



**Washington State  
Department of Transportation**

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W. Michael Anderson  
Assistant Secretary of Marine Operations  
Executive Director

**DATE: MAY 4, 2007**

**TO: INTERESTED PARTIES**

**RE: NEW 144 - AUTO FERRIES  
DESIGN - BUILD CONTRACT NO. 00-6674**

**NOTICE NO. 23**

The attached "APPENDIX F" is provided for your information and to expedite the procurement process under the RFP in light of the recent passage of SHB 2378 by both houses of the legislature. This attachment will be published in an addendum to the RFP on, or about, May 14, 2007 when it is anticipated that SHB 2378 will be signed by the Governor and the thirty day response period provided for by the legislation commences.

Sincerely,

David H. Humphreys  
Vessel Project Engineer  
New 144-Auto Ferries Project  
Washington State Ferries

Attachment



**APPENDIX F**

**INSTRUCTIONS FOR A JOINT SINGLE  
PROPOSAL PURSUANT TO  
SUBSTITUTE HOUSE BILL (SHB) 2378**

**APPENDIX F**

**WASHINGTON STATE FERRIES**

**NEW 144 – AUTO FERRIES  
DESIGN - BUILD CONTRACT**

**INSTRUCTIONS FOR A JOINT SINGLE PROPOSAL  
PURSUANT TO SUBSTITUTE HOUSE BILL (SHB) 2378**

1 The intent of this Appendix is to supply instructions for implementation of the provisions of  
2 the recently enacted 2007 SHB 2378. This Appendix provides submittal requirements and  
3 acceptance criteria for a joint single proposal as set forth in Section 1 of the legislation.

4 Current “pre-qualified” and “best-qualified” proposers under the RFP who intend to submit a  
5 joint single proposal shall provide WSDOT/WSF a duly executed Notice of Intent to Submit  
6 a Joint Single Proposal in the form of Exhibit 1, attached hereto, on or before June 13, 2007.  
7 If the joint single proposal is based on a prime contractor/subcontractor relationship, provide  
8 a brief statement of the planned organization structure identifying the prime contractor and  
9 principal subcontractors and the respective responsibilities and obligations. If the joint single  
10 proposal is based on a joint venture, partnership, limited liability corporation or other similar  
11 type of legal entity formed specifically for the RFP, provide a copy of the Joint Operating  
12 Agreement (e.g. Joint Venture Agreement, LLC Agreement, etc.) establishing the proposed  
13 legal entity and organizational structure. A copy of the proposed Conceptual Build Strategy  
14 as described below shall also be submitted for evaluation with the Notice of Intent. .

15 The best-qualified proposers may meet, should they choose to do so, to conduct discussions  
16 related to matters that are reasonably necessary to determine whether to submit a joint single  
17 proposal, subject to the limitations and instructions herein. Discussions may address the  
18 terms of any agreement that may be entered into between the proposers for purposes of  
19 submitting a joint single proposal and other subject matters allowed under SHB 2378.

20 Pursuant to RFP Volume II, Section 1.4.2, the best-qualified proposers shall refrain from  
21 discussing their respective Technical Proposals and/or design concepts. Proposers are  
22 reminded that strict compliance with all applicable laws and RFP requirements is required.

23 The current RFP documents form the basis of the future Contract and any subsequent  
24 negotiations. A joint build strategy which shares the Contract Work shall be in accordance  
25 with the criteria below. Construction of the four ferries required by the scope of work shall  
26 not be divided between participants on a complete vessel-by-vessel basis. As required by the  
27 Technical Specification, the WSF-furnished equipment, including the propulsion system and  
28 diesel generators shall be incorporated into the vessel design.

1 The criteria for the general organizational structure that a joint single proposal must meet are  
2 listed below. Also provided below are instructions for preparation of a Conceptual Build  
3 Strategy which shall be submitted to WSF for review and approval.

