the South Carolina Consolidated Procurement Code.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: _____



Willie D. Franks, Chairman

March 13, 2026
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
In Re: Haren Construction Co., Inc.)
)
Project No. P24-6052-PG)
Beaufort-Waddell Mariculture)
Maturation Ponds Maintenance – Re-Bid)
_____)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

ORDER DENYING
MOTIONS TO RECONSIDER

Case No. 2025-5

RECEIVED

Apr 13 2026

SC Court of Appeals

I. INTRODUCTION

This matter is before the Panel on the following post-order filings: Motions to Reconsider filed by the Chief Procurement Officer for Construction (CPO), Paragon Inc. of South Carolina, LLC (Paragon), and the South Carolina Department of Natural Resources (DNR), and an Objection to Motions to Reconsider filed by Haren Construction Co., Inc. (Haren).

Because the motions fail on their merits, the Panel need not decide whether it possesses authority to reconsider its Order, and the motions are denied.

II. BACKGROUND AND PROCEDURAL HISTORY

The Panel issued its Order on March 13, 2026, reversing the CPO's November 19, 2025, decision, and affirming DNR's determination that Paragon was non-responsible.

On March 23, 2026, the parties filed the post-order motions and objection. On March 25, 2026, the Panel issued a procedural order permitting responses. The CPO, DNR, and Haren filed responses on April 1, 2026. Paragon filed no response. The Panel has considered all timely submissions.

The motions challenge the Panel's application of the standard of review and its treatment of the licensing issues, and the responses do not materially expand or alter those issues. DNR's motion does not challenge the outcome but raises arguments concerning the scope of review and issue preservation.

III. DISCUSSION

The Panel has considered the arguments in the post-order filings. Those filings do not establish that the Panel's Order dated March 13, 2026, was contrary to law or reflects any error in the Panel's interpretation of the licensing subclassifications at issue.

The Panel first conducted a de novo review of the CPO's decision and independently determined that the relevant statutory provisions, as applied to the Project, do not mandate a single license subclassification as a matter of law. The Panel then determined that, under S.C. Code Ann. § 11-35-2410(A), DNR's selection among legally permissible subclassifications was not clearly erroneous, arbitrary, capricious, or contrary to law, and that the record demonstrated a rational basis for that determination. See Order dated March 13, 2026, at 11-14. To the extent the Order referenced DNR's technical expertise, that discussion pertained to DNR's selection of license subclassifications for the Project, not the Panel's interpretation of those statutes. Having concluded that DNR's determination was not contrary to law, the Panel could not and did not substitute its judgment for that of DNR. The Panel's review of DNR's determination was limited to the statutory standard. Because the governing statutes do not compel a single license subclassification, the Panel was not required to select one.

Consistent with that conclusion, the Panel recognized that the license subclassifications do not, on their face, resolve the Project's unique technical nature. In this context, those subclassifications permit more than one reasonable interpretation. The Panel's determination is supported by the absence of any competing engineering estimate or line-item cost analysis showing that DNR's cost allocation by license subclassification was factually unsupported or artificially structured (Order at 4). This analysis reflects the Panel's independent application of the governing statutes to the record rather than any deference to DNR's interpretation of law.

The arguments advanced by the CPO and Paragon largely restate positions already considered and rejected by the Panel and do not establish that the Panel misapprehended applicable law, overlooked material facts, or committed error warranting reconsideration.

DNR requested specific rulings regarding the scope of Paragon's protest and the name variation on Paragon's bid. The Panel determined that the name variation did not affect bidder responsibility, as set forth in its Order dated March 13, 2026, and did not limit the scope of its review. Even if the scope were limited, it would not alter the outcome.

The Panel has considered the motions, Haren's objection, and the responses filed. These submissions provide no basis to modify the Panel's Order dated March 13, 2026. Any argument not expressly addressed has been considered and is either redundant or without merit.

IV. CONCLUSION

The post-order motions are denied. The Panel's Order dated March 13, 2026, remains unchanged.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: Willie D. Franks
Willie D. Franks, Chairman

April 6, 2026
Columbia, South Carolina

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Apr 13 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
Willie D. Franks, Chairman

Case No. 2025-5

IN RE: Haren Construction, Co., Inc.

South Carolina Department of Natural Resources
Project No. P24-6052-PG
Beaufort-Waddel Mariculture
Maturation Ponds Maintenance – Re-Bid

Chief Procurement Officer, State Fiscal Accountability Authority.....Appellant

PROOF OF SERVICE

The undersigned certifies that I have served all counsel in this action of the Notice of Appeal by emailing a copy to each attorney listed below.

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Columbia, South Carolina

April 13, 2026

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Apr 21 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
Willie D. Franks, Chairman

Case No. 2025-5

In Re: Haren Construction, Co., Inc.

South Carolina Department of Natural Resources
Project No. P24-6052-PG
Beaufort-Waddel Mariculture
Maturation Ponds Maintenance – Re-Bid

NOTICE OF CROSS-APPEAL

The South Carolina Department of Natural Resources (“SCDNR”), Respondent-Appellant in the above referenced matter, cross appeals the (a) Order of the South Carolina Procurement Review Panel dated March 13, 2026, and (b) the Order of the South Carolina Procurement Review Panel dated April 6, 2026, denying the SCDNR’s Motion to Reconsider. SCDNR received written notice of each order on the dates they were entered and indicated above. SCDNR received the Notice of Appeal filed by Paragon, Inc. of South Carolina, LLC on April 9, 2026 and the Notice of Appeal filed by the Chief Procurement Officer, State Fiscal Accountability Authority on April 13, 2026. The Court of Appeals has designated this matter as Appellate Case No. 2026-000914.

[signature page follows]

Respectfully submitted,
s/ Van Whitehead

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April 21, 2026

(SCDNR 25-0060)
(Ct. App. 2026-000914)

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Apr 21 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL
Willie D. Franks, Chairman

Case No. 2025-5

In Re: Haren Construction, Co., Inc.

South Carolina Department of Natural Resources
Project No. P24-6052-PG
Beaufort-Waddel Mariculture
Maturation Ponds Maintenance – Re-Bid

PROOF OF SERVICE

I certify that I have served the SCDNR's Notice of Cross-Appeal upon counsel for all parties and the South Carolina Procurement Review Panel in the above captioned matter by sending a copy by email to each attorney listed below on April 21, 2026.

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April 21, 2026

(SCDNR 25-0060)
(Ct. App. 2026-000914)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
In Re: Haren Construction Co., Inc.)
Project No. P24-6052-PG)
Beaufort-Waddell Mariculture)
Maturation Ponds Maintenance – Re-Bid)
_____)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

ORDER

Case No. 2025-5

RECEIVED

Apr 21 2026

SC Court of Appeals

I. INTRODUCTION

This matter comes before the South Carolina Procurement Review Panel (Panel) on the appeal by Haren Construction Co., Inc. (Haren) from the November 19, 2025, decision of the Chief Procurement Officer for Construction (CPO). The CPO sustained the protest filed by Paragon Inc. of South Carolina, LLC (Paragon) in connection with Project No. P24-6052-PG, the Beaufort-Waddell Mariculture Maturation Ponds Maintenance (Project), and remanded the procurement to the South Carolina Department of Natural Resources (DNR). PRP000015.

Although the parties raise several issues concerning licensing classifications, statutory exclusions, protest sufficiency, and scope of review, the dispositive question is whether DNR's non-responsibility determination was clearly erroneous, arbitrary, capricious, or contrary to law under S.C. Code Ann. § 11-35-2410(A).

Upon de novo review of the administrative record, the parties' briefs, and the applicable law, the Panel concludes that DNR's determination was not clearly erroneous, arbitrary, capricious, or contrary to law. The CPO's decision is therefore reversed.

Haren was represented by D. Gregory Placone, Esquire, and P. Nicholas Nybo, Esquire, of Hudson Lambert Parrott, LLC; the CPO by Manton M. Grier, Jr., Esquire, Assistant General Counsel for the State Fiscal Accountability Authority (SFAA); Paragon by

James M. Griffin, Esquire, of Griffin Humphries LLC; and DNR by Susan O. Porter, Esquire, General Counsel for DNR.

II. BACKGROUND

On August 12, 2025, DNR issued an advertisement and solicitation documents for the Project, including bidder instructions, specifications, and drawings defining the scope of work. PRP000062; PRP000084; PRP000192; PRP000470.

The solicitation describes renovation of hatchery infrastructure on DNR property, including rehabilitation of rearing ponds, replacement of piping networks, modifications to an existing head tower, site electrical systems, and related improvements. PRP000062; PRP000084; PRP000192.

The solicitation did not designate a specific contractor license classification for the prime contractor. However, the bid form required bidders to identify the entity performing electrical work under the Electrical (EL) license designation pursuant to the subcontractor listing requirements. PRP000105-106.

Paragon, which holds a Mechanical Contractor license with a Plumbing (PB) subclassification, submitted the apparent low responsive bid. PRP000063. During its responsibility review, DNR contacted personnel associated with the Contractor's Licensing Board within the South Carolina Department of Labor, Licensing and Regulation (LLR), who declined to provide a classification determination and advised that licensing questions should be directed to the local building official responsible for reviewing the Project's plans. PRP000070-73. DNR also reviewed contractor licensure information associated with Paragon's bid and noted that the bid was submitted under the name Paragon Inc. of South Carolina, LLC, while the contractor license in the LLR database was issued to Paragon

Builders. PRP000066. DNR relied on the engineer of record's opinion of cost and allocation of project costs by license classification contained in the administrative record. The estimate separated licensed construction work from non-licensed project costs, including contractor overhead and profit, insurance and bonds, engineering during construction, and third-party inspections. PRP000074. Based on that review, DNR issued a written determination dated October 17, 2025, concluding that Paragon was non-responsible – and therefore ineligible for award – because it did not satisfy the contractor licensing requirements of Title 40 of the South Carolina Code. PRP000066.

Paragon protested the determination, asserting that most of the Project fell within its PB subclassification, that the Project was not a municipal water supply system, that DNR had not properly quantified work outside its classification, and that the discrepancy between its legal and trade names was a mere ministerial variance. PRP000024. The CPO reviewed the protest.

On November 19, 2025, the CPO sustained the protest, concluding that the licensing issue presented a legal question, that the PB subclassification encompassed the work described in the solicitation, and that DNR had not sufficiently supported its sole prime determination. PRP000015.

Haren, which holds a General Contractors-Public Utility license with a Water and Sewer Lines (WL) subclassification, timely appealed. PRP000001. The parties initially agreed that the appeal could be resolved on the written record. After DNR raised jurisdictional and procedural issues in its response brief and limited reply briefing was permitted, no party requested a hearing, and the Panel proceeded on the written record.

On February 25, 2026, the Panel deliberated and reached its decision in this matter. Due to the unique technical nature of mariculture infrastructure and the difficulty of applying specialized Title 40 contractor subclassifications to the Project's scope, the Panel designated this matter as complex pursuant to S.C. Code Ann. § 11-35-4410(5), which requires the Panel to record its determination within thirty days.

