

COPY

**MV STEILACOOM II
VESSEL CHARTER AGREEMENT**

THIS VESSEL CHARTER AGREEMENT ("Agreement") is entered into effective as of the 18th day of January, 2008 by and between Pierce County, a municipal corporation and political subdivision of the State of Washington, ("**County**") and the Washington State Department of Transportation, acting by and through its Ferries Division ("**State**").

RECITALS

A. **WHEREAS**, the State recently decided to permanently retire the ferries that were operating on the ferry route between Port Townsend, Washington and Keystone, Washington (the "**Keystone Route**"). Retirement of such ferries resulted in a loss of car ferry service on the Keystone Route.

B. **WHEREAS**, the County owns two car ferry vessels, the 250 passenger/54 car MV Christine Anderson and the 299 passenger/54 car MV Steilacoom II (the "**Steilacoom II**"), both of which operate in Puget Sound waters between the Town of Steilacoom and the islands of Anderson and Ketron (the "**Steilacoom routes**").

C. **WHEREAS**, the State is in the process of developing a bid package for construction of new passenger/car ferries for use on the Keystone Route that are substantially similar to the Steilacoom II.

D. **WHEREAS**, the State would like to charter the Steilacoom II on the terms and conditions contained herein and the County is willing to charter the Steilacoom II to the State on the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration including the covenants and conditions contained herein, it is mutually agreed by and between the County and the State as follows:

1. **CHARTER.** Upon satisfaction or waiver of the County's Contingencies, as set forth in Section 3 herein, and on the terms and conditions contained herein, the County shall charter the Steilacoom II to the State in consideration for prompt and complete performance of the State's obligations as set forth herein ("**Charter**").

2. **CONSIDERATION.** In consideration for the Charter, the State shall comply with the terms of this Agreement and shall provide the County with the following consideration:

2.1 Steilacoom II Charter Fee. The State's use of the Steilacoom II shall be completely net to the County, meaning that the County shall not incur any unreimbursed expenses of the vessel during the period in which the State has chartered it. Without limiting the foregoing, the County and the State agree that the State will pay the following specific charges for the Charter:

- 2.1.1 Depreciation = \$17,670/month + 15% overhead;
- 2.1.2 County's insurance cost = Actual expenses + 15% overhead;
- 2.1.3 Drive System Wear and Tear = \$20/hour of operation + 15% overhead (this charge will not be applied to the time when the Steilacoom II is not operating);
- 2.1.4 Drydocking = Actual expenses + 15% overhead;
- 2.1.5 Training and Consulting = Personnel charges and incurred expenses + 15% overhead;
- 2.1.6 Mobilization and Demobilization = Personnel charges and incurred expenses + 15% overhead;
- 2.1.7 On Hire and Off Hire Survey = Personnel charges and incurred expenses + 15% overhead;
- 2.1.8 County staff time (operations and inspections, consulting, management, accounting and contract) = Personnel charges and incurred expenses + 15% overhead;
- 2.1.9 Professional Fees (third party legal, accounting, etc.) = incurred fees and expenses + 15% overhead;
- 2.1.10 Other County expenses directly related to this Agreement (e.g., insurance costs (including insurance required of County under Section 2.2) and On Hire and Off Hire Survey costs) = incurred expenses + 15% overhead; and
- 2.1.11 Any costs incurred by the County in having an "on call" contractor available to immediately repair any mechanical issues with the MV Christine Anderson.

The charges described in Section 2.1 are sometimes collectively referred to herein as the "Charter Fee." The Charter Fee shall be paid in good U.S. funds without offset, delay or deduction upon invoice from the County. Incurred expenses that are incurred prior to execution of this Agreement are reimbursable if directly incurred in furtherance of the consummation of this Agreement and the Charter described herein.

