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EXECUTIVE DIRECTOR

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## Decision

**Matter of:** Request for Resolution of a Contract Controversy by South Carolina  
Department of Motor Vehicles

**Case No.:** 2023-131

**Posting Date:** June 29, 2023

**Contracting Entity:** South Carolina Department of Motor Vehicles

**Description:** Digitized License Plate Production & Distribution

## AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4230(4). This decision is based on materials in the procurement file and applicable law and precedents.

## BACKGROUND

This issue comes before the CPO through a request for resolution by the South Carolina Department of Motor Vehicles (DMV) of a contract controversy between it and the 3M Company. (3M) (Attachment 1) This contract was the result of a sole source procurement conducted under Section 11-35-1560. The contract was memorialized in a Memorandum of Agreement (MOA) countersigned on January 3, 2023. (Attachment 2)

The term of the MOA was set forth in the following clause:

The agreement period will begin on **February 4, 2023** and end **February 3, 2024** and will have no options for renewal. Minimum contract length is six (6) months, after which time, contract may be cancelled or terminated without cause or convenience with a one hundred eighty (180) days written notice to Contractor.

SCDMV shall only procure supplies/services listed under this MOA from 3M for the duration of this agreement.

(emphasis added)

This indicates that the minimum contract term would expire on or about August 3, 2023. On March 10, 2023, DMV notified 3M that it was providing the 180-day notice required to exercise its option to terminate the contract on September 15, 2023. 3M responded that, in accordance with its interpretation of the contract, the 180-day notification cannot be delivered until after the initial six-month term:

Please see attached MOA fully signed by both 3M and South Carolina. It is effect for six month after which time, the State is obligated to give a 180 day notice to cancel - the Amendment seeks to end the agreement prior to that. Let me know if you would like to discuss.

[Email from Joy Stahosky, dated Monday, March 13, 2023, 8:44 AM] (Attachment 3)

The parties exchanged several proposals that included various modifications to the contract, including a November 1, 2023, termination date, but were unable to resolve this issue and move toward an amicable termination of the contract.

## **DISCUSSION**

“The cardinal rule of contract interpretation is to give legal effect to the parties’ intention as determined by the contract language.” *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). Assuming there was a purpose for including every clause in the contract, preference should be given to an interpretation that does not render the clause meaningless or without reason. *See Stevens Aviation, Inc. v. DynCorp Intern. LLC*, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014). Also, the appropriate interpretation depends, in part, on the context in which it is set. The clause in question provides an option to terminate the contract prior to its maximum term:

The agreement period will begin on **February 4, 2023** and end **February 3, 2024** and will have no options for renewal. Minimum contract length is six (6) months, after which time, contract may be cancelled or terminated without cause or convenience with a one hundred eighty (180) days written notice to Contractor.

Under the plain language, the minimum term of this contract is 6 months, and the maximum term is 12 months. The contract started on February 4, 2023. The minimum contract term ends on August 3, 2023, and the maximum contract term ends on February 3, 2024.

On March 10, 2023, DMV gave 3M more than 180-days' notice and informed 3M that it intended to terminate the contract effective September 15, 2023. DMV argues that its notice was proper because it could have exercised the option to terminate the contract at any time during its term so long as the termination date is after the minimum contract term. This interpretation is supported by the plain language of the contract. The agreement requires the contract to have a minimum term of six months but places no restriction on when the 180-days' termination notice must be given.

3M argues, however, that notice cannot be given until after the minimum contract period. If this interpretation were adopted, the earliest date the State could give the required 180-day notice that it intended to terminate the contract would be August 3, 2023, meaning the earliest the contract could be terminated would be January 30, 2024. This is only 4 days prior to the maximum termination date. This interpretation would essentially convert a "six-month minimum" contract to a "361-day minimum contract," rendering the six-month minimum clause meaningless and of no effect. *Stevens Aviation*, 407 S.C. at 417, 756 S.E.2d at 153. This would also render the option to terminate early meaningless.

