

SOUTH CAROLINA ASPHALT PAVEMENT ASSOCIATION, INC.

MEMBERSHIP APPLICATION AND REMOVAL POLICY

PURPOSE

The South Carolina Asphalt Pavement Association, Inc. (the “*Association*”) has established this Membership Application and Removal Policy, as amended from time to time (the “*Policy*”), to develop criteria for Membership in the Association on a reasonable and nondiscriminatory basis. Capitalized terms not otherwise defined herein shall have the meaning ascribed as provided in the Bylaws of the Association; in the event of conflict between the Bylaws and this Policy, the Bylaws shall control. This Policy is intended to ensure that Membership in the Association is granted to all sole proprietors, partnerships, corporations and other entities who meet the professional and ethical standards enumerated herein. The Policy is further promulgated to provide due process to applicants and current Members prior to denial or removal of Membership.

The purpose of this Policy is not intended to and shall not operate to inhibit competition. Please refer to the Association’s Antitrust Policy and Guidelines for more information regarding the Association’s standards on legal compliance with antitrust law.

MEMBERSHIP APPLICATION

The Association’s Board of Director’s (the “*Board*”), or its duly authorized delegate, shall have sole discretion to create a Membership application form for each category of membership, which the may be amended from time to time. An applicant for Membership in the Association must submit an application on the appropriate form corresponding to the type of Membership sought. There are two types of membership: *Contractor Membership* and *Associate Membership*. The decision to admit or deny Membership to the Association shall be made in accordance with the voting requirements provided in the Bylaws and may be based on the following criteria.

A. Disqualifying Membership Criteria

An application for Membership may be denied, or a Member may be removed, based on any of the following criteria, actions, or events:

1. A record of official sanctions involving unprofessional conduct of the applicant or an owner, director, or officer of the applicant (as defined below);
2. A finding of Association policy violation and/or violation of other membership duties in any other similar association within the past three years;
3. An unpaid civil, criminal, or arbitration award, judgment or order, or an unpaid financial obligation to any other association;
4. The filing by applicant or with respect to applicant of a petition or other pleading seeking relief under any bankruptcy law or other law for the benefit of debtors within the past three

years;

5. The transfer or assignment by applicant or with respect to applicant of substantially all of its assets for the benefit of one or more creditors within the past three years;
6. A finding of a materially false, incomplete, or misleading representations made by or on behalf of applicant in connection with the Association or an application for Membership in the Association;
7. Failure of an Associate Member to maintain the “materially” requirement as contemplated in the Bylaws of the Association, as interpreted by the Board and contemplated in this policy.
8. The failure of the applicant to affirm the applicant’s intention to comply with the Association Bylaws, as amended and restated from time to time, and all Association policies and procedures.
9. A change in this policy or the Bylaws that eliminates an Associate Member category, example, or illustration, or more narrowly interprets or construes this policy and the Bylaws, as contemplated in and permitted by this policy and the Bylaws.

For purposes of this Policy, a “*record of official sanctions involving unprofessional conduct*” shall mean the following:

1. Judgments against the applicant or an owner, director, or officer of the applicant within the past three (3) years of violation of (a) civil rights laws; (b) business licensing laws; or (c) other laws prohibiting unprofessional conduct rendered by the courts or other lawful authorities; and
2. Criminal convictions of or a plea of nolo contendere by the applicant or an owner, director, or officer of the applicant of a crime if (a) the crime was punishable by death or imprisonment in excess of one year; and (b) no more than ten years have elapsed since the date of the conviction or plea or the release of the applicant or owner, director or officer of the applicant from the confinement imposed for that conviction or plea, whichever is the later date.

A provisional Membership may be granted in instances where such a civil or criminal action is pending that would meet the above definition upon a judgment or conviction, provided all other membership criteria have been satisfied. The Board may reconsider Membership status of an applicant when all pending civil and criminal actions have been resolved, but an applicant’s provisional Membership shall automatically be revoked upon the judgment, conviction or plea of nolo contendere meeting the definition above. Provisional Members shall be subject to all privileges and obligations of other Members in the Association.

B. Additional Criteria for Contractor Membership

An applicant for a Contractor Membership must supply evidence, satisfactory to the Board or its duly authorized delegate, of active operation of one or more plants in South Carolina, which

manufacture asphalt-paving materials, as described in the Bylaws.

C. Additional Criteria for Associate Membership

An applicant for an Associate Membership must supply evidence, satisfactory to the Board or its duly authorized delegate, that the applicant “*materially*” manufactures, produces, engages in and/or provides any of the following, with such additional examples, illustrations, and non-binding guidance as provided below, in addition to the payment of annual fees for such membership as provided herein:

(1) Material Suppliers.

Products and services materially related to the asphalt industry, and significant facilities and operations commonly found in the asphalt industry, to which a Material Supplier might manufacture, produce, engage in and/or provide as contemplated by this policy, include, but may not be limited to:

- a. Asphalt cement, or
- b. Aggregate.

The cost of an Associate Membership for a Material Supplier is currently \$5,000 per year of membership, and includes such rights, preferences, and limitations as designated by the Board from time to time.

(2) Other Suppliers.