III. FINDINGS OF FACT

After consideration of the entire record, the Panel finds the following facts:

1. DNR issued the solicitation for the Project. PRP000062; PRP000079.
2. Paragon submitted the apparent low responsive bid. PRP000063.
3. DNR's written determination stated that Paragon Inc. of South Carolina, LLC did not hold a contractor license under that name in the LLR database and that a contractor license was issued to Paragon Builders, identified by DNR as being "owned by the same owner." PRP000066. The administrative record also includes applications submitted to LLR that identify Paragon Inc. of South Carolina, LLC, doing business as Paragon Builders. PRP000040; PRP000042.
4. DNR's written determination relied upon the engineer's opinion of cost and allocation of project costs by license classification in concluding that eighty percent of the Project required WL licensure. PRP000066. The administrative record also includes the engineer's allocation supporting that conclusion. PRP000074.
5. Although Paragon asserted a different percentage allocation in its protest, the administrative record contains no competing engineering estimate or line-item cost analysis demonstrating that DNR's allocation was factually unsupported or artificially structured. PRP000026; PRP000074.

IV. APPLICABLE LAW

A. Standard of Review

Responsibility determinations under the Procurement Code are “final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law.” S.C. Code Ann. § 11-35-2410(A). Although appeals to the Panel are conducted de novo – allowing the Panel to make its own findings of fact and conclusions of law – its review of such determinations remains subject to this statutory limitation. *See* S.C. Code Ann. § 11-35-4410(1). The Panel has recently applied this standard when reviewing procurement determinations. *See In re U.S. Facilities, Inc.*, Case No. 2025-1, at 5 (S.C. Procurement Rev. Panel May 19, 2025); *In re Schindler Elevator Corp.*, Case No. 2024-5, at 9 (S.C. Procurement Rev. Panel Sept. 19, 2024).

An administrative decision is arbitrary and capricious if it lacks a rational basis or is made without adequate determining principles. As the Court of Appeals has explained, a decision is arbitrary if it is “without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.” *Blackmon v. S.C. Dep’t of Health & Envtl. Control*, 441 S.C. 342, 353, 893 S.E.2d 578, 584 (Ct. App. 2022). Courts reviewing administrative decisions do not substitute their discretion for that of the agency in matters committed to agency expertise. The South Carolina Supreme Court has cautioned that otherwise “[j]udicial discretion in a non-judicial field would be substituted for that of the appropriate administrative agency. This we cannot do.” *Guerard v. Whitner*, 276 S.C. 521, 523, 280 S.E.2d 539, 540 (1981).

In accordance with this principle of deference, judicial review of factual determinations made in the administrative process is limited. “As to factual issues, judicial review of administrative agency orders is limited to a determination of whether the order is supported by substantial evidence.” *Murphy v. S.C. Dep’t of Health & Envtl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 194 (2012). “Substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached to justify its action.” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Moreover, “[t]he mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.” *Rhame v. Charleston Cnty. Sch. Dist.*, 415 S.C. 162, 167, 781 S.E.2d 151, 154 (Ct. App. 2015).

Under the substantial evidence standard, the reviewing body does not reweigh technical evidence or resolve competing expert judgments but determines only whether the agency’s decision has a rational evidentiary basis in the record. Courts reviewing administrative decisions “need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion.” *Schwiers v. S.C. Dep’t of Health & Envtl. Control*, 429 S.C. 43, 49, 837 S.E.2d 730, 733 (Ct. App. 2019).

Panel precedent likewise recognizes that responsibility determinations are made by the procuring agency. The Panel has explained that “[t]he responsibility inquiry is delegated to the procuring agency and the Panel takes the position that review of this issue is limited to whether the procuring officer’s determination was clearly erroneous, arbitrary, capricious, or contrary to law.” *In re Value Options*, Case No. 2001-7, at 7 (S.C. Procurement Rev. Panel

Aug. 3, 2001). The Panel has further recognized that the party challenging such determinations bears the burden of proof. *Id.* at 7; *see also U.S. Facilities, Inc.*, at 5; *Schindler Elevator Corp.*, at 9.

B. Statutory Interpretation

When interpreting a statute, “[courts] must give the words in a statute their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute’s operation, and when the words are unambiguous, [courts] must apply their literal meaning.” *Davis v. S.C. Dep’t of Corr.*, 444 S.C. 138, 150, 906 S.E.2d 569, 575 (2024). If the language is clear, courts apply the statute according to its plain meaning.

Where statutory language does not resolve the issue presented, courts may defer to an agency’s interpretation when the statute is ambiguous. As the South Carolina Supreme Court explained, “[i]f the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to the agency’s interpretation of the statute or regulation, assuming the interpretation is worthy of deference.” *Kiawah Dev. Partners II v. S.C. Dep’t of Health & Envtl. Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014).

This deference reflects the institutional role of administrative agencies. Courts defer to agencies “because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations.” *Kiawah Dev. Partners II*, 411 S.C. at 34. At the same time, agency deference does not permit an interpretation that conflicts with the statute itself. The Supreme Court has explained that courts will reject an agency’s interpretation “where the plain language of a statute is contrary to the agency’s interpretation.” *Davis*, 444 S.C. at 150.

C. Responsibility Determinations

Under the South Carolina Consolidated Procurement Code, the State must determine the responsibility of bidders and offerors before awarding a contract. Section 11-35-1810(1) provides that “[r]esponsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.” Section 11-35-1410(8) defines a “responsible bidder or offeror” as “a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.”

When a protest challenges a bidder’s ability to perform work required by the solicitation, the issue concerns responsibility rather than responsiveness. As the Panel explained, when the State examines “the bidder’s ability to perform, the state is no longer determining responsiveness of the bid, but deciding the responsibility of the bidder.” *In re Brantley Constr. Co.*, Case No. 1999-3, at 3 (S.C. Procurement Rev. Panel June 25, 1999). Because the ability to lawfully perform the work required by the solicitation is part of a bidder’s legal capacity to perform the contract, questions concerning applicable contractor licensing requirements may properly arise during a procuring agency’s responsibility determination.

When a responsibility determination requires application of a statute administered by another state agency, the procuring agency must apply that statute in evaluating bidder responsibility. In a procurement protest, however, the relevant inquiry is not whether the reviewing body would independently interpret that statute, but whether the procuring agency’s

application of the statute lacked a rational basis or was contrary to law under § 11-35-2410(A).

D. Sole Prime Contractor Requirements

South Carolina law establishes specific licensing requirements for entities acting as sole prime contractors on construction projects. Section 40-11-340 provides:

An entity licensed under the classifications or subclassifications in Sections 40-11-410(1), (2), or (3) may act as a sole prime contractor on a project if forty percent or more of the work as measured by the total cost of construction falls under one or more of the licensee's license classifications or subclassifications. An entity licensed under the classifications or subclassifications in Section 40-11-410(4) and (5) may act as sole prime contractor if fifty-one percent or more of the work falls under one or more of the licensee's license classifications or subclassifications.
S.C. Code Ann. § 40-11-340.

Because sole prime eligibility under § 40-11-340 depends on the portion of a project's total construction cost falling within a contractor's license classifications, the categorization of project work for licensing purposes bears directly on a bidder's legal capacity to perform the contract. Under the Procurement Code, responsibility determinations must be based on a bidder's capacity to meet the terms of the contract. S.C. Code Ann. § 11-35-1810.

Accordingly, determining whether the work required by a solicitation falls within a particular contractor license classification is part of the procuring agency's responsibility determination. Such determinations are "final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A).

E. Relevant License Subclassifications

Section 40-11-410 identifies numerous classifications and subclassifications of construction work. Two subclassifications are relevant here. Section 40-11-410(3)(c) describes the WL subclassification as:

“Water and Sewer Lines” which includes construction work on water mains, water service lines, water storage tanks, sewer mains, sewer lines, lift stations, pumping stations and appurtenances to water storage tanks, lift stations, pumping stations, pavement patching, backfill, and erosion control as a part of construction, and which includes connection at the building of all lines to the appropriate lines contained in commercial structures, installation and repair of a project involving manholes, the laying of pipe for storm drains and sewer mains, all necessary connections, and excavation and backfilling, and concrete work incidental thereto.

Contractors in this license subclassification in license groups three, four, and five may install fire protection sprinkler system underground mains to a flanged outlet 1’-0” above the finished floor in compliance with National Fire Protection Association Standard 24. However, shop drawings must be submitted and approved by the State Fire Marshal with a copy of the approved drawings going to the licensed fire sprinkler contractor. Flushing and testing certificates must be delivered to the authority having jurisdiction and the performing licensed fire sprinkler contractor performing. General contractors in this license subclassification may not engage in water and sewer line work from the right-of-way to a residential structure unless the entity is a subcontractor to a licensee holding a plumbing subclassification. S.C. Code Ann. § 40-11-410(3)(c).

Section 40-11-410(5)(f) describes the PB subclassification as:

“Plumbing” which includes the installation, replacement, alteration, and repair of all plumbing including solar water heating when performed solely within property lines and not on public easements or rights-of-way except to make connections to water meters or sewer taps as allowed by the utility owner; and the installation, alteration, and repair of all piping, fixtures, and appliances related to water supply, including pressure vessels and tanks, and excluding municipal or related water supply systems; venting and sanitary drainage systems for all fluid and semi-fluid and organic wastes; roof leaders; water-conditioning equipment; piping and equipment for swimming pools; and installation of a system of pipes, fittings, fixtures, drains, and all necessary component parts upon the premises or in a building to supply water to buildings and to convey sewage or other waste products from buildings. If this equipment is gas-fired, the necessary gas lines may be installed under this subclassification used in connection with this subclassification. Plumbing contractors in license groups three, four, and five are not required to be licensed under Chapter 45, Title 23 to install standpipe systems, including water hose connections, water hose cabinets, and related branch lines if the water hoses do not supply water to automatic fire protection sprinklers. S.C. Code Ann. § 40-11-410(5)(f).

V. DISCUSSION AND CONCLUSIONS OF LAW

Before addressing the parties' arguments, the Panel begins by noting the scope of its review. Although appeals to the Panel are conducted de novo, responsibility determinations remain subject to the standard of review set forth in § 11-35-2410(A). The Panel therefore does not decide which contractor license classification it would independently select, but whether DNR's determination lacked a rational basis or was contrary to law. With that framework in mind, the Panel addresses the issues presented.

A. Licensing

DNR determined that Paragon was non-responsible under the contractor licensing requirements applicable to the Project. DNR's determination referenced a discrepancy between the name appearing on Paragon's bid and the contractor license listed in the LLR database. PRP000066. The administrative record includes applications submitted to LLR that identify Paragon Inc. of South Carolina, LLC, doing business as Paragon Builders. The Panel therefore does not treat the name variation as affecting bidder responsibility. PRP000040; PRP000042.

The central dispute, however, concerns whether the Project could be performed under the PB subclassification or the WL subclassification. The contractor license subclassifications identified in § 40-11-410 describe broad categories of construction work and do not, as applied to this mariculture infrastructure, compel a single classification as a matter of law. The administrative record reflects that applying these subclassifications to specialized facilities is not always straightforward.