Finally, the law seeks to avoid interpretations that lead to absurd results. *Koon v. Fares*, 379 S.C. 150, 155, 666 S.E.2d, 230, 233 (2008) ("An interpretation which establishes the more reasonable and probable agreement of the parties should be adopted while an interpretation leading to an absurd result should be avoided."). It would be absurd that, despite the contract stating it was for a minimum of six months, the parties actually intended to have a contract that was a minimum of 361 days and a maximum of 365 days—and the 361-day minimum would require notice given exactly on August 3, 2023.<sup>1</sup>

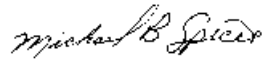
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<sup>1</sup> The CPO believes the plain language supports DMV's interpretation. Nevertheless, to the extent the language is ambiguous, any ambiguity would be construed against the drafter, 3M. *Southern Atlantic Financial Services, Inc. v. Middleton*, 349 S.C. 77, 84, 562 S.E.2d 482, 486 (Ct. App. 2002).

DMV properly notified 3M that the contract will terminate on September 15, 2023.

During negotiations, 3M offered several modifications to the contract. These suggested modifications were never incorporated into the contract and the terms of the MOA signed by the State on January 3, 2023, remains unchanged and in effect until the contract terminates on September 15, 2023.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

Attachment 1

*Henry McMaster*  
Governor



*Kevin A. Shwedo*  
Executive Director

*State of South Carolina*  
*Department of Motor Vehicles*

June 13, 2023

Michael B. Spicer  
1201 Main Street  
Suite 600  
Columbia, SC 29201

RE: Digitized License Plate Production & Distribution contract extension with 3M via Sole Source– “Request for Resolution”

Dear Mr. Spicer,

The South Carolina Department of Motor Vehicles (SCDMV) is requesting resolution of a contract controversy regarding the above referenced contract. Despite our best efforts, the agency and Contractor, 3M, have not been able to come to an agreement on the following issues:

SCDMV and 3M entered into a Memorandum of Agreement (MOA #1) to continue services provided under contract# 4400007707 via a sole source procurement (**Exhibit 1**). MOA #1 had effective dates of February 4, 2022, through February 3, 2023. MOA #1 allowed SCDMV the option to terminate MOA #1 for any reason, with a ninety (90) day written notice to the Contractor, 3M. The reason MOA #1 was needed was to ensure the SCDMV could continue printing license plates for the citizens of South Carolina until solicitation # 5400019885 was awarded.

On March 7, 2022, an Intent to Award was issued for the new license plate contract (solicitation # 5400019885, contract # 4400030381). The March 7, 2022, Intent to Award named Intellectual Technology Inc (ITI) as the awardee and 3M, the incumbent, was not selected. 3M elected to protest. That protest was resolved by the Procurement Panel on September 20, 2022, and the Intent to Award (ITA) was posted on October 25, 2022.

On January 3, 2023, an MOA (hereinafter, “MOA #2”) was executed between SCDMV and 3M for the continuation of services (**Exhibit 2**). Due to the time taken up by the protest filed by 3M, SCDMV had to enter into MOA #2 with 3M for continuation of services to allow for implementation for the transition to the new license plate contractor. 3M was aware at the time the parties entered into MOA #2 that they had not been awarded the new plate contract and were not likely to win the protest.

When the draft of MOA #2 was sent over to 3M, it had the same exact language as MOA #1 with regard to termination of the MOA. However, 3M changed the language to the following (highlighted in yellow):

Henry McMaster  
Governor



Kevin A. Strwedo  
Executive Director

## State of South Carolina

### Department of Motor Vehicles

The agreement period will begin on **February 4, 2023** and end **February 3, 2024** and will have no options for renewal. Minimum contract length is six (6) months, after which time, contract may be cancelled or terminated without cause or convenience with a one hundred eighty (180) days written notice to Contractor. SCDMV shall only procure supplies/services listed under this MOA from 3M for the duration of this agreement.