Examples of items that Other Suppliers might manufacture, produce, engage in and/or provide in relation to the asphalt industry include, but are not limited to:

- a. Equipment Dealer or Manufacturer;
- b. Other Bituminous and Related Chemical Suppliers
- c. Safety and Traffic Control Devices and Equipment;

The cost of an Associate Membership for an Equipment Supplier is currently \$1,750 per year of membership, and includes such rights, preferences, and limitations as designated by the Board from time to time.

(3) Subcontractors.

Examples to which an applicant may qualify as a Subcontractor hereunder include, but may not be limited to:

- a. Safety and Traffic Control Contractor;
- b. Milling Contractor;

- c. Pavement Marking Contractor
- d. Erosion Control Contractor; or
- e. Guardrail Contractor

The cost of an Associate Membership for a Subcontractor is currently \$1,750 per year of membership, and include such rights, preferences, and limitations as designated by the Board from time to time.

(4) Support Industries.

Support industries preferably include the provision of any specific service that, in some respect, is unique and necessary for the asphalt industry. Generic professional services that relate to any manufacturing industry may not qualify, unless such applicant demonstrates a significant focus of practice related to the asphalt industry. Significant focus of practice related to the asphalt industry might include evidence related to number of hours, staff, or gross revenues related to the provision of services to the asphalt industry. Examples of activities and services to which an applicant may qualify as a Subcontractor as contemplated in this policy include, but may not be limited to:

- a. Engineering Firms;
- b. Contract bonds and construction insurance services; or
- c. Accounting Firms.

The cost of an Associate Membership for Support Industries is currently \$1,750 per year of membership, and includes such rights, preferences, and limitations as designated by the Board from time to time.

The term “*materially*” as used above and in Article III, Section 1.B. of the Bylaws contemplates that the applicant will have an office in South Carolina to carry out the above-described business, shall hold itself out to the public as being actively engaged in the above-described business, and shall actively seek such business opportunities in its ordinary course of business. The term “materially” does not contemplate that the applicant must devote all of its time to the above-described business or derive any particular percentage of its income from such business, nor does it contemplate that the applicant be engaged in no other business endeavors. The term “materially” includes the expectation that each Associate Member maintain that requisite level of activity related to the asphalt industry from year to year in order to remain in such Associate Member status.

When a question arises as to whether an applicant is “materially” engaged in the above-described business, a duly authorized representative of the applicant shall be given the opportunity to present evidence concerning the actual and intended scope of its business activities. The Board of the Association, in its reasonable discretion, after affording an opportunity of the applicant to support its application through all manner of evidence and written submissions, shall make the final determination in good faith as to whether the facts and circumstances of a particular applicant, and its business, meets the standard of “materially,” as contemplated herein.

DENIAL OF A MEMBERSHIP APPLICATION AND REMOVAL OF MEMBERS

All applicants denied Membership and all current Members removed from Membership are entitled to due process, as provided herein, prior to any final decision of the Board or its duly authorized delegate.

The grounds for a Membership denial or removal shall be clear and not speculative. Whenever an application for Membership is denied or a Member is removed, the Board or its duly authorized delegate shall maintain a full record of the proceedings, sufficiently detailed to demonstrate the specific basis or bases of Membership denial or removal. Such record shall be preserved by the Board and used for guidance in other future Membership decisions.

A. Application Review

The Board shall admit or deny a Membership application in accordance with the voting requirements provided in the Bylaws and applicable law. Any such applicant proposed to be admitted or denied Membership shall be entitled to at least ten (10) days notice in writing by mail of the meeting at which such application for Membership is to be voted upon and shall be entitled to appear before the Board and be heard at such meeting. In the event of a vote denying a Membership application, the Board shall provide the applicant the record of the proceeding. The applicant shall be entitled to re-apply for Membership at any time subsequent to its receipt of the proceeding record in accordance with the then-current policies of the Board.

B. Member Removal

The Board may, at its discretion, by affirmative vote of three-fourths (3/4ths) of all of the Directors, remove any Contractor Member or Associate Member with or without cause, at any duly called meeting of the Board of Directors where a quorum is present. Any such Contractor Member or Associate Member proposed to be removed shall be entitled to at least ten (10) days notice in writing by mail of the meeting at which such removal is to be voted upon and shall be entitled to appear before the Board and be heard at such meeting. In the event of such removal of a Member, the Member shall likewise be removed and relieved of all rights as a Member and/or Director (as applicable) of the Association.

A prior Member may only be reinstated to Membership by application as a new Member and upon payment of all dues and other charges in arrears. The application shall be considered as described above.

AMENDMENT/INTERPRETATION

Subject to the Internal Revenue Code of 1986, as amended and other applicable federal and state laws, the Board of the Association has sole and absolute authority and discretion to interpret, amend, modify or terminate this Membership Application and Removal Policy.

The Board expressly reserves the right to amend, modify, more narrowly construe, and/ or eliminate any Associate Member category, example or illustration thereof, as contemplated in this policy. Additionally, the Board may add or expand to such other categories, examples, and illustrations as it determines in its sole discretion. Any change to this policy that might eliminate any person from being eligible to be an Associate Member shall only take effect upon the conclusion of such period of time, for which that person has paid any annual fees to be an Associate Member. Under such circumstances, that person may apply under the then-current guidelines for Associate Membership in order to remain an Associate Member.