4 **A. Organizational Structure and Responsibility Criteria**

- 5 1. A joint proposal shall be based on a single legal entity (“Contracting Entity”)  
6 contracting with WSF that is responsive and responsible in accordance with  
7 the provisions of the New 144 - Auto Ferries Design and Build Request for  
8 Proposals (“RFP”).
- 9 2. A proposer who has previously been found to be “pre-qualified” and “best-  
10 qualified” during the current RFP process may act as the Contracting Entity.  
11 If the proposed Contracting Entity is not based on a single prime  
12 contractor/subcontractor relationship, but instead consists of a joint venture,  
13 limited liability corporation or other legally constituted entity formed  
14 especially for the RFP, then all the members of the Contracting Entity must  
15 have individually been found to be “pre-qualified” and “best-qualified” during  
16 the existing current RFP process. With the exception of a prime  
17 contractor/subcontractor arrangement, all members of any Contracting Entity  
18 shall be jointly and severally liable for the development of a Technical  
19 Proposal and performance of the Contract Work and will be required to  
20 execute guarantees or other appropriate documents establishing such liability  
21 as may be required by WSF. If the Contracting Entity is a joint venture, the  
22 joint venture members will be required to execute an Individual Project  
23 Statement of Joint Venture form. A sample is attached hereto as Exhibit 2. If  
24 the Contracting Entity is a limited liability company or other legally  
25 constituted entity formed especially for the RFP, the members will be required  
26 to execute a guaranty. A sample guaranty form is attached hereto as Exhibit 3.  
27 Such Contracting Entity shall be duly and properly formed, licensed and  
28 registered as a contractor as required under Washington law. The agreement  
29 forming the Contracting Entity (Joint Operating Agreement) and other related  
30 information as requested by WSF shall be provided to WSF for review prior to  
31 acceptance of the entity in accordance with the SHB 2378.
- 32 3. All the provisions of the RFP apply including requirements relating to  
33 subcontracting. More specifically, as provided in Article 34 of the Design  
34 Build Contract, the Contractor must perform at least 50% of the Contract  
35 Work, and WSF has the right to reject any proposed subcontractor except any  
36 previously “pre-qualified” and “best-qualified” proposer.
- 37 4. To assure adequate quality control, configuration control and management,  
38 commonality and efficient administration and inspection of the Contract  
39 Work, each ferry shall be designed, built, tested and delivered using the same

1 management, organization, build strategy and combination of facilities in the  
2 same sequence. The following requirements shall apply:

- 3 a. All detailed design work and drawing preparation shall be performed  
4 by a single design team with a design team lead, either an employee or  
5 a subcontractor, who has been designated by, and reports directly to  
6 the Contracting Entity.
- 7 b. The construction plan and build strategy implemented by the joint  
8 proposers must meet the following criteria as shown and demonstrated  
9 in a Conceptual Build Strategy submitted to WSF:
- 10 i. Each module or block provided for erection into the hull or  
11 superstructure of a vessel shall be constructed at the same  
12 facility for each vessel to be delivered under the Contract.
- 13 ii. Each vessel to be delivered under the Contract shall have its  
14 final hull assembly and launching performed at the same  
15 facility.
- 16 iii. All post launch outfitting, machinery commissioning, testing  
17 and dock trials for all vessels to be delivered under the Contract  
18 shall be performed at the same facility; and
- 19 iv. The module or block construction facility, assembly and  
20 launching facility, and outfitting and testing facility used for  
21 building the vessels may be in different locations or shipyard  
22 premises, provided the above requirements are met.

23 **B. Preparation of a Conceptual Build Strategy**

24 Proposers who intend to submit a joint single proposal must provide a conceptual  
25 build strategy that presents their combined approach to construction of the vessels in  
26 accordance with the requirements of the RFP. WSF may request clarification and/or  
27 additional information, which shall be provided by the proposers.