Although 3M marked other changes in this draft of MOA #2 with strike through and underline marks (to indicate additions and removals), they did not mark the changes to the termination clause in any way (**Exhibit 3**). Therefore, 3M made changes to the draft of MOA #2 and failed to bring SCDMV's attention to the changes. Despite this failure, SCDMV noticed the changes in the termination clause. In evaluating the meaning of those changes, SCDMV interpreted the sentence to provide a minimum contract length of six months and allow termination of the contract at any point after the initial six months, as long as SCDMV provided 3M with a 180-day advanced notification. For example, since the MOA #2 was entered into on February 4, 2023, the initial six months would run through August 4, 2023. Under SCDMV's interpretation, MOA #2 could be terminated at any time between August 5, 2023, and February 3, 2024, as long as SCDMV provided at least a 180-day notice of the termination date to 3M.

On March 10, 2023, SCDMV sent a written notice to 3M, notifying them that the final contract date would be September 15, 2023. 3M responded to SCDMV that SCDMV was not allowed to terminate the contract on September 15, 2023, because under MOA #2 SCDMV was not allowed to provide any notice of cancellation until after the initial 6-month period had ended (**Exhibit 4**). Further, it is 3M's position that with August 4, 2023, being the earliest date that SCDMV can provide the 180-day notice of cancellation to 3M for MOA #2, then the earliest possible date MOA #2 can be terminated is February 1, 2024. SCDMV has expressed to 3M on several occasions that their interpretation of this sentence does not make sense because the term for the entire contract was for one year; thus, the sentence at issue would only allow for termination of MOA #2 up to two days earlier than when it is already scheduled to expire.

On March 28, 2023, SCDMV staff and 3M staff met to try to resolve the discrepancies. During that meeting, SCDMV requested 3M send over some proposed resolutions in an attempt to resolve this issue for all parties involved (**Exhibit 5**), this exhibit is not submitted to prove any liability for or invalidity of either parties claim in this action, but merely to demonstrate that the parties were trying to resolve the matter at issue with regard to MOA #2). As of March 28, 2023, SCDMV had committed to a go live date of September 18, 2023, with the new license plate contractor.

Since March, the SCDMV and 3M have gone back and forth several times attempting to resolve this matter, but have been unable to agree to a resolution. **Exhibit 6** is the final letter received from 3M (highlights, bolding, and italics all in the original). In response to Exhibit 5, on June 6, 2023, SCDMV reached out to 3M and expressed the following:

1. The Service Level Agreement for South Carolina Contract # 4400007707 stated 3M has five (5) days to complete all plate files after they are transmitted to 3M. Despite this requirement in the SLA, 3M was asking for thirteen (13) days to complete production and mailing of the final daily plate file, which would

*Henry McMaster*  
Governor



*Kevin A. Skwedo*  
Executive Director

*State of South Carolina*  
*Department of Motor Vehicles*

violate the SLA by eight (8) days. SCDMV needed clarification from 3M as to why an additional 8 days beyond the normal SLA would be needed to complete the final daily plate file.

2. Additionally, MOA #2 states, "SCDMV shall only procure supplies/services listed under this MOA from 3M for the duration of this agreement." To avoid disruption in producing plates for the citizens of South Carolina, the SCDMV would like their new vendor, ITI, to be able to begin production on October 24, 2023, shortly after the SLA requires all seed numbers from the October 18, 2023, daily plate file to be returned to SCDMV from 3M. This production would be for any daily plate files created on and after October 19, 2023.

**Exhibit 7** reflects 3M's response to SCDMV's above request. In short, although 3M has expressed that it is willing to terminate MOA #2 with a termination date of November 1, 2023, 3M consistently refuses to allow for any license plate production by the new license plate vendor for the daily plate files created on or after October 19, 2023, until after November 1, 2023. SCDMV cannot disrupt the state's plate production from October 19, 2023, until November 1, 2023. Ensuring a lack of disruption in the state's plate production is the reason the SLA set forth a five-day production and mailing timeframe for all license plates.

In short, it appears that 3M intentionally included language in MOA #2 that could be purposely interpreted at least two different ways, one that appears to make sense within the remaining portions of the MOA and a second that is a forced construction and does not appear to make sense even if it is mathematically possible. Further, 3M has proactively communicated that they cannot and will not comply with the five-day production and mailing timeframe in the SLA for purposes of winding down their contract with SCDMV. As a result of both of these issues, 3M is making it extremely difficult for SCDMV to exit the contract without causing significant disruption in services to South Carolina's citizens.