2.2 Back-Up Vessel. Commencing on July 1, 2008 or as soon thereafter as is reasonable, the State shall deliver and make available to the County on an exclusive basis during the Term, the 200 passenger/34 car MV Hiyu (the "Hiyu") to act as a back-up vessel to the MV Christine Anderson. The MV Hiyu will be moored at the Steilacoom Ferry Dock for use by the County if needed, in the County's determination. For the first week after delivery of Hiyu, the State shall identify and make available, at the request of the County, such manuals, logs, technical specifications and qualified personnel as the County may request to familiarize itself with the proper operation of the Hiyu. Thereafter, such personnel will be available periodically to answer questions that the County may have regarding the safe and proper operation of the Hiyu. The State shall be responsible for all costs and expenses associated with the Hiyu's operation on the Steilacoom routes. The Hiyu will be delivered to the County in proper safe and working order and ready for service on the Steilacoom routes. If and when the County operates the Hiyu, it shall do so with properly qualified and trained crew in numbers sufficient for the safe, proper, and legal operation of the vessel. The County will take reasonable care so as to return the Hiyu upon termination of this Agreement in the same condition as when it was delivered, reasonable wear and tear excepted. The County will have no responsibility or liability for steel wastage anywhere on the Hiyu or for any damages which occur as a result of such steel wastage.

During the County's use of the Hiyu, the State will maintain any legally required and currently existing insurance coverage on the Hiyu, including but not limited to, insurance covering navigating hull and machinery in an amount at least equal to the State's 2007 insured value (\$6,000,000) for the vessel, plus protection & indemnity and terminal operator's liability coverage, all pursuant to the State's Master Marine Insurance Program. During the County's use of the Hiyu, the County will maintain comprehensive general liability insurance pursuant to the requirements of Section 9.2. The State's insurance coverage shall be primary and the County's insurance coverage shall be secondary.

2.3 Restoration. As described in more detail in Section 7 below, an On Hire/Off Hire Survey of the Steilacoom II will be performed before and after the State uses the Steilacoom II. The State will, at the end of the Term or earlier termination of this Agreement, immediately upon written request from the County reimburse the County for any repairs or replacement work required to return the vessel to its pre-Charter condition as identified in the Surveys (as defined below), with the exception of normal wear and tear experienced by the drive system which is included in the Charter Fee. Such repair/replacement work shall be performed by a contractor and at a location acceptable to the County.

2.4 Improvements. Pursuant to plans approved by the County, and through contractors acceptable to the County, the State may perform an initial set of modifications to the Steilacoom II including the addition of life boats, the installation of an automated draft indicator system, and the installation of radar used by Washington State Ferries. Upon the termination of this Agreement, the County and the State shall meet to review the modifications made by the State. The County reserves the option of retaining those State installed modifications at no additional cost. Any modifications which the County does not elect to retain shall be removed by the State at its sole expense.

3. **CONTINGENCIES TO CHARTER.** Prior to delivering the Steilacoom II to the State for Charter, certain contingencies to the County's obligation to Lease shall be satisfied to the County's satisfaction. Those contingencies include the following:

3.1 Insurance. All insurance required by this Agreement and otherwise at law shall be in full force and effect and the State shall have delivered a certificate of insurance demonstrating the State's compliance with the insurance provisions of this Agreement to the County.

3.2 Payment Procedures. The County shall invoice the State the Charter Fee on a monthly basis. The Charter Fee shall be paid in good U.S. funds without offset, delay or deduction upon invoice from the County.

3.3 On Hire Survey. The initial On Hire Survey, as discussed in Section 7 hereof, shall have been completed.

3.4 Acceptable Wear and Tear. The County shall be satisfied that natural conditions affecting, and use being made of, the Steilacoom II on the Keystone Route present an acceptable level of wear and tear on the Steilacoom II drive system.

3.5 Proper Crew. The State shall have demonstrated to the County's satisfaction that it has committed, and will through the Term of the Charter maintain, a properly qualified and trained crew in numbers sufficient for the safe, proper, and legal operation of the Steilacoom II.

3.6 Approvals. The State shall have demonstrated to the County's satisfaction that all permits, approvals and clearances required for the State's use and operation of the Steilacoom II have been secured.

3.7 Warranty Work. The State will facilitate and permit the completion of all warranty work for the vessel that is known or which may arise and that occurs during the Term.