28 The Conceptual Build Strategy should describe the construction process and  
29 demonstrate compliance with the acceptance criteria, the Contract requirements and  
30 show the integration of the efforts of the various parties. Therefore, the Conceptual  
31 Build Strategy must describe the method of construction from design work through  
32 keel laying to completion of outfitting, launching, testing, drydocking, delivery and  
33 warranty support for all four ferry vessels.

1 The following information shall be included, at a minimum, in the Conceptual Build  
2 Strategy submittal:

3 1. Approach to Construction

4 a. Present in narrative form the overall plan and responsibilities for  
5 vessel construction describing concepts, methods, modules, sequence  
6 of the various evolutions involved and any unique features of the  
7 approach to construction and explain how the acceptance criteria shall  
8 be met by the proposal.

9 b. Provide a description of the plan to transport and integrate any portion  
10 or section of the vessels constructed in a separate geographical  
11 location from others.

12 c. Provide an outline schedule, assuming a contract execution date of  
13 January 2, 2008, that provides the most economical construction  
14 process for four new ferries based upon the construction plan. Explain  
15 in general terms why the joint proposers believe such construction plan  
16 and schedule is the most cost effective approach.

17 2. Technical Plan

18 Shipyards must exhibit a capability to perform and meet the requirement of  
19 the Technical Specification for both the design necessary to prepare and gain  
20 approval for Phase II Technical Proposals and the Detailed Design required in  
21 Phase III involved with the construction of United States registry passenger  
22 vessels. Describe the planned membership and organization of the proposed  
23 design team for the Contract and explain how the acceptance criteria shall be  
24 met by the proposal.

25 **C. Evaluation by WSF**

26 WSF will evaluate the proposed organizational structure and Conceptual Build  
27 Strategy based on the above criteria upon receipt of a duly executed Notice of Intent  
28 from the joint proposers and submission of the information required in this  
29 Addendum 23. WSF in its discretion may request additional information from the  
30 joint proposers as may be necessary to complete the evaluation. WSF will notify the  
31 joint proposers in writing whether their proposed organizational structure and  
32 Conceptual Build Strategy is acceptable. No negotiations regarding the RFP shall  
33 commence or occur until WSF has provided its written acceptance of the proposed  
34 organizational structure and Conceptual Build Strategy.

1 If WSF does not receive a Notice of Intent to Submit a Joint Single Proposal along  
2 with the designated information by the date noted in this Addendum 23, or if WSF in  
3 its discretion, determines that the joint venture, other legal entity, or organizational  
4 structure, or division of responsibilities intended by the joint proposers, including  
5 conceptual build strategy, are unacceptable and not in the best interests of the state,  
6 the proposers will be deemed as proposing separately to the RFP, and further  
7 discussions related to the RFP shall not be allowed between the proposers.

**( END )**

**EXHIBIT 1**

**NOTICE OF INTENT TO SUBMIT A  
JOINT SINGLE PROPOSAL PURSUANT TO SHB 2378**

EXHIBIT 1

WASHINGTON STATE FERRIES

NEW 144 – AUTO FERRIES  
DESIGN - BUILD CONTRACT

NOTICE OF INTENT TO SUBMIT A  
JOINT SINGLE PROPOSAL PURSUANT TO SHB 2378

PROPOSERS: \_\_\_\_\_

DATED: \_\_\_\_\_

WASHINGTON STATE FERRIES, a division of  
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
2901 Third Avenue, Suite 500  
Seattle, WA 98121-3014

Attention: Mr. David H. Humphreys  
Project Engineer

The undersigned proposers intend to submit a joint single proposal for the RFP for the above Project as allowed under SHB 2378. We hereby acknowledge receipt of Addendum 23, Instructions for a Joint Proposal Pursuant to Substitute House Bill (SHB) 2378, have reviewed such, and understand that we will be required to comply with the RFP requirements, including Addendum 23, in the continued development of our Technical Proposal and Bid for this Project. We further certify that all information we provide as required by Addendum 23 or otherwise requested by WSF is accurate and complete.