SCDMV requests your assistance in resolving both of these issues as soon as possible. Our hope is that with your assistance we can ensure a smooth transition between license plates produced by 3M and license plates produced by ITI, with no disruption in production and, therefore, no negative impact on the citizens of South Carolina that rely on license plates to travel the roadways.

Should any additional or clarification information be needed regarding this matter and our request for assistance in resolving these issues, I can be reached at 803-896-7858 or at LaTasha.Terry@scdmv.net. Thank you for your consideration.

Sincerely,

*LaTasha Terry*  
LaTasha Terry MBA, CPPO, NIGP-CPP  
Procurement Chief

Attachment 2

**SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES**

**MEMORANDUM OF AGREEMENT LICENSE  
PLATE PRODUCTION SERVICES**

This agreement is entered into between the **3M Company**, hereinafter referred to as "Contractor," and the **South Carolina Department of Motor Vehicles**, hereinafter referred to as 'SCDMV' or "Customer."

The agreement period will begin on **February 4, 2023** and end **February 3, 2024** and will have no options for renewal. Minimum contract length is six (6) months, after which time, contract may be cancelled or terminated without cause or convenience with a one hundred eighty (180) days written notice to Contractor. SCDMV shall only procure supplies/services listed under this MOA from 3M for the duration of this agreement.

WHEREAS, the Customer desires to continue to receive license plate production services as specified in previous South Carolina Contract #4400007707, which were continued in the previous Memorandum Of Agreement for License Plate Production Services, with a period of February 4, 2021 through February 3, 2022. All terms, conditions, and requirements of South Carolina Contract #4400007707 will remain in effect for this Memorandum of Agreement along with the addition of the following clauses.

**Ownership of Materials and Goods.** The Parties agree that upon termination or expiration of Contract 4400007707, it will be the State's obligation to purchase from Contractor, up to three (3) months' worth, based on the State's historical usage, of all remaining finished and unfinished materials to include preprinted license plate sheeting, aluminum substrate, and finished license plates and registrations that the Contractor purchased and manufactured in the fulfillment of this Contract.

**Delays Beyond Control.** Neither party will be liable to the other party for any failure or delay in performance caused by reasons beyond such party's reasonable control, and such failure or delay will not constitute a material breach of this Agreement. Examples of such causes include, but are not limited to, (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of either party.



It is agreed that the cost of all items in the above referenced contract and previous Memorandum of Agreement for License Plate Production Services will be as specified below.

3M ID Description	Current Price in effect to 2/3/2023	Price effective 2/4/2023 to 2/3/2024
HDSCDPD SC HD PLATE DIST (25/BOX) B/O EA (6010003653)	0.37	.407
HDSCDPD SC HD PLATE DIST (50/BOX) B/O EA (6010002593)	0.22	.242
HDSCDPD SC HD PLATE DIST (75/BOX) B/O EA (6010003652)	0.16	.176
HDSCDPD SC PLATE DISTRIB (BO) EA (6010003651)	0.14	.154
<b>Postage</b>		
HDSCMC MP SC MC MAIL HD PLTS(BO)EA (6010002997)	3.89	3.89
HDSCMP SC MAILED HD PLATE(BO) EA (6100002336)	4.05	4.05
<b>MC plates (manufacture and alum price)</b>		
HDSCREG1-MC MC PLATE (PHASE 1) 4"X7" EA (7010390261)	3.41	3.751
HDSCREG2 M/C MC PLATE (REISSUE) 4"X7" EA (7010390262)	3.12	3.432
<b>Passenger plates (manufacture and alum price)</b>		
HDSCREG1 HD REG PASS PLATE 6INX12IN EA (7010391316)	3.50	3.85
HDSCREG2 HD REISSUE PASS PLATE 6"X12"EA (7010345633)	3.21	3.531
HDSCSPEC1 SPEC PASS PLT (HAND DELIVERED) (6010003650)	3.76	4.136
HDSCSPEC1 SPEC PSS PLT (PHS 1) 6"X12" EA (7010344596)	3.64	4.004
HDSCSPEC2 SPEC PAS PLT (REISS) 6"X12" EA (7010318254)	3.35	3.685
<b>Registration and decals - Forms with one sticker</b>		
SC WHT ID REGISTR FORM 1 STKR EA (7010345580)	0.29	.319
VP9000SC WHT ID REGISTR RENEWAL FORM EA (7100153373)	0.29	.319
VP9005SC Y-GRN ID REGISTR FORM 1 STKR EA (7010391323)	0.29	.319
VP9009SC L-YLW ID REGISTR FORM 1 STKR EA (7010345637)	0.29	.319