4. **TRANSITION PERIOD.** Upon compliance with the insurance requirements applicable to the State as described herein, the County will begin transitioning the Steilacoom II to the State. During the transition period, the County will make available all technical specifications for the Steilacoom II, in the County's possession, to the State for the State's

review and familiarization. The County will also make available qualified staff to consult with the State staff to assist in training and operation of the vessel during both sea trials and, from time to time thereafter on an occasional basis once the vessel is put into service on the Keystone Run. The State may inspect the Steilacoom II during the transition period and shall be responsible for determining the suitability and condition of the vessel for the State's purposes. The State shall rely entirely on said inspection and review with respect to the condition of the Steilacoom II and or its suitability for the State's purposes. The County makes absolutely no representations or warranties with regard to the Steilacoom II or its seaworthiness, nor does it make any other warranties expressed or implied. At the request of the County, the parties shall prepare an inventory of all portable personal property on the Steilacoom II on the vessel's delivery date. The County's participation in the transition period shall not be deemed to be a waiver of the County's contingencies to Charter as described in Section 3 herein.

5. **CONSULTING.** During the Term, the County shall make available to the State once a month, or more frequently if the parties agree, an operations management engineer who will observe the State's operation and uses of the Steilacoom II and shall discuss same with the State, as appropriate. The County also agrees to provide assistance to the State with regard to the design, engineering and bidding process for its replacement ferries. Consulting services are provided without representation or warranty and are subject to the release and indemnification provisions set forth herein at Section 10.

6. **TRAINING.** The State shall select personnel to be trained on the proper operation, maintenance, and use of the Steilacoom II. The County will provide training to these personnel at mutually agreeable times and locations. Training services are provided without representation or warranty and are subject to the release and indemnification provisions set forth herein at Section 10.

7. **ON AND OFF HIRE SURVEY.** The County and the State shall conduct an "On Hire / Off Hire Survey" of the Steilacoom II ("**Surveys**"). The On Hire Survey shall occur prior to delivery to the State and the Off Hire Survey shall occur prior to redelivery to the County. The Surveys shall be conducted by a certified and qualified marine surveyor mutually agreed upon by the parties ("**Surveyor**"). The Surveys will include an examination of all areas of the vessel for wear and tear and damage. The Surveys shall include an underwater inspection of the drive systems and rudders and may include, at the State or County's option, haul out of the vessel. The Surveys will be used to document the condition of the vessel at the beginning of the Term and will be compared to the vessel's condition at the end of the Term to determine if/what repairs will be required to return the vessel to its pre-Charter condition in accordance with Section 2.3. The Surveyor's determination of wear and tear and damages shall be binding on both parties.

8. **USE.** The Steilacoom II shall not be operated beyond the limits established in the applicable policies of insurance as hereinafter set forth, and may only be used for the transportation of passengers and vehicles as provided in this Agreement. The State shall use the Steilacoom II in a careful and proper manner and shall comply with all federal, state, local, port, maritime, or other governmental laws, regulations, requirements and rules with respect to the

use, maintenance and operation of the Steilacoom II and shall have on board, as and when required thereby, valid certificates showing compliance therewith. Subject to the provisions of this Agreement, the State shall have the exclusive right to possession and control of Steilacoom II during the Term of this Charter and shall, to the extent required at any time, staff, supply and fuel the vessel by its own procurement throughout the Term. The State shall pay all pilotage charges and all other costs, charges and expenses whatsoever incident to the use, operation and maintenance of the Steilacoom II during the Term.

9. INSURANCE AND SELF-INSURANCE. The State shall procure and maintain, for the duration of the Term, insurance or self-insurance against claims for injuries to persons or damages to property which may arise from or in connection with the use of the Steilacoom II by the State. Such insurance or self-insurance shall not be construed to relieve the State of any liability in excess of such coverage. The State shall procure or self-insure and maintain in full force and effect the following insurance or self-insurance coverage during the Term:

9.1 Workers' Compensation insurance or self-insurance in the full statutory limits as required by (i) the State of Washington, and (ii) the laws of the United States (including, full statutory limits, the Longshoremen and Harbor Workers Act ("USL&H") coverage for non-crew marine State employees), and employers' liability insurance in an amount not less than Two-Hundred Fifty Million Dollars (\$250,000,000) per occurrence (in connection with Workers' Compensation and USL&H).