Pursuant to Addendum 23, attached for your consideration are copies of the following documents:

1. Conceptual Build Strategy; and
2. Organizational Structure (*Note, if the joint proposal will be submitted under a prime contractor/subcontractor relationship, so state and provide a brief statement of the planned organizational structure identifying the prime contractor and principal subcontractors and the respective responsibilities and obligations. If the joint single proposal is based on a Joint Venture, Partnership, Limited Liability Corporation or other similar type of entity formed specifically for the RFP, provide a copy of the*



**EXHIBIT 2**

**INDIVIDUAL PROJECT STATEMENT  
OF JOINT VENTURE**

**FOR A JOINT SINGLE PROPOSAL  
PURSUANT TO SHB 2378**



Name of Joint Venture: \_\_\_\_\_

Address of Joint Venture: \_\_\_\_\_

The following named contractors, each of whom have been prequalified to bid for work of the Washington State Department of Transportation, have entered into a joint venture and executed this instrument for the purpose of submitting a joint bid and securing from the Department of Transportation a proposal form so that the named contractors may, under said joint venture, bid upon the following improvement and if the successful bidder therefor, be awarded the contract for said work. The work for which said joint venture has been entered into is identified as follows:

Highway Number or County Road: \_\_\_\_\_ FA Number: \_\_\_\_\_

Project Title: \_\_\_\_\_

Bids to be Received on: \_\_\_\_\_  
Date

The named contractors who have entered into said joint venture and the respective expiration dates of their last prequalification are:

Firm Name of Contractor as Prequalified	Expiration Date of Prequalification
(1) _____ <input type="checkbox"/> Individual <input type="checkbox"/> Co-Partnership <input type="checkbox"/> Corporation	_____
(2) _____ <input type="checkbox"/> Individual <input type="checkbox"/> Co-Partnership <input type="checkbox"/> Corporation	_____
(3) _____ <input type="checkbox"/> Individual <input type="checkbox"/> Co-Partnership <input type="checkbox"/> Corporation	_____

The undersigned do hereby certify that under the provisions of such joint venture the assets of each said named contractors, and in the case any thereof is a co-partnership of the individual members of such co-partnership, will be available for the performance of such joint venture and liable therefor and for all obligations incurred therewith. We severally certify that the assets and liabilities of the named contractors for whom we severally execute this instrument are now substantially the same as set forth in the last questionnaires and statements heretofore filed with the Department of Transportation for purposes of prequalification.

In consideration of being furnished said proposal form and being prequalified to bid upon said work, we severally by the execution of this instrument bind the respective above named contractors for whom we execute the same in firm agreement with the Department of Transportation that each of the representations herein set forth is true.

The name under which this joint venture shall operate shall be the following:

\_\_\_\_\_

It is recognized that this name shall not be changed during the course of the performance of any contract which may be awarded to said joint venture.



**EXHIBIT 3**

**GUARANTY FORM**

**FOR A JOINT SINGLE PROPOSAL  
PURSUANT TO SHB 2378**

**Exhibit 3**

**FORM OF GUARANTY**

**WASHINGTON STATE FERRIES  
NEW 144 – AUTO FERRIES  
DESIGN-BUILD CONTRACT NO. 00-6674**

**THIS GUARANTY** (this “Guaranty”) is made as of \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (“Guarantor”), in favor of the **WASHINGTON STATE FERRIES, a division of the Washington State Department of Transportation (“WSF”).**

**R E C I T A L S**

A. \_\_\_\_\_ (“Contractor”), and WSF are parties to that certain Design-Build Contract dated \_\_\_\_\_ (the “Contract”) pursuant to which the Contractor has agreed to design and construct the Project. Initially capitalized terms used herein without definition will have the meaning given such terms in the Contract.