The Project involves an integrated seawater distribution system serving the hatchery facility, including a head tower, underground distribution piping, and outlet structures

connecting multiple ponds. PRP000062; PRP000068; PRP000192. Although some components resemble work typically performed under a PB subclassification, DNR determined that the Project concerns the installation and rehabilitation of a broader water distribution system supporting the facility's operations. Notably, S.C. Code Ann. § 40-11-410(3)(c) provides that the WL subclassification includes construction work involving water and sewer lines, pumping stations, pipe laying, manholes, necessary connections, and incidental concrete work. The Project plans reflect a complex piping network and integrated pumping components, along with manholes and utility vault structures connecting the maturation ponds' distribution system. PRP000068; PRP000301; PRP000413; PRP000470; PRP000476. DNR reasonably concluded that these functional infrastructure elements correspond to the pumping stations, water lines, and manholes contemplated by the WL subclassification. Because the Project's core utility involves the distribution of seawater through these components, DNR's selection of the WL classification is supported by the statute's plain language.

The CPO concluded that § 40-11-410 permits the Project to be performed under a PB subclassification, but the statute does not require that classification. Courts interpret statutes according to their plain language, and where the language does not definitively resolve the issue, agencies may apply the statute to the facts before them. *See Davis*, 444 S.C. at 145; *Kiawah Dev. Partners II*, 411 S.C. at 33.

Deference is warranted where the dispute concerns the technical application of licensing categories to specialized mariculture infrastructure. Under *Kiawah*, the Panel recognizes that DNR possesses the expertise necessary to evaluate the technical nature of the Project's intake and distribution systems. The mere possibility that the PB subclassification

could have been selected does not render DNR's actual determination clearly erroneous under § 11-35-2410(A). The relevant inquiry is not whether the Panel would have selected the same classification, but whether DNR's determination had a rational basis. Because DNR's determination that eighty percent of the Project required WL licensure aligns with the components described in § 40-11-410(3)(c) and reflects the agency's technical expertise, it had a rational basis and was not clearly erroneous, arbitrary, capricious, or contrary to law.

B. Sole Prime Contractor Determination

DNR further determined that Paragon could not serve as the sole prime contractor because the predominant portion of the Project required WL licensure for sole prime eligibility. Section 40-11-340 establishes the percentage thresholds governing sole prime eligibility. A contractor may serve as sole prime only if the applicable percentage threshold is satisfied – forty percent of the project's total construction cost for WL work and fifty-one percent for PB work. The statute ensures that the prime contractor holds licensure covering the predominant portion of the project's construction work. Because Paragon holds a PB license and not a WL license, its eligibility turns on whether DNR reasonably classified the Project as predominantly WL.

Responsibility determinations fall within the discretion of the procuring agency, and state agencies possess broad authority to make such procurement judgments. *Value Options*, at 6. The party challenging such a determination bears the burden of proving it was clearly erroneous, arbitrary, capricious, or contrary to law. *Id.* at 7; *see also U.S. Facilities, Inc.*, at 7; *Schindler Elevator Corp.*, at 9.

In evaluating Paragon's eligibility to serve as sole prime contractor, DNR relied on the engineer's design estimate and itemized cost allocation indicating that eighty percent of the

Project required WL licensure. PRP000066; PRP000074. This allocation significantly exceeds both the forty percent threshold applicable to WL work and the fifty-one percent threshold applicable to PB work. The administrative record contains no competing engineering estimate or technical analysis demonstrating that DNR's allocation lacked a rational basis or was artificially structured. Although Paragon asserted a different percentage allocation in its protest, it did not submit independent engineering analysis contradicting the agency's estimate. PRP000026. The engineer's estimate therefore provides a rational evidentiary basis for DNR's determination.

Under the substantial evidence standard governing administrative review, a reviewing body does not reweigh technical evidence or substitute its judgment for competing expert evaluations. *See Murphy*, 396 S.C. at 639; *Lark*, 276 S.C. at 135; *Rhame*, 415 S.C. at 167. The inquiry is whether the agency's determination is supported by evidence from which reasonable minds could reach the same conclusion. Because DNR relied on a professional engineering estimate contained in the administrative record, its determination that Paragon did not satisfy the statutory requirements for sole prime eligibility is supported by substantial evidence.

C. Substitution of Judgment by the CPO

By selecting a different licensing classification, the CPO substituted his judgment for that of the procuring agency. The Procurement Code does not permit such substitution. Because DNR's determination was supported by substantial evidence and reflected a reasoned application of the governing statutes, the CPO exceeded his scope of review.

D. Scope of Holding

Because the Panel resolves the appeal based on the merits of DNR's determination that the portion of the Project requiring WL licensure exceeded the statutory thresholds for sole prime eligibility, it need not address additional arguments raised by the parties. The Panel emphasizes the limited nature of its holding. This Order does not determine that WL licensure was the only possible classification for the Project. Rather, the Panel holds only that DNR's determination was not clearly erroneous, arbitrary, capricious, or contrary to law.

VI. ORDER

For the foregoing reasons:

1. The CPO's November 19, 2025, protest decision is **REVERSED**.
2. DNR's determination that Paragon is non-responsible is **REINSTATED**.
3. This matter is **REMANDED** to DNR for further action consistent with this

Order and the South Carolina Consolidated Procurement Code.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: _____



Willie D. Franks, Chairman

March 13, 2026
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
In Re: Haren Construction Co., Inc.)
)
Project No. P24-6052-PG)
Beaufort-Waddell Mariculture)
Maturation Ponds Maintenance – Re-Bid)
_____)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

ORDER DENYING
MOTIONS TO RECONSIDER

Case No. 2025-5

RECEIVED

Apr 21 2026

SC Court of Appeals

I. INTRODUCTION

This matter is before the Panel on the following post-order filings: Motions to Reconsider filed by the Chief Procurement Officer for Construction (CPO), Paragon Inc. of South Carolina, LLC (Paragon), and the South Carolina Department of Natural Resources (DNR), and an Objection to Motions to Reconsider filed by Haren Construction Co., Inc. (Haren).

Because the motions fail on their merits, the Panel need not decide whether it possesses authority to reconsider its Order, and the motions are denied.

II. BACKGROUND AND PROCEDURAL HISTORY

The Panel issued its Order on March 13, 2026, reversing the CPO's November 19, 2025, decision, and affirming DNR's determination that Paragon was non-responsible.

On March 23, 2026, the parties filed the post-order motions and objection. On March 25, 2026, the Panel issued a procedural order permitting responses. The CPO, DNR, and Haren filed responses on April 1, 2026. Paragon filed no response. The Panel has considered all timely submissions.

The motions challenge the Panel's application of the standard of review and its treatment of the licensing issues, and the responses do not materially expand or alter those issues. DNR's motion does not challenge the outcome but raises arguments concerning the scope of review and issue preservation.

III. DISCUSSION

The Panel has considered the arguments in the post-order filings. Those filings do not establish that the Panel's Order dated March 13, 2026, was contrary to law or reflects any error in the Panel's interpretation of the licensing subclassifications at issue.

The Panel first conducted a de novo review of the CPO's decision and independently determined that the relevant statutory provisions, as applied to the Project, do not mandate a single license subclassification as a matter of law. The Panel then determined that, under S.C. Code Ann. § 11-35-2410(A), DNR's selection among legally permissible subclassifications was not clearly erroneous, arbitrary, capricious, or contrary to law, and that the record demonstrated a rational basis for that determination. See Order dated March 13, 2026, at 11-14. To the extent the Order referenced DNR's technical expertise, that discussion pertained to DNR's selection of license subclassifications for the Project, not the Panel's interpretation of those statutes. Having concluded that DNR's determination was not contrary to law, the Panel could not and did not substitute its judgment for that of DNR. The Panel's review of DNR's determination was limited to the statutory standard. Because the governing statutes do not compel a single license subclassification, the Panel was not required to select one.

Consistent with that conclusion, the Panel recognized that the license subclassifications do not, on their face, resolve the Project's unique technical nature. In this context, those subclassifications permit more than one reasonable interpretation. The Panel's determination is supported by the absence of any competing engineering estimate or line-item cost analysis showing that DNR's cost allocation by license subclassification was factually unsupported or artificially structured (Order at 4). This analysis reflects the Panel's independent application of the governing statutes to the record rather than any deference to DNR's interpretation of law.

The arguments advanced by the CPO and Paragon largely restate positions already considered and rejected by the Panel and do not establish that the Panel misapprehended applicable law, overlooked material facts, or committed error warranting reconsideration.

DNR requested specific rulings regarding the scope of Paragon's protest and the name variation on Paragon's bid. The Panel determined that the name variation did not affect bidder responsibility, as set forth in its Order dated March 13, 2026, and did not limit the scope of its review. Even if the scope were limited, it would not alter the outcome.

The Panel has considered the motions, Haren's objection, and the responses filed. These submissions provide no basis to modify the Panel's Order dated March 13, 2026. Any argument not expressly addressed has been considered and is either redundant or without merit.

IV. CONCLUSION

The post-order motions are denied. The Panel's Order dated March 13, 2026, remains unchanged.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: Willie D. Franks
Willie D. Franks, Chairman

April 6, 2026
Columbia, South Carolina

**South Carolina Division of Procurement
Services, Office of State Engineer Version of
 AIA® Document A101® – 2017**

***Standard Form of Agreement Between Owner and
Contractor where the basis of payment is a Stipulated Sum***

This version of AIA Document A101®–2017 is modified by the South Carolina Division of Procurement Services, Office of State Engineer (“SCOSE”). Publication of this version of AIA Document A101–2017 does not imply the American Institute of Architects’ endorsement of any modification by SCOSE. A comparative version of AIA Document A101–2017 showing additions and deletions by SCOSE is available for review on the SCOSE Web site.

Cite this document as “AIA Document A101®–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum — SCOSE Version,” or “AIA Document A101®–2017 — SCOSE Version.”

South Carolina Division of Procurement Services, Office of State Engineer Version of AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Twenty Second day of May
in the year Two Thousand Twenty Six
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

South Carolina Department of Natural Resources
1000 Assembly Street
Columbia, SC 29201
New Address: P.O. Box 167, Columbia, SC 29201

The Owner is a Governmental Body of the State of South Carolina as defined in
S.C. Code Ann. § 11-35-310.

and the Contractor:
(Name, legal status, address and other information)

Haren Construction Co. Inc.
1715 Highway 411 N.
Etowah, TN 37331-5499

for the following Project:
(Name, State Project Number, location and detailed description)

Beaufort - Waddell Mariculture Maturation Pond Maintenance
P24-6052-MJ
211 Sawmill Creek Road, Bluffton, SC 29910

The Architect:
(Name, legal status, address and other information)

Schnabel Engineering
250 S 5th Street, Suite 510
Boise, ID 83702

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The Owner and Contractor agree as follows.