SIGNATURES

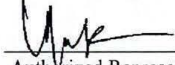
As witness herein, the parties hereto have affixed their signatures and seals.

Contractor

3M COMPANY

Maria Paraschou

\_\_\_\_\_  
Authorized Representative (print name)

  
\_\_\_\_\_  
Authorized Representative (signature)

November 15, 2022

\_\_\_\_\_  
Date

Customer

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES

Adam Wagnblas Director of Administration

\_\_\_\_\_  
Authorized Representative (print name)

  
\_\_\_\_\_  
Authorized Representative (signature)

1.3.23

\_\_\_\_\_  
Date

Attachment 3

**Terry, LaTasha A**

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**From:** Joy Stahosky <jlstahosky@mmm.com>  
**Sent:** Monday, March 13, 2023 8:44 AM  
**To:** Terry, LaTasha A  
**Cc:** Ford, Stephanie L; Farrell, Steven R; John Macklin  
**Subject:** RE: FY 23 License Plate Production Change Order 2  
**Attachments:** Change Order 2.docx; 3M executed MOA 020422-020324.pdf

**CAUTION: EXTERNAL EMAIL!** Ensure you trust this sender and validate attachments or links before opening them.

Good morning, La Tasha,

Please see attached MOA fully signed by both 3M and South Carolina. It is effect for six month after which time, the State is obligated to give a 180 day notice to cancel – the Amendment seeks to end the agreement prior to that. Let me know if you would like to discuss.

The agreement period will begin on **February 4, 2023** and end **February 3, 2024** and will h renewal. Minimum contract length is six (6) months, after which time, contract may be cancelled without cause or convenience with a one hundred eighty (180) days written notice to Contractor. ; procure supplies/services listed under this MOA from 3M for the duration of this agreement.

Regards,

Joy



Joy Stahosky | Contract Specialist  
3M Transportation Safety Division  
3M Center, 223-35-33 | St. Paul, MN 55144-1000  
Office: 651.381.2837  
[jlstahosky@mmm.com](mailto:jlstahosky@mmm.com) | [www.3M.com](http://www.3M.com)  
[contractmanagementteam@mmm.com](mailto:contractmanagementteam@mmm.com)

Great leadership isn't about control. It's about **empowering people**.

-Brigitte Hyacinth

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**From:** Terry, LaTasha A <LaTasha.Terry@scdmv.net>  
**Sent:** Friday, March 10, 2023 2:02 PM  
**To:** Joy Stahosky <jlstahosky@mmm.com>  
**Cc:** Ford, Stephanie L <Stephanie.Ford@scdmv.net>; Farrell, Steven R <Steven.Farrell@scdmv.net>

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Contract Controversy Appeal Notice (Revised June 2019)*

The South Carolina Procurement Code, in Section 11-35-4230, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and must be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or legal.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILING FEE: Pursuant to Proviso 111.1 of the 2022 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. *[The Request for Filing Fee Waiver form is attached to this Decision.]* If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel  
Request for Filing Fee Waiver  
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

- 
1. What is your/your company's monthly income? \_\_\_\_\_
  2. What are your/your company's monthly expenses? \_\_\_\_\_
  3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public of South Carolina

\_\_\_\_\_  
Requestor/Appellant

My Commission expires: \_\_\_\_\_

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For official use only: \_\_\_\_\_ Fee Waived      \_\_\_\_\_ Waiver Denied

\_\_\_\_\_  
Chairman or Vice Chairman, SC Procurement Review Panel

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Columbia, South Carolina

**NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.**