9.2 Comprehensive general liability insurance in an amount not less than Two-Hundred Fifty Million Dollars (\$250,000,000) per occurrence, covering all legal liability for personal injury, bodily injury, death or property damage which may arise out of the State's performance under this Agreement. Coverage shall be extended to include coverage for Terminal Operations, Action Over Indemnities and Blanket Additional Assured.

9.3 Protection and Indemnity insurance, including, without limitation, Jones Act Insurance, with a minimum of Two-Hundred Fifty Million Dollars (\$250,000,000) per occurrence.

9.4 Pollution liability insurance or self-insurance with an amount not less than Twenty Million Dollars (\$20,000,000) per occurrence.

9.5 With respect to the vessel to be used under this Agreement, insurance covering navigating hull and machinery, subject to the terms and conditions of the American Institute Hull Clauses policy (6/1/1977), in an amount equal to USD \$12,500,000.00, such vessel's agreed replacement cost value.

9.6 Coverage under the Terrorism Insurance Act of 2002 for Hull and Machinery for County Provided Vessel.

9.7 Automobile liability (bodily injury and property damage) in an amount not less than Ten Million Dollars (\$10,000,000) combined single limit extending to owned, non-owned, and hired vehicles.

The State has acquired commercial liability insurance for the Washington State Ferries (WSF's) liability. Such insurance is generally referred to as the State's Master Marine Insurance Program, which is written through XL Syndicate at Lloyd's and Allianz Marine & Aviation for the 2007-2008 policy year. Such insurance will be endorsed to add the Steilacoom II to the Marine Insurance Schedule of Vessels for the insured value noted in section 9.5.

Generally, the State's Master Marine Insurance Program has a self-insured retention (deductible) of \$1,000,000 per vessel per occurrence for Hull & Machinery and Protection & Indemnity combined. The deductible has a \$3,500,000 aggregate limit for all losses in the policy year, subject to a maintenance deductible of \$25,000. per occurrence thereafter. However, for this agreement, WSF's underwriters have agreed that the self-insured retention(deductible) for the Steilacoom II will be \$250,000 per occurrence for Hull & Machinery and Protection & Liability combined. All such insurance policy deductibles are a risk retained by the State of Washington, as confirmed by the Washington State Office of Financial Management.

All self insured risks that are not part of WSF's commercial insurance policy shall remain an obligation of the WSDOT, WSF, and the State of Washington.

All insurance policies or self-insurance, except workers' compensation, required by this Agreement shall be endorsed or otherwise provide the following:

Name the County, its councils, boards, commissions, departments, officers, employees, agents and volunteers as additional insureds to be covered as insured as respects; liability arising out of activities performed by or on behalf of the State; products and completed operations of the State; premises owned, occupied or used by the State; or automobiles owned, leased, hired or borrowed by the State. The coverage shall contain no special limitations on the scope of protection afforded to the County and its councils, boards, commissions, departments, officers, employees, agents and volunteers. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

All policies shall be endorsed to provide thirty (30) days written notice to the County's Risk Manager of cancellation, except in the case of cancellation for nonpayment of premium, in which case cancellation shall not take effect until ten (10) days prior written notice has been given. The State covenants and agrees to give the County reasonable notice in the event that it learns or has any reason to believe that any such policy may be canceled or that the coverage of any such policy may be reduced. That State shall provide thirty (30) days notice to the County of any material change to the policy terms and conditions.

All insurance coverage shall be primary insurance to any other insurance available to the additional insureds (including self-insurance), with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought. All policies shall include provisions denying such respective insurer the right of subrogation and recovery against the County. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

Any deductibles or self-insured retentions shall be declared and approved by the County's Risk Manager.

The State's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

On or before the commencement of the Term, the State shall deliver to the County certificates of insurance in form reasonably satisfactory to the County's Risk Manager, evidencing the coverages required hereunder ("**Evidence of Insurance**"), and the State shall provide the County with Evidence of Insurance thereafter before the expiration dates of expiring policies. Such certifications shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer afforded coverage shall provide thirty(30) days advance notice to Pierce County, Washington by certified mail, Attention Risk Manager, 955 Tacoma Avenue S, Ste 303, Tacoma WA 98402".