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TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

§ 1.2 Any reference in this document to the Agreement between the Owner and Contractor, AIA Document A101, or some abbreviated reference thereof, shall mean the AIA A101-2017 Standard Form of Agreement Between Owner and Contractor, SCOSE Version. Any reference in this document to the General Conditions of the Contract for Construction, AIA Document A201, or some abbreviated reference thereof, shall mean the AIA A201-2017 General Conditions of the Contract for Construction, SCOSE Version.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The Date of Commencement of the Work shall be the date fixed in a Notice to Proceed issued by the Owner. The Owner shall issue the Notice to Proceed to the Contractor in writing, no less than seven (7) days prior to the Date of Commencement. Unless otherwise provided elsewhere in the Contract Documents and provided the Contractor has secured all required insurance and surety bonds, the Contractor may commence work immediately after receipt of the Notice to Proceed.

§ 3.2 The Contract Time as provided in the Notice to Proceed for this project shall be measured from the Date of Commencement of the Work to Substantial Completion.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work within the Contract Time indicated in the Notice to Proceed.

§ 3.3.2 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

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ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum, including all accepted alternates indicated in the bid documents, in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Six Million Two Hundred Seven Thousand Dollars (\$ 6,207,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates that are accepted, if any, included in the Contract Sum:

(Insert the accepted Alternates.)

Item	Price
Alternate #1	\$525,000.00

§ 4.3 Allowances, if any, included in the Contract Sum:

(Identify each allowance.)

Item	Price
------	-------

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages

§ 4.5.1 Contractor agrees that from the compensation to be paid, the Owner shall retain as liquidated damages the amount indicated in Section 9(b) of the Bid Form for each calendar day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted time for Substantial Completion as provided in the Contract Documents. The liquidated damages amount is intended by the parties as the predetermined measure of compensation for actual damages, not as a penalty.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 The Owner shall make payment of the certified amount to the Contractor not later than twenty-one (21) days after receipt of the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to S.C. Code Ann. § 12-8-550 (Withholding Requirements for Payments to Non-Residents), in accordance with AIA Document A201®-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold three and one-half percent (3.5%), as retainage, from the payment otherwise due.

§ 5.1.7.2 When a portion, or division, of Work as listed in the Schedule of Values is 100% complete, that portion of the retained funds which is allocable to the completed division must be released to the Contractor. No later than ten (10) days after receipt of retained funds from the Owner, the Contractor shall pay to the subcontractor responsible for such completed work the full amount of retainage allocable to the subcontractor's work.

§ 5.1.7.3 Upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7.

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than twenty-one (21) days after the issuance of the Architect's final Certificate for Payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Claims and disputes shall be resolved in accordance with Article 15 of AIA Document A201–2017.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

§ 8.2.1 The Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the responsibility for and, subject to Section 7.2.1 of the General Conditions, the authority to resolve disputes under Section 15.6 of the General Conditions:

Name: Andy Wicker, PE

Title: Chief Engineer

Address: P.O. Box 167, Columbia, SC 29202

Telephone: 803-542-2729

Email: wickera@dnr.sc.gov

§ 8.2.2 The Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions:

Name: Jeff Boyer

Title: Engineer III

Address: P.O. Box 167, Columbia, SC 29202

Telephone: 803-360-0042

Email: boyerj@dnr.sc.gov

§ 8.3 The Contractor's representative:

§ 8.3.1 The Contractor designates the individual listed below as its Senior Representative ("Contractor's Senior Representative"), which individual has the responsibility for and authority to resolve disputes under Section 15.6 of the General Conditions:

Name: Frank E. Haren, III

Title: President
Address: P.O. Box 350 Etowah, TN 37331
Telephone: 423-604-3036
Email: fharen@harenconstructon.com

§ 8.3.2 The Contractor designates the individual listed below as its Contractor's Representative, which individual has the authority and responsibility set forth in Section 3.1.1 of the General Conditions:

Name: Frank E. Haren, Jr.
Title: Chairman of the Board
Address: P.O. Box 350 Etowah, TN 37331
Telephone: 423-604-3032
Email: eharen@harenconstruction .com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 The Architect's representative:

Name: Bryant Charlo, PE
Title: Associate
Address: 348 W. Parkcenter Blvd. Suite 200
Telephone: 208-331-9736
Email: bcharlo@schnabel-eng.com

§ 8.6 Insurance and Bonds

§ 8.6.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101®–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.6.2 The Contractor shall provide bonds as set forth in AIA Document A101®–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.7 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.8 Other Provisions:

§ 8.8.1 Additional requirements, if any, for the Contractor's Construction Schedule are as follows:

(Check box if applicable to this Contract)

☒ The Construction Schedule shall be in a detailed precedence-style critical path management (CPM) or primavera-type format satisfactory to the Owner and the Architect that shall also (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth milestone dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

- .1 Upon review by the Owner and the Architect for conformance with milestone dates and Construction Time given in the Bidding Documents, with associated Substantial Completion date, the Construction Schedule shall be deemed part of the Contract Documents and attached to the Agreement as an Exhibit. If returned for non-conformance, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted.

- 2 The Contactor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. Whenever the Construction Schedule no longer reflects actual conditions and progress of the Work or the Contract Time is modified in accordance with the terms of the Contract Documents, the Contractor shall update the Construction Schedule to reflect such conditions.
- 3 In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary.
- 4 In no event shall any progress report constitute an adjustment in the Contract Time, any milestone date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 8.8.2 The Owner's review of the Contractor's schedule is not conducted for the purpose of either determining its accuracy, completeness, or approving the construction means, methods, techniques, sequences or procedures. The Owner's review shall not relieve the Contractor of any obligations.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- 1 AIA Document A101®-2017, SCOSE Version Standard Form of Agreement Between Owner and Contractor
- 2 AIA Document A101®-2017, Exhibit A, Insurance and Bonds
- 3 AIA Document A201®-2017, SCOSE Version General Conditions of the Contract for Construction
- 4 Form SE-390, Notice to Proceed – Construction Contract
- 5 Drawings

Number	Title	Date
See Attachment 1		

- 6 Specifications

Section	Title	Date	Pages
See Attachment 2			

- 7 Addenda, if any:

Number	Date	Pages
Addendum 1	9/9/2025	1
Addendum 2	9/16/2025	1

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Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐

The Sustainability Plan:

Title

Date

Pages

☐

Supplementary and other Conditions of the Contract:

Document

Title

Date

Pages

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201®–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Form SE-310, Invitation for Construction Services

Instructions to Bidders (AIA Document A701-2018 OSE Version)

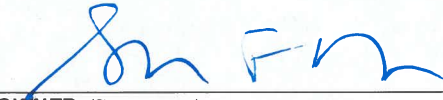
Form SE-330, Contractor's Bid (Completed Bid Form)

Form SE-370, Notice of Intent to Award

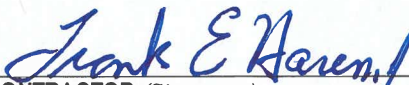
Certificate of Procurement Authority issued by the State Fiscal Accountability Authority

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This Agreement entered into as of the day and year first written above.


OWNER (Signature)

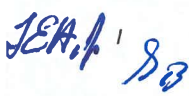
Shannon Bobertz, Chief of Staff
(Printed name and title)


CONTRACTOR (Signature)

Frank E. Haren, Jr. Chairman of the Board
(Printed name and title)



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SCDNR Memo to Court Exhibits048

South Carolina Division of Procurement Services, Office of State Engineer Version of AIA® Document A101® – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Twenty Second day of May in the year Two Thousand Twenty Six
(In words, indicate day, month and year.)

for the following **PROJECT**:

(Name, State Project Number, and location or address)

Beaufort - Waddell Mariculture Maturation Pond Maintenance

P24-6052-MJ

211 Sawmill Creek Road, Bluffton, SC 29910

THE OWNER:

(Name, legal status and address)

South Carolina Department of Natural Resources

1000 Assembly Street

Columbia, SC 29201

This version of AIA Document A101–2017 Exhibit A is modified by the South Carolina Division of Procurement, Office of State Engineer. Publication of this version of AIA Document A101 Exhibit A does not imply the American Institute of Architects' endorsement of any modification by the South Carolina Division of Procurement, Office of State Engineer.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The Owner is a Governmental Body of the State of South Carolina as defined by Title 11, Chapter 35 of the South Carolina Code of Laws, as amended.

THE CONTRACTOR:

(Name, legal status and address)

Haren Construction Co. Inc.

1715 Highway 411 N.

Etowah, TN 37331-5499

TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201®–2017, General Conditions of the Contract for Construction, SCOSE Version.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ A.2.3 Reserved

§ A.2.3.1 Reserved

§ A.2.3.1.1 Reserved

§ A.2.3.1.2 Reserved

§ A.2.3.1.3 Reserved

§ A.2.3.1.4 Reserved

§ A.2.3.2 Reserved

§ A.2.3.3 Reserved

§ A.2.4 Optional Insurance.

The Owner shall purchase and maintain any insurance selected below.

☐

§ A.2.4.1 Other Insurance

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the

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Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.1.4 A failure by the Owner to either (i) demand a certificate of insurance or written endorsement required by Section A.3, or (ii) reject a certificate or endorsement on the grounds that it fails to comply with Section A.3, shall not be considered a waiver of Contractor's obligations to obtain the required insurance.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, for such other period for maintenance of completed operations coverage as specified in the Contract Documents, or unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than \$1,000,000 each occurrence, \$1,000,000 general aggregate, \$1,000,000 aggregate for products-completed operations hazard, \$1,000,000 personal and advertising injury, \$50,000 fire damage (any one fire), and \$5,000 medical expense (any one person) providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than \$1,000,000 per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability, Employers Liability, and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. The umbrella policy limits shall not be less than \$3,000,000.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than \$100,000 each accident, \$100,000 each employee, and \$500,000 policy limit for claims, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

§ A.3.2.8 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.9 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.3 Required Property Insurance

§ A.3.3.1 The Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Contractor's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.3.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds.

§ A.3.3.1.1 **Causes of Loss.** The insurance required by this Section A.3.3.1 shall provide coverage for direct physical loss or damage and shall include the risks of fire (with extended coverage), explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, workmanship, or materials.
(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss

Sub-Limit

§ A.3.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.3.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. (Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss

Sub-Limit

§ A.3.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall replace the insurance policy required under Section A.3.3.1 with property insurance written for the total value of the Project.

§ A.3.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.3.3 is subject to deductibles or self-insured retentions, the Contractor shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.3.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.3.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.3.3.3 If the Owner requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Contractor shall, if possible, include such insurance, and the cost thereof shall be charged to the Owner by appropriate Change Order.