B. To induce WSF to (i) enter into the Contract; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Contractor is a \_\_\_\_\_ [describe relationship with Guarantor]. The execution of the Contract by WSF and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, WSF would not have entered into the Contract with Contractor. Therefore, in consideration of WSF’s execution of the Contract and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

**NOW, THEREFORE,** in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. **Guaranty.** Guarantor guarantees to WSF and its successors and assigns the full and prompt payment and performance when due of all of the obligations of the Contractor arising out of, in connection with, under or related to (a) the Contract as amended or supplemented (and the documents executed or to be executed in connection therewith), and (b) each and every other document and agreement executed by the Contractor in connection with the consummation of the transactions contemplated by the Contract (the documents described in clauses (a)-(b) shall collectively be referred to herein as the “**Project Documents**”). The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the “**Guaranteed Obligations.**”

2. **Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection and is an absolute, unconditional, and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed

Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, whether or not recovery may be, or hereafter may become, barred by any statute of limitations or otherwise, and whether or not enforceable against the Contractor. If any payment made by the Contractor or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential, or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged, or otherwise affected by (a) any change in the Project Documents or the obligations thereunder, or any insolvency, bankruptcy, or similar proceeding affecting the Contractor, Guarantor, or their respective assets, and (b) the existence of any claim or set-off which the Contractor has or Guarantor may have against WSF, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity, or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefore or any other circumstances relating to the Guaranteed Obligations which might otherwise constitute a defense to the Guaranteed Obligations of this Guaranty.

**3. Independent Obligations.** Guarantor agrees that the Guaranteed Obligations are independent of the obligations of the Contractor and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not the Contractor is joined therein. WSF may maintain successive actions for other defaults of Guarantor. WSF's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that WSF may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against the Contractor. Guarantor hereby waives the right to require WSF to proceed against the Contractor, to exercise any right or remedy under any of the Project Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement, or stipulation between the Contractor and WSF or their respective successors and assigns, with respect to any of the Project Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants, or conditions contained in any of the Project Documents or any modification thereof; (iii) any release of the Contractor from any liability with respect to any of the Project

Documents; or (iv) any release or subordination of any collateral then held by WSF as security for the performance by the Contractor of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity, or enforceability of any of the Project Documents or the pursuit by WSF of any remedies which WSF either now has or may hereafter have with respect thereto under any of the Project Documents.

**4. Liability of Guarantor.**

a. WSF may enforce this Guaranty upon the occurrence of a breach by the Contractor of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between WSF and the Contractor with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify, or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. WSF, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge, or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of the Contractor, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner, or terms of payment of such financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto; (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate, or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations; (v) enforce and apply any security hereafter held by or for the benefit of WSF in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that WSF may have against any such security, as WSF in its discretion may determine; and (vi) exercise any other rights available to it under the Project Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge, or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power, or remedy (whether arising under the Project

Documents, at law, in equity, or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment, or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Project Documents or any agreement or instrument executed pursuant thereto; (iii) WSF's consent to the change, reorganization, or termination of the corporate structure or existence of the Contractor; (iv) any defenses, set-offs, or counterclaims that the Contractor may allege or assert against WSF in respect of the Guaranteed Obligations, including but not limited to failure of consideration, breach of warranty, payment, statute of frauds, accord and satisfaction, and usury; and (v) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations.

5. **Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require WSF to proceed against the Contractor or any other Person or to proceed against or exhaust any security held by WSF at any time or to pursue any right or remedy under any of the Project Documents or any other remedy in WSF's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of WSF, death or disability of, or revocation hereof by Guarantor, the Contractor, or any other Person or the failure of WSF to file or enforce a claim against the estate (either in administration, bankruptcy, or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by WSF even though the election of remedies, such as non-judicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against the Contractor by the operation of law or otherwise; (e) all notices to Guarantor, to the Contractor, or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of the Contractor under any of the Project Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto, or notice of any other matters relating thereto; (f) any requirements of diligence or promptness on the part of WSF; (g) any defense arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Contractor or any other Person from any cause other than indefeasible performance in full of the Guaranteed Obligations; (h) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (i) any defense based upon any act or omission of WSF which directly or indirectly results in or aids the discharge or release of the Contractor, Guarantor, or any security given or held by WSF in connection with the Guaranteed Obligations; and (j) any and all suretyship defenses under applicable law.