§ A.3.3.4 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section A.3.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

§ A.3.4 Contractor's Other Insurance Coverage

§ A.3.4.1 Insurance selected and described in this Section A.3.4 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.4.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.4.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

☐ § A.3.4.2.1 Reserved

☐ § A.3.4.2.2 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

☐ § A.3.4.2.3 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

☐ § A.3.4.2.4 **Boiler and Machinery Insurance**
The Contractor shall purchase and maintain boiler and machinery insurance as required, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this

Init.

insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ A.3.5 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	100%
Performance Bond	100%

§ A.3.5.1 Before commencing any services hereunder, the Contractor shall provide the Owner with Performance and Payment Bonds, each in an amount not less than the Contract Price set forth in Article 4 of the Agreement. The Surety shall have, at a minimum, a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property-Casualty". In addition, the Surety shall have a minimum "Best Financial Strength Category" of "Class V", and in no case less than five (5) times the contract amount. The Performance Bond shall be written on Form SE-355, "Performance Bond" and the Payment Bond shall be written on Form SE-357, "Labor and Material Payment Bond", and both shall be made payable to the Owner.

§ A.3.5.2 The Performance and Labor and Material Payment Bonds shall:

- .1 be issued by a surety company licensed to do business in South Carolina;
- .2 be accompanied by a current power of attorney and certified by the attorney-in-fact who executes the bond on the behalf of the surety company; and
- .3 remain in effect for a period not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.

§ A.3.5.3 Any bonds required by this Contract shall meet the requirements of the South Carolina Code of Laws and Regulations, as amended.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Attachment 1 - Drawing List

Number	Title	Date
G-0	COVER SHEET	7/28/2025
G-1	DRAWING LIST AND LOCATION MAPS	7/28/2025
G-2	SYMBOLS AND ABBREVIATIONS	7/28/2025
G-3	DESIGN CRITERIA AND FLOW SCHEMATIC	7/28/2025
G-4	POND & HEAD TOWER FLOW SCHEMATICS	7/28/2025
G-5	HYDRAULIC PROFILE	7/28/2025
GC-1	GENERAL CIVIL NOTES	7/28/2025
GC-2	CIVIL DETAILS - I	7/28/2025
GC-3	CIVIL DETAILS - II	7/28/2025
GS-1	GENERAL STRUCTURAL NOTES	7/28/2025
GS-2	STRUCTURAL DETAILS - I	7/28/2025
GS-3	STRUCTURAL DETAILS - II	7/28/2025
GS-4	STRUCTURAL DETAILS - III	7/28/2025
GM-1	GENERAL MECHANICAL NOTES	7/28/2025
GM-2	MECHANICAL SCHEDULES	7/28/2025
GM-3	MECHANICAL DETAILS - I	7/28/2025
D-1	SITE DEMOLITION PLAN	7/28/2025
D-2	HEAD TOWER DEMOLITION PLAN	7/28/2025
D-3	SITE PHOTOS - I	7/28/2025
C-1	OVERALL SITE PLAN	7/28/2025
C-2	YARD PIPING PLAN - I	7/28/2025
C-3	YARD PIPING PLAN - II	7/28/2025
C-4	YARD PIPING PLAN - III	7/28/2025
C-5	YARD PIPING PLAN - IV	7/28/2025
C-6	COORDINATE TABLE	7/28/2025
C-7	NOT USED	7/28/2025
C-8	M-POND REHABILITATION PLAN & PROFILE	7/28/2025
S-1	POND OUTLET KETTLE PLANS	7/28/2025
S-2	POND OUTLET KETTLE SECTIONS - I	7/28/2025
S-3	POND OUTLET KETTLE SECTIONS - II	7/28/2025
S-4	POND OUTLET KETTLE DETAILS	7/28/2025
M-1	OUTLET STRUCTURE PIPING PLAN & SECTIONS	7/28/2025
M-2	KETTLE AND MONK SCREEN DETAILS	7/28/2025
M-3	HEAD TOWER MECHANICAL LAYOUT	7/28/2025
E-001	ELECTRICAL NOTES, DETAILS AND LEGEND	7/28/2025
E-002	M-POND AREA ELECTRICAL DEMOLITION RISER	7/28/2025
E-003	WELL PUMP ELECTRICAL DEMOLITION RISER	7/28/2025
E-004	M-POND GRASS FIELD AREA DEMOLITION	7/28/2025
E-005	M-POND PANELS EXISTING CONDITIONS PICTURES	7/28/2025
E-006	RISER DIAGRAMS, FEEDER SCHEDULES & MOUNTING DETAILS	7/28/2025
E-007	PANEL SCHEDULES	7/28/2025
E-101	ELECTRICAL SITE DEMOLITION PLAN II	7/28/2025

E-102	ELECTRICAL SITE DEMOLITION PLAN III	7/28/2025
E-103	ELECTRICAL SITE DEMOLITION PLAN IV	7/28/2025
E-200	ELECTRICAL SITE INSTALLATION PLAN I	7/28/2025
E-201	ELECTRICAL SITE INSTALLATION PLAN II	7/28/2025
E-202	ELECTRICAL SITE INSTALLATION PLAN III	7/28/2025
E-203	ELECTRICAL SITE INSTALLATION PLAN IV	7/28/2025

Attachment 2 - Specification List

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011000	Summary	7/28/2025	4
012900	Payment Procedures	7/28/2025	4
012910	Schedule of Values	7/28/2025	2
013119	Project Management and Coordination	7/28/2025	3
013216	Progress Schedule	7/28/2025	4
013300	Submittal Procedures	7/28/2025	7
014000	Quality Requirements	7/28/2025	7
014150	Special Inspections and Testing	7/28/2025	4
015000	Temporary Facilities and Controls	7/28/2025	6
016500	Products Delivery and Handling	7/28/2025	2
017200	Project Layout and Field Engineering	7/28/2025	3
017329	Cutting and Patching	7/28/2025	4
017700	Contract Close Out Procedures	7/28/2025	3
017823	Operation and Maintenance Data	7/28/2025	7
017836	Warranties	7/28/2025	4
019100	Equipment Testing and Facility Startup	7/28/2025	4
024116	Structure Demolition	7/28/2025	3
030100	Maintenance of Concrete	7/28/2025	15
031000	Concrete Forming and Accessories	7/28/2025	14
032000	Concrete Reinforcing	7/28/2025	10
033000	Cast-In-Place Concrete	7/28/2025	28
051200	Structural Steel Framing	7/28/2025	11
055000	Miscellaneous Metalwork	7/28/2025	12
055250	Steel Railing	7/28/2025	6
099600	Protective Coatings	7/28/2025	16
260500	Common Work Results for Electrical	7/28/2025	7
260501	Excavation and Backfill for Electrical Work	7/28/2025	2
260503	Electrical Demolition	7/28/2025	3
260519	Low Voltage Electrical Power Conductors and Cables	7/28/2025	4
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260529	Hangers and Supports for Electrical Systems	7/28/2025	3
260534	Conduit	7/28/2025	4
260537	Boxes	7/28/2025	3
260553	Identification for Electrical Systems	7/28/2025	3
262416	Panelboards	7/28/2025	3
262818	Enclosed Switches	7/28/2025	2
312316	Excavation	7/28/2025	4
312323	Soils and Aggregates	7/28/2025	7
317700	Geomembrane Liner	7/28/2025	9
400507	Pipe Supports - General	7/28/2025	5
400510	General Piping Provisions	7/28/2025	11
400515	Pipe and Fitting Materials	7/28/2025	7

400551	Valves and Appurtenances	7/28/2025	7
400597	Identifications, Stenciling and Tagging Systems	7/28/2025	9

**South Carolina Division of Procurement
Services, Office of State Engineer Version of
 AIA® Document A201® – 2017**

General Conditions of the Contract for Construction

This version of AIA Document A201®–2017 is modified by the South Carolina Division of Procurement Services, Office of State Engineer (“SCOSE”). Publication of this version of AIA Document A201–2017 does not imply the American Institute of Architects’ endorsement of any modification by SCOSE. A comparative version of AIA Document A201–2017 showing additions and deletions by SCOSE is available for review on the SCOSE Web site.

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SCDNR Memo to Court Exhibits059

South Carolina Division of Procurement Services, Office of State Engineer Version of AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name, State Project Number, and location or address)

Beaufort - Waddell Mariculture Maturation Pond Maintenance

P24-6052-MJ

211 Sawmill Creek Road, Bluffton, SC 29910

THE OWNER:

(Name, legal status, and address)

South Carolina Department of Natural Resources

P.O. Box 167

Columbia, SC 29201

The Owner is a Governmental Body of the State of South Carolina as defined in S.C. Code Ann. § 11-35-310.

THE ARCHITECT:

(Name, legal status, and address)

Schnabel Engineering

250 S 5th Street, Suite 510

Boise, ID 83702

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

- .1 The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract.
- .2 A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect.
- .3 Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.
- .4 Any reference in this document to the Agreement between the Owner and Contractor, AIA Document A101, or some abbreviated reference thereof, shall mean the AIA A101-2017, Standard Form of Agreement Between Owner and Contractor, SCOSE Version.
- .5 Any reference in this document to the General Conditions of the Contract for Construction, AIA Document A201, or some abbreviated reference thereof, shall mean the AIA A201-2017, General Conditions of the Contract for Construction, SCOSE Version.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Reserved

§ 1.1.9 Notice to Proceed

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The Notice to Proceed is a document issued by the Owner to the Contractor directing the Contractor to begin prosecution of the Work in accordance with the requirements of the Contract Documents. The Notice to Proceed shall fix the date on which the Contract Time will commence and establish the initial date of the Substantial Completion.

§ 1.1.10 State Engineer

"State Engineer" means the person holding the position as head of the State Engineer's Office. The State Engineer's Office is created by S.C. Code Ann. § 11-35-830, and is sometimes referred to in the Contract Documents as "Office of State Engineer" or "OSE." The State Engineer is also the Chief Procurement Officer for Construction, sometimes referred to in the Contract Documents as "CPOC".

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of patent ambiguities within or between parts of the Contract Documents, the Contractor shall 1) provide the better quality or greater quantity of Work, or 2) comply with the more stringent requirement, either or both in accordance with the Architect's interpretation.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as a violation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to

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whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.6.3 Notice to Contractor shall be to the address provided in Section 8.3.2 of the Agreement. Notice to Owner shall be to the address provided in Section 8.2.2 of the Agreement. Either party may designate a different address for notice by giving notice in accordance with Section 1.6.1.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation, including in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, except as provided in Section 7.1.7. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's Representative noted in the Agreement.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to post Notice of Project Commencement pursuant to S.C. Code Ann. § 29-5-23.

§ 2.2 Reserved

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain a design professional lawfully licensed to practice, or an entity lawfully practicing, in the jurisdiction where the Project is located. The person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Subject to the Contractor's obligations, including those in Section 3.2, the Contractor shall be entitled to rely on the accuracy of information furnished by the Owner pursuant to this Section but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. However, the Owner does not warrant the accuracy of any such information requested by the Contractor that is not otherwise required of the Owner by the Contract Documents. Neither the Owner nor the Architect shall be required to conduct investigations or to furnish the Contractor with any information concerning subsurface characteristics or other conditions of the area where the Work is to be performed beyond that which is provided in the Contract Documents.

§ 2.3.6 The Owner shall furnish the Contract Documents to the Contractor in digital format.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect, including but not limited to providing necessary resources, with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's Representative noted in the Agreement.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

- .1 The Contractor acknowledges that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to (a) conditions bearing upon transportation, disposal, handling, and storage of materials; (b) the availability of labor, water, electric power, and roads; (c) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (d) the conformation and conditions of the ground; and (e) the character of equipment and facilities needed preliminary to and during work performance.
- .2 The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is

- reasonably ascertainable from an inspection of the site, including all exploratory work done by the Owner, as well as from the drawings and specifications made a part of this Contract.
- 3 Any failure of the Contractor to take the actions described and acknowledged in this Section will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Owner.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from latent errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction and provide its findings to the Owner. Unless the Owner objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 After the Contract has been executed, the Owner and Architect may consider requests for the substitution of products in place of those specified. The Owner and Architect may, but are not obligated to, consider only those substitution requests that are in full compliance with the conditions set forth in the General Requirements (Division 1 of the Specifications). By making requests for substitutions, the Contractor:

- .1 represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the product specified;
- .2 represents that it will provide the same warranty for the substitution as it would have provided for the product specified;
- .3 certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be performed or changes as a result of the substitution, except for the Architect's re-design costs, and waives all claims for additional costs related to the substitution that subsequently become apparent;
- .4 agrees that it shall, if the substitution is approved, coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects; and
- .5 represents that the request includes a written representation identifying any potential effect the substitution may have on Project's achievement of a Sustainable Measure or the Sustainable Objective.

§ 3.4.2.2 The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for reviewing the Contractor's proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be considered defective. Unless caused by the Contractor or a subcontractor at any tier, the Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contractor shall comply with the requirements of S.C Code Ann. Title 12, Chapter 8, regarding withholding tax for nonresidents, employees, contractors and subcontractors.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Pursuant to S.C. Code Ann. § 10-1-180, no local general or specialty building permits are required for state buildings. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all other permits, fees, and licenses by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs, as documented by invoices, and the allowances under Section 3.8.2.1.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent, acceptable to the Owner, and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

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§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner may notify the Contractor, stating whether the Owner has reasonable objection to the proposed superintendent. Failure of the Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall notify the Owner of any proposed change in the superintendent, including the reason therefore, prior to making such change. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. Subject to any additional requirements in the Contract Documents, the schedule shall contain detail appropriate for the Project, including at a minimum (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

- .1 The fire sprinkler shop drawings shall be prepared by a licensed fire sprinkler contractor and shall accurately reflect actual conditions affecting the required layout of the fire sprinkler system. The fire sprinkler contractor shall certify the accuracy of its shop drawings prior to submitting them for review and approval.
- .2 The fire sprinkler shop drawings shall be reviewed and approved by the Architect's engineer of record (EOR) prior to submittal to the Office of State Fire Marshal (OSFM).
- .3 The EOR shall submit to OSFM in accordance with the OSFM process.
- .4 Unless authorized in writing by OSE, neither the Contractor nor subcontractor at any tier shall submit the fire sprinkler shop drawings directly to OSFM.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, who shall comply with reasonable requirements of the Owner regarding qualifications and insurance and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to

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the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but

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only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Any reference in the Contract Documents to the Architect taking action or rendering a decision with a "reasonable time" is understood to mean no more than ten (10) days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.

§ 4.2.2 The Architect will visit the site as necessary to fulfill its obligation to the Owner for inspection services, if any, and, at a minimum, to assure conformance with the Architect's design as shown in the Contract Documents and to observe the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) deviations from the Contract Documents, (2) deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Work completed and correlated with the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will, in the first instance, interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. Upon receipt of such request, the Architect will promptly provide the other party with a copy of the request. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, and will not show partiality to either. Except in the case of interpretations resulting in omissions, defects, or errors in the Instruments of Service or perpetuating omissions, defects or errors in the Instruments of Service, the Architect will not be liable for results of interpretations or decisions rendered in good faith. If either party disputes the Architect's interpretation or decision, that party may proceed as provided in Article 15. The Architect's interpretations and decisions may be, but need not be, accorded any deference in any review conducted pursuant to law or the Contract Documents.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents so as to avoid delay to the construction of the Project. The Architect's response to such requests will be made in writing with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. Any response to a request for information must be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

Unless issued pursuant to a Modification, supplemental Drawings or Specifications will not involve an adjustment to the Contract Sum or Contract Time.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, within fourteen (14) days after posting of the Notice of Intent to Award the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Owner may notify the Contractor whether the Owner has reasonable objection to any such proposed person or entity. Failure of the Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Owner shall not direct the Contractor to contract with any specific individual or entity for supplies or services unless such supplies and services are necessary for completion of the Work and the specified individual or entity is the only source of such supply or service.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner makes reasonable objection to such substitution. The Contractor's request for substitution must be made to the Owner in writing, accompanied by supporting information.

§ 5.2.5 A Subcontractor identified in the Contractor's Bid pursuant to the subcontractor listing requirements of Section 7 of the Bid Form may only be substituted in accordance with and as permitted by the provisions of S.C. Code Ann. § 11-35-3021. A proposed substitute for a listed subcontractor shall also be subject to the Owner's approval as set forth in Section 5.2.3.

§ 5.2.6 A Contractor may substitute one prospective subcontractor for another, with the approval of the Owner as follows:

- .1 If the Contractor requests the substitution, the Contractor is responsible for all costs associated with the substitution.
- .2 If the Owner requests the substitution, the Owner is responsible for any resulting increased costs to the Contractor.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not

prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise herein, or in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Without limitation on the generality of Section 5.3.1, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following Sections of these General Conditions: 3.2, 3.5, 3.18, 5.3, 5.4, 6.2.2, 7.1.6, 7.3.3, 7.5, 13.1, 13.9, 14.3, 14.4, and 15.1.7.

§ 5.3.3 Each Subcontract Agreement and each Sub-subcontract agreement shall exclude, and shall be deemed to exclude, Sections 13.2 and 13.5 and all of Article 15, except Section 15.1.7, of these General Conditions. In the place of these excluded sections of the General Conditions, each Subcontract Agreement and each Sub-subcontract may include Sections 13.2 and 13.5 and all of Article 15, except Section 15.1.7, of AIA Document A201-2007, Conditions of the Contract, as originally issued by the American Institute of Architects.

§ 5.3.4 The Contractor shall assure the Owner that all agreements between the Contractor and its Subcontractor incorporate the provisions of Section 5.3.1 as necessary to preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the work to be performed by Subcontractors so that the subcontracting thereof will not prejudice such rights. The Contractor's assurance shall be in the form of an affidavit or in such other form as the Owner may approve. Upon request, the Contractor shall provide the Owner or Architect with copies of any or all subcontracts or purchase orders.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- 1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

§ 5.4.5 Each subcontract shall specifically provide that the Subcontractor agrees to perform portions of the Work assigned to the Owner in accordance with the Contract Documents.

§ 5.4.6 Nothing in this Section 5.4 shall act to reduce or discharge the Contractor's payment bond surety's obligations to claimants for claims arising prior to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to

those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Reserved

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 If a change in the Work provides for an adjustment to the Contract Sum, the amount of such adjustment must be computed and documented in writing. In order to facilitate evaluation of proposals or claims for increases and decreases to the Contract Sum, all proposals or claims, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. Labor and materials shall be itemized. Where major cost items are subcontracts, they shall be itemized also. The amount of the adjustment must approximate the actual cost to the Contractor and all costs incurred by the Contractor must be justifiably compared with prevailing industry standards. Except as provided in Section 7.1.5, all adjustments to the Contract Sum shall be limited to job specific costs and shall not include indirect costs, home office overhead or profit.

§ 7.1.5 The combined overhead and profit included in the total cost to the Owner for a change in the Work shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, not to exceed seventeen (17%) percent of the Contractor's actual costs.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, not to exceed ten (10%) percent of each Subcontractor's actual costs (not including the Subcontractor's overhead and profit).
- .3 For each Subcontractor involved, for Work performed by that Subcontractor's own forces, not to exceed seventeen (17%) percent of the Subcontractor's actual costs.
- .4 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.4.

The percentages cited above shall be considered to include all indirect costs including, but not limited to field and office managers, supervisors and assistants, incidental job burdens, small tools, and general overhead allocations.

§ 7.1.6 The procedures described in Sections 7.1.4 and 7.1.5 shall be used to calculate any adjustment in the Contract Sum, including without limitation an adjustment permitted under Articles 7, 9, 14, or 15.

§ 7.1.7 If a change in the Work requires an adjustment to the Contract Sum that exceeds the limits of the Owner's Construction Change Order Certification (reference Section 9.1.9 of the Agreement), then the Owner's agreement is not effective, and Work may not proceed until approved in writing by the OSE.

§ 7.1.8 Additional Work performed after the declaration of Substantial Completion must be approved by OSE, if the Change Order exceeds the Owner's Construction Change Order Certification.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument, using the OSE Construction Change Order form, prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, any adjustments to the Contract Sum or the Contract Time.

§ 7.2.2 At the Owner's request, the Contractor shall prepare a proposal to perform the work of a proposed Change Order setting forth the amount of the proposed adjustment, if any, in the Contract Sum; and the extent of the proposed adjustment, if any, in the Contract Time. Any proposed adjustment in the Contract Sum shall be prepared in accordance with Section 7.1.4 and 7.1.5. The Owner's request shall include any revisions to the Drawings or Specifications necessary to define any changes in the Work. Within fourteen (14) days of receiving the request, the Contractor shall submit the proposal to the Owner and Architect along with all documentation required by Section 7.5.

§ 7.2.3 If the Contractor requests a Change Order, the request shall set forth the proposed change in the Work and shall be prepared in accordance with Section 7.2.2. If the Contractor requests a change to the Work that involves a revision

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to either the Drawings or Specifications, the Contractor shall reimburse the Owner for any expenditure associated with the Architects' review of the proposed revisions, except to the extent the revisions are accepted by execution of a Change Order.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum if properly itemized and substantiating data is not available to permit evaluation;
- .2 Unit prices specified in the Contract Documents or subsequently agreed upon, subject to adjustment if any, as provided in Section 9.1.2;
- .3 Cost and a percentage fee, calculated as described in Sections 7.1.4 and 7.1.5;
- .4 in another manner as the parties may agree; or
- .5 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall make an initial determination, consistent with Section 7.3.3, of the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in Section 7.1.5. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; and
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual cost including overhead and profit as confirmed by the Architect from the Schedule of Values.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The

Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 Pricing Data and Audit

§ 7.5.1 Cost or Pricing Data

Upon request of the Owner or Architect, Contractor shall submit cost or pricing data prior to execution of a Modification which exceeds \$500,000 [Reference S.C. Code Ann. §§ 11-35-1830 and 11-35-2220, and SC Code Ann. Reg 19-445.2120]. Contractor shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date prior to the date of pricing the Modification. Contractor's price, including profit, shall be adjusted to exclude any significant sums by which such price was increased because Contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the parties. Notwithstanding Subparagraph 9.10.4, such adjustments may be made after final payment to the Contractor.

§ 7.5.2 Cost or pricing data means all facts that, as of the date specified by the parties, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.