6. **Waiver of Subrogation and Rights of Reimbursement; Subordination.** Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right, or remedy which it may now have or may hereafter acquire against the

Contractor that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right, or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right, or remedy of WSF against the Contractor, or any other security or collateral that WSF now has or hereafter acquires, whether or not such claim, right, or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Contractor or any shareholders, partners, members, or joint venturers of Contractor to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Contractor shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Contractor or any shareholders, partners, members, or joint venturers of Contractor to Guarantor without the prior written consent of WSF. Any payment by Contractor or any shareholders, partners, members, or joint venturers of Contractor to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for WSF.

7. **Cumulative Rights.** All rights, powers, and remedies of WSF hereunder will be in addition to and not in lieu of all other rights, powers, and remedies given to WSF, whether at law, in equity or otherwise.

8. **Representations and Warranties.** Guarantor represents and warrants that:

a. it is a \_\_\_\_\_ duly [organized][formed], validly existing, and in good standing under the laws of the State of \_\_\_\_\_;

b. it has all requisite [corporate][partnership][limited liability company] power and WSF to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under (1) [the certificate of incorporation or by-laws][certificate of limited partnership or partnership agreement][certificate of formation or limited liability company agreement] of Guarantor; (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound; or (3) any federal, state, or local law, statute, ordinance, rule, or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Project Documents or referred to therein, the financial status of the Contractor and the ability of the Contractor to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Project Documents and is fully informed of the remedies WSF may pursue, with or without notice to the Contractor or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of the Contractor and will keep itself fully informed as to all aspects of the financial condition of the Contractor, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of WSF to disclose any matter, fact, or thing relating to the business, operations, or conditions of the Contractor now known or hereafter known by WSF;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental WSF or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Person which challenges the validity or enforceability of this Guaranty.

9. **Governing Law.** The validity, interpretation, and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Washington applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are pre-empted by Federal law or are governed by the law of the jurisdiction of organization of the respective parties.

10. **Entire Document.** This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersedes all negotiations, representations, warranties, commitments, offers, contracts, and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification, or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by WSF referring specifically to this Guaranty, and then only to the specific purpose, extent, and interest so provided.

11. **Severability.** If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties, and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

12. **Notices.** Any communication, notice, or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram, or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to WSF:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

If to Guarantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Either Guarantor or WSF may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 12 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail.

13. **Captions.** The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge, or restrict any of the provisions of this Guaranty.

14. **Construction of Guaranty.** Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

15. **No Waiver.** Any forbearance or failure to exercise, and any delay by WSF in exercising, any right, power, or remedy hereunder will not impair any such right, power, or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power, or remedy.

16. **Bankruptcy; Reinstatement of Guaranty.** The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended, or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of the Contractor or by any defense which the Contractor may have by reason of the order, decree, or decision of any

court or administrative body resulting from any such proceeding. WSF is not obligated to file any claim relating to the Guaranteed Obligations if the Contractor becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of WSF to so file will not affect Guarantor's obligations under this Guaranty.

17. **CONSENT TO JURISDICTION.** GUARANTOR AND WSF AGREE THAT ANY ACTION OR PROCEEDING TO RESOLVE A DISPUTE BETWEEN GUARANTOR AND WSF CONCERNING THE INTERPRETATION, APPLICATION OR ENFORCEMENT OF THE TERMS OF THIS GUARANTY MAY ONLY BE BROUGHT IN THE SUPERIOR COURT OF THURSTON COUNTY, WASHINGTON PURSUANT TO WASHINGTON LAW. GUARANTOR AND THE WSF ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURT AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. IF NOT A RESIDENT OF THE STATE OF WASHINGTON GUARANTOR MUST APPOINT AND MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN THE STATE OF WASHINGTON.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_