§ 7.5.3 Records Retention

As used in Section 7.5, the term "Records" means any books or records that relate to cost or pricing data of a Change Order that Contractor is required to submit pursuant to Section 7.5.1. Contractor shall maintain records for three years from the date of final payment, or longer if requested by the chief procurement officer. The Owner may audit Contractor's records at reasonable times and places.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly commence the Work prior to the effective date of surety bonds and insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time, the Contract Time shall be extended for such reasonable time as the Architect may determine, provided the delay:

- .1 is not caused by the fault or negligence of the Contractor or a subcontractor at any tier, and
- .2 is not due to unusual delay in the delivery of supplies, machinery, equipment, or services when such supplies, machinery, equipment, or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

§ 9.2.1 The Contractor shall submit a schedule of values to the Architect within ten (10) days of full execution of the Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.2 As requested by the Architect, the Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible. The breakdown, being submitted on a uniform standardized format approved by the Architect and Owner, shall be divided in detail, using convenient units, sufficient to accurately determine the value of completed Work during the course of the Project. The Contractor shall update the schedule of values as required by either the Architect or Owner as necessary to reflect:

- .1 the description of Work (listing labor and material separately);
- .2 the total value of the Work;
- .3 the percent and value of the Work completed to date;
- .4 the percent and value of previous amounts billed; and
- .5 the current percent completed, and amount billed.

§ 9.2.3 Any schedule of values or trade breakdown that fails to provide sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If a schedule of values or trade breakdown is used as the basis for payment and later determined to be inaccurate, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 Applications for Payment

§ 9.3.1 Monthly, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require (such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers), and shall reflect retainage as provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing, provided such materials or equipment will be subsequently incorporated in the Work. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall 1) protect such materials from diversion, vandalism, theft, destruction, and damage, 2) mark such materials specifically for use on the Project, and 3) segregate such materials from other materials at the storage facility. The Architect and the Owner shall have the right to make inspections of the storage areas at any time.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated in both the Application for Payment and, if required to be submitted, the accompanying current construction schedule, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means,

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methods, techniques, sequences, or procedures; or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect shall withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. The Architect shall withhold a Certificate of Payment if the Application for Payment is not accompanied by the current construction schedule required by Section 3.10.1. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 Pursuant to S.C. Ann. §§ 29-6-10 through 29-6-60, the Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment to the Owner, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the time established in the Contract Documents, the amount certified by the Architect or awarded by final dispute resolution order, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive written list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect, the Owner, and any other party the Architect or the Owner choose, will make an inspection on a date and at a time mutually agreeable to determine whether the Work or designated portion thereof is substantially complete. The Contractor shall furnish access for the inspection and testing as provided in this Contract. The inspection shall include a demonstration by the Contractor that all equipment, systems and operable components of the Work function properly and in accordance with the Contract Documents.

- .1 If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.
- .2 If more than one Substantial Completion inspection is required, the Contractor shall reimburse the Owner for all costs of re-inspections or, at the Owner's option, the costs may be deducted from payments due to the Contractor.
- .3 Representatives of the State Fire Marshal's Office and other authorities having jurisdiction may be present at the Substantial Completion inspection or otherwise inspect the completed Work and advise the Owner whether the Work meets their respective requirements for the Project.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner for its written acceptance of responsibilities assigned in the Certificate and a copy of the signed Certificate shall be delivered to the Contractor. Upon such acceptance, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 If the Architect and Owner concur in the Contractor's assessment that the Work or a portion of the Work is safe to occupy, the Owner and Contractor may arrange for a Certificate of Occupancy inspection by OSE. The Owner, Architect, and Contractor shall be present at OSE's inspection. Upon verifying that the Work or a portion of the Work is substantially complete and safe to occupy, OSE will issue, as appropriate, a Full or Partial Certificate of Occupancy.

§ 9.8.7 The Owner may not occupy the Work until all required occupancy permits, if any, have been issued and delivered to the Owner.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Unless the parties agree otherwise in the Certificate of Substantial Completion, the Contractor shall achieve Final Completion within thirty days after Substantial Completion. Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect, the Owner, and any other party the Architect or the Owner choose will make an inspection on a date and at a time mutually agreeable. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

- .1 If more than one Final Completion inspection is required, the Contractor shall reimburse the Owner for all costs of re-inspections or, at the Owner's option, the costs may be deducted from payments due to the Contractor.
- .2 If the Contractor does not achieve Final Completion within thirty days after Substantial Completion or the timeframe agreed to by the parties in the Certificate of Substantial Completion, whichever is

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greater, the Contractor shall be responsible for any additional Architectural fees resulting from the delay.

- .3 If OSE has not previously issued a Certificate of Occupancy for the entire Project, the Parties shall arrange for a representative of OSE to participate in the Final Completion inspection.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied,
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect,
- .3 a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents,
- .4 consent of surety, if any, to final payment,
- .5 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties,
- .6 if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner,
- .7 required Training Manuals,
- .8 equipment Operations and Maintenance Manuals,
- .9 any certificates of testing, inspection or approval required by the Contract Documents and not previously provided, and
10. one copy of the Documents required by Section 3.11.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is delayed 60 days through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those specific claims in stated amounts that have been previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance which was not discoverable as provided in Section 3.2.1 and not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons or serious loss to real or personal property resulting from such a material or substance encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. Hazardous materials or substances are those hazardous, toxic, or radioactive materials or substances subject to regulations by applicable governmental authorities having jurisdiction, such as, but not limited to, the S.C. Department of Health and Environmental Control, the U.S. Environmental Protection Agency, and the U.S. Nuclear Regulatory Commission.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. In the absence of agreement, the Architect will make an interim determination regarding any delay or impact on the Contractor's additional costs. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the rights of either party to disagree and assert a Claim in accordance with Article 15.

§ 10.3.3 The Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (a) the Owner causes remedial work to be performed that results in the absence of hazardous materials or substances; (b) the Owner and the Contractor, by written agreement, decide to resume performance of the Work; or (c) the Work may safely and lawfully proceed, as determined by an appropriate governmental authority or as evidenced by a written report to both the Owner and the Contractor, which is prepared by an environmental engineer reasonably satisfactory to both the Owner and the Contractor.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 In addition to its obligations under Section 3.18, the Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Reserved

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. The Contractor shall immediately give the Owner and Architect notice of the emergency. This initial notice may be oral followed within five (5) days by a written notice setting forth the nature and scope of the emergency. Within fourteen (14) days of the start of the emergency, the Contractor shall give the Architect a written estimate of the cost and probable effect of delay on the progress of the Work.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Failure to Purchase Required Property Insurance. If the Contractor fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the

Contract Documents, the Contractor shall inform the Owner in writing prior to commencement of the Work. Upon receipt of notice from the Contractor, the Owner may delay commencement of the Work and may obtain insurance that will protect the interests of the Owner in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall not be equitably adjusted. In the event the Contractor fails to procure coverage, the Contractor waives all rights against the Owner to the extent the loss to the Contractor (including Subcontractors and Sub-subcontractors) would have been covered by the insurance to have been procured by the Contractor. The cost of the insurance shall be charged to the Contractor by a Change Order. If the Contractor does not provide written notice, and the Owner is damaged by the failure or neglect of the Contractor to purchase or maintain the required insurance, the Contractor shall reimburse the Owner for all reasonable costs and damages attributable thereto.

§ 11.1.5 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner and all additional insureds of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Owner: (1) the Owner, upon receipt of notice from the Contractor, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall not be equitably adjusted; and (3) the Contractor waives all rights against the Owner to the extent any loss to the Contractor, Subcontractors, and Sub-subcontractors would have been covered by the insurance had it not expired or been cancelled. If the Owner purchases replacement coverage, the cost of the insurance shall be charged to the Contractor by an appropriate Change Order. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Reserved

§ 11.2.3 Reserved

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.3.3 Limitation on the Owner's Waiver of Subrogation

South Carolina law prohibits the State from indemnifying a private party. Accordingly, and notwithstanding anything in the Agreement to the contrary, including but not limited to Sections 11.3.1, 11.3.2, and 11.4, the Owner cannot and

does not waive subrogation to the extent any losses are covered by insurance provided by the South Carolina Insurance Reserve Fund.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Contractors as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Contractor shall pay the Architect and Owner their just shares of insurance proceeds received by the Contractor, and by appropriate agreements the Architect and Owner shall make payments to their consultants and separate contractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Contractor shall notify the Owner of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Owner shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Owner does not object, the Contractor shall settle the loss and the Owner shall be bound by the settlement and allocation. Upon receipt, the Contractor shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Owner timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Contractor may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.5.3 If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the requirements specifically expressed in the Contract Documents, including inspections of work-in-progress required by all authorities having jurisdiction over the Project, it must, upon demand of the Architect or authority having jurisdiction, be uncovered for observation/inspection and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense unless the condition was caused by the Owner or a Separate Contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

- .1 If the Contractor, a Subcontractor, or anyone for whom either is responsible, uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2 unless otherwise provided in the Contract Documents.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

§ 13.1.1 The Contract, any dispute, claim, or controversy relating to the Contract, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules.

§ 13.1.2 This Contract is formed pursuant to and governed by the South Carolina Consolidated Procurement Code and is deemed to incorporate all applicable provisions thereof and the ensuing regulations.

§ 13.2 Successors and Assigns

The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole, or in part, without written consent of the other and then only in accordance with and as permitted by Regulation 19-445.2180 of the South Carolina Code of Regulations, as amended. If either party attempts

to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.3 Rights and Remedies

§ 13.3.1 Unless expressly provided otherwise, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.3.3 Notwithstanding Section 9.10.4, the rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses:

- 1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service;
- 3.5 Warranty
- 3.17 Royalties, Patents and Copyrights
- 3.18 Indemnification
- 7.5 Pricing Data and Audit
- A.3.2.2 Contractor's Liability Insurance (A101, Exhibit A)
- A.3.5 Performance and Payment Bond (A101, Exhibit A)
- 15.1.7 Claims for Listed Damages
- 15.1.8 Waiver of Claims Against the Architect
- 15.6 Dispute Resolution
- 15.6.5 Service of Process

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that they may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

- 1 Inspection, Special Inspections, and testing requirements, if any, as required by the ICC series of Building Codes shall be purchased by the Owner.
- 2 Contractor shall schedule and request inspections in an orderly and efficient manner and shall notify the Owner whenever the Contractor schedules an inspection. Contractor shall be responsible for the cost of inspections scheduled and conducted without the Owner's knowledge and for any increase in the cost of inspections resulting from the inefficient scheduling of inspections.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense and shall be deducted from future Applications of Payment.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due to the Contractor and unpaid under the Contract Documents shall bear interest only if and to the extent allowed by S.C. Code Ann. §§ 29-6-10 through 29-6-60. Amounts due to the Owner shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.

§ 13.6 Procurement of Materials by Owner

The Contractor accepts assignment of all purchase orders and other agreements for procurement of materials and equipment by the Owner that are identified as part of the Contract Documents. The Contractor shall, upon delivery, be responsible for the storage, protection, proper installation, and preservation of such Owner purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. Unless the Contract Documents specifically provide otherwise, all Contractor warranty of workmanship and correction of the Work obligations under the Contract Documents shall apply to the Contractor's installation of and modifications to any Owner purchased items.

§ 13.7 Interpretation of Building Codes

As required by S.C. Code Ann. § 10-1-180, OSE shall determine the enforcement and interpretation of all building codes and referenced standards on state buildings. The Contractor shall refer any questions, comments, or directives from local officials to the Owner and OSE for resolution.

§ 13.8 Minority Business Enterprises

Contractor shall notify Owner of each Minority Business Enterprise (MBE) providing labor, materials, equipment, or supplies to the Project under a contract with the Contractor. Contractor's notification shall be via the first monthly status report submitted to the Owner after execution of the contract with the MBE. For each such MBE, the Contractor shall provide the MBE's name, address, and telephone number, the nature of the work to be performed or materials or equipment to be supplied by the MBE, whether the MBE is certified by the South Carolina Office of Small and Minority Business Assistance, and the value of the contract.

§ 13.9 Illegal Immigration

Contractor certifies and agrees that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to Contractor and its subcontractors or sub-subcontractors; or (b) that Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." Contractor agrees to include in any contracts with its subcontractor's language requiring its subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractor's language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. (An overview is available at www.procurement.sc.gov)

§ 13.10 Drug-Free Workplace

The Contractor must comply with the Drug-Free Workplace Act, S.C. Code Ann. §§ 44-107-10, et seq. The Contractor certifies to the Owner that Contractor will provide a Drug-Free Workplace, as defined by S.C. Code Ann. § 44-107-20(1).

§ 13.11 False Claims

According to S.C. Code Ann. § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

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§ 13.12 Prohibited Acts

It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations. (§ 11-9-20) It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year. (§ 11-1-40)

§ 13.13 Open Trade (Jun 2015)

During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in S.C. Code Ann. § 11-35-5300.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 45 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires substantially all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents and the Contractor has stopped work in accordance with Section 9.7.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials, or otherwise fails to prosecute the Work, or any separable part of the Work, with the diligence, resources and skill that will ensure its completion within the time specified in the Contract Documents, including any authorized adjustments;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the Contract Documents and the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 If, after termination for cause, it is determined that the Owner lacked justification to terminate under Section 14.2.1, or that the Contractor's default was excusable, or that the termination for cause was affected by any other error, then Owner and Contractor agree that the termination shall be conclusively deemed to be one for the convenience of the Owner, and the rights and obligations of the parties shall be the same as if the termination had been issued for in Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause. The Owner shall give notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders; and
- .4 complete the performance of the Work not terminated, if any.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and any other adjustments otherwise set forth in the Agreement.

§ 14.4.4 Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the Owner's right to require the termination of a subcontract, or (ii) increase the obligation of the Owner beyond what it would have been if the subcontract had contained an appropriate clause.

§ 14.4.5 Upon written consent of the Contractor, the Owner may reinstate the terminated portion of this Contract in whole or in part by amending the notice of termination if it has been determined that:

- .1 the termination was due to withdrawal of funding by the General Assembly, Governor, or State Fiscal Accountability Authority or the need to divert project funds to respond to an emergency as defined by Regulation 19-445.2110(B) of the South Carolina Code of Regulations, as amended;

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- .2 funding for the reinstated portion of the Work has been restored;
- .3 circumstances clearly indicate a requirement for the terminated Work; and
- .4 reinstatement of the terminated work is advantageous to the Owner.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. A voucher, invoice, payment application or other routine request for payment that is not in dispute when submitted is not a Claim under this definition. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Reserved

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Architect. Such notice shall include sufficient information to advise the Architect and other party of the circumstances giving rise to the Claim, the specific contractual adjustment or relief requested and the basis of such request. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later except as stated for adverse weather days in Section 15.1.6.2. By failing to give written notice of a Claim within the time required by this Section, a party expressly waives its Claim.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Architect is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, including any administrative review allowed under Section 15.6, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Architect's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Claims for an increase in the Contract Time shall be based on one additional calendar day for each full calendar day that the Contractor is prevented from working.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

- .1 Claims for adverse weather shall be based on actual weather conditions at the job site or other place of performance of the Work, as documented in the Contractor's job site log.

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- 2 For the purpose of this Contract, a total of five (5) days per calendar month (non-cumulative) shall be anticipated as "adverse weather" at the job site, and such time will not be considered justification for an extension of time. If, in any month, adverse weather develops beyond the five (5) days, the Contractor shall be allowed to claim additional days to compensate for the excess weather delays only to the extent of the impact on the approved construction schedule and days the Contractor was already scheduled to work. The remedy for this condition is for an extension of time only and is exclusive of all other rights and remedies available under the Contract Documents or imposed or available by law.
- 3 The Contractor shall submit monthly with their pay application all Claims for adverse weather conditions that occurred during the previous month. The Architect shall review each monthly submittal in accordance with Section 15.5 and inform the Contractor and the Owner promptly of its evaluation. Approved days shall be included in the next Change Order issued by the Architect. Adverse weather conditions not claimed within the time limits of this Subparagraph shall be considered to be waived by the Contractor. Claims will not be allowed for adverse weather days that occur after the scheduled (original or adjusted) date of Substantial Completion.

§ 15.1.6.3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the work, and the number of days increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

§ 15.1.6.4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

§ 15.1.7 Claims for Listed Damages

Notwithstanding any other provision of the Contract Documents, including Section 1.2.1, but subject to a duty of good faith and fair dealing, the Contractor and Owner waive Claims against each other for listed damages arising out of or relating to this Contract.

§ 15.1.7.1 For the Owner, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) costs suffered by a third party unable to commence work, (vi) attorney's fees, (vii) any interest, except to the extent allowed by Section 13.5 (Interest), (viii) lost revenue and profit for lost use of the property, (ix) costs resulting from lost productivity or efficiency.

§ 15.1.7.2 For the Contractor, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) attorney's fees, (vi) any interest, except to the extent allowed by Section 13.5 (Interest); (vii) unamortized equipment costs; and, (viii) losses incurred by subcontractors for the types of damages the Contractor has waived as against the Owner. Without limitation, this mutual waiver is applicable to all damages due to either party's termination in accordance with Article 14.

§ 15.1.7.3 Nothing contained in this Section shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. This mutual waiver is not applicable to amounts due or obligations under Section 3.18 (Indemnification).

§ 15.1.8 Waiver of Claims Against the Architect

Notwithstanding any other provision of the Contract Documents, including Section 1.2.1, but subject to a duty of good faith and fair dealing, the Contractor waives all claims against the Architect and any other design professionals who provide design and/or project management services to the Owner, either directly or as independent contractors or subcontractors to the Architect, for listed damages arising out of or relating to this Contract. The listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) attorney's fees, (vi) any interest; (vii) unamortized equipment costs; and, (viii) losses incurred by subcontractors for the types of damages the Contractor has waived as against the Owner. This mutual waiver is not applicable to amounts due or obligations under Section 3.18 (Indemnification).

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§ 15.2 Reserved

§ 15.3 Reserved

§ 15.4 Reserved

§ 15.5 Claim and Disputes - Duty of Cooperation, Notice, and Architects Initial Decision

§ 15.5.1 Contractor and Owner are fully committed to working with each other throughout the Project to avoid or minimize Claims. To further this goal, Contractor and Owner agree to communicate regularly with each other and the Architect at all times notifying one another as soon as reasonably possible of any issue that if not addressed may cause loss, delay, and/or disruption of the Work. If Claims do arise, Contractor and Owner each commit to resolving such Claims in an amicable, professional, and expeditious manner to avoid unnecessary losses, delays, and disruptions to the Work.

§ 15.5.2 Claims shall first be referred to the Architect for initial decision. An initial decision shall be required as a condition precedent to resolution pursuant to Section 15.6 of any Claim arising prior to the date of final payment, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered, or after all the Architect's requests for additional supporting data have been answered, whichever is later. The Architect will not address Claims between the Contractor and persons or entities other than the Owner.

§ 15.5.3 The Architect will review Claims and within ten days of the receipt of a Claim (1) request additional supporting data from the claimant or a response with supporting data from the other party or (2) render an initial decision in accordance with Section 15.5.5.

§ 15.5.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished or (3) advise the Architect that all supporting data has already been provided. Upon receipt of the response or supporting data, the Architect will render an initial decision in accordance with Section 15.5.5.

§ 15.5.5 The Architect will render an initial decision in writing; (1) stating the reasons therefor; and (2) notifying the parties of any change in the Contract Sum or Contract Time or both. The Architect will deliver the initial decision to the parties within two weeks of receipt of any response or supporting data requested pursuant to Section 16.4 or within such longer period as may be mutually agreeable to the parties. If the parties accept the initial decision, the Architect shall prepare a Change Order with appropriate supporting documentation for the review and approval of the parties and the Office of State Engineer. If either the Contractor, Owner, or both, disagree with the initial decision, the Contractor and Owner shall proceed with dispute resolution in accordance with the provisions of Section 15.6.

§ 15.5.6 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.6 Dispute Resolution

§ 15.6.1 If a Claim is not resolved pursuant to Section 15.5 to the satisfaction of either party, both parties shall attempt to resolve the dispute at the field level through discussions between Contractor's Representative and Owner's Representative. If a dispute cannot be resolved through Contractor's Representative and Owner's Representative, then the Contractor's Senior Representative and the Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than twenty-one (21) days after such a request is made, to attempt to resolve such dispute. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute. The meetings required by this Section are a condition precedent to resolution pursuant to Section 15.6.2.

§ 15.6.2 If after meeting in accordance with the provisions of Section 15.6.1, the Senior Representatives determine that the dispute cannot be resolved on terms satisfactory to both the Contractor and the Owner, then either party may submit the dispute by written request to South Carolina's Chief Procurement Officer for Construction (CPOC). Except as otherwise provided in Article 15, all Claims, or controversies relating to the Contract shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the

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South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or in the absence of jurisdiction a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the State regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution.

§ 15.6.3 If any party seeks resolution to a dispute pursuant to Section 15.6.2, the parties shall participate in non-binding mediation to resolve the Claim. If the Claim is governed by Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws as amended and the amount in controversy is \$100,000.00 or less, the CPOC shall appoint a mediator, otherwise, the mediation shall be conducted by an impartial mediator selected by mutual agreement of the parties, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.

§ 15.6.4 Without relieving any party from the other requirements of Sections 15.5 and 15.6, either party may initiate proceedings in the appropriate forum prior to initiating or completing the procedures required by Sections 15.5 and 15.6 if such action is necessary to preserve a claim by avoiding the application of any applicable statutory period of limitation or repose.

§ 15.6.5 Service of Process

Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any Claims, or controversies relating to the Contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided for the Contractor's Senior Representative or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

ARTICLE 16 PROJECT-SPECIFIC REQUIREMENTS AND INFORMATION

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