It is further understood and agreed the State of Washington, WSF and WSDOT shall provide liability protection for Pierce County, et al., provided in the Indemnity provisions set forth in Section 10 whether covered by insurance or not.

10. INDEMNITY; HOLD HARMLESS AND WAIVER.

10.1 Third Party Claims. The State shall indemnify, hold harmless and defend the County and its councils, boards, commissions, departments, officers, employees, agents and volunteers (each, an "**Indemnified Party**") from and against all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys' fees and costs and consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to County of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires County to take any action (collectively, "**Indemnified Claims**") which arise in any manner out of (a) an act or omission (whether or not wrongful or on the part of the State, its employees, any contractor or subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts

any of them may be liable) occurring during the Term (including court costs and reasonable attorneys' fees), (b) are actually incurred, (c) result from or in respect of the death, injury, loss or damage caused to any natural persons or property of any person or entity, and (d) arise out of or in connection with in any way relating to (i) the State's possession or use of the Steilacoom II, or (ii) the breach by the State or its agents, subcontractors, or employees of any covenant or obligation under this Agreement. The foregoing indemnity shall exclude any Indemnified Claims to the extent they result from the sole negligence or unlawful intentional misconduct of an Indemnified Party. The State agrees to defend the Indemnified Parties against any claims that are actually or potentially within the scope of the indemnity provisions of this instrument, even if such claims may be groundless, fraudulent or false. The terms and conditions of this Section 10.1 shall survive any termination of this Agreement.

10.2 **Claims Between the Parties.** Except as otherwise provided in this Agreement, the State and its agencies, agents, affiliates, employees and insurers hereby waive and release the County from any and all claims, liabilities, loss, injury or damage, whether known or unknown, whether accrued or unaccrued, that may occur or arise out of, or be in connection with, (i) the State's use or operation of the Steilacoom II, (ii) the County's use or operation of the Hiyu, and (iii) the County's consulting, training and inspection services, regardless of cause or origin.

10.3 **Survival.** The indemnification and release set forth herein shall survive expiration and/or termination of the Charter and this Agreement.

11. **TERM.** This Agreement shall be effective as of the date first set forth above, and shall have duration of approximately eighteen (18) months thereafter, expiring on August 18, 2009 unless sooner terminated in accordance with its terms or extended by mutual agreement of the parties in the parties' respective sole discretion ("**Term**").

12. **TEMPORARY RETURN OF VESSEL.** During the Term, the County will be using the MV Christine Anderson as its primary service vessel. In April or later in 2008, the MV Christine Anderson will be dry docked for the Certificate of Inspection required by the Coast Guard and scheduled repairs. Due to the limited capacity of the Hiyu, if such scheduled repairs take more than three (3) days, or alternatively if emergency repairs or maintenance for the MV Christine Anderson require more than three (3) days, the State, upon request of the County, will immediately and without protest return the Steilacoom II to the County at the Steilacoom ferry dock for the County's use for such time as the County requires. Upon cessation of the County's need for the Steilacoom II pursuant to this Section, the County will re-deliver the Steilacoom II to the State for the remainder of the Term or until such earlier time as the County may require it pursuant to the terms of this Section 12.

13. **INSPECTIONS AND DEFICIENCIES.** The County may enter upon the property of the State and the Steilacoom II for purposes of inspecting the vessel at any time during the Term of this Agreement provided said inspections are reasonably designed to minimize material interference with the State's use and operation of the Steilacoom II. Whether related to the inspections or not, the County may issue a notice of deficiencies ("**Notice of Deficiencies**") to the State, specifying areas of unsatisfactory performance of this Agreement and

specifying what improvements are necessary to correct the deficiency or deficiencies. Such Notice of Deficiencies shall specify the provision(s) of this Agreement which address the issue. The State shall correct the indicated deficiency or deficiencies within reasonable time limits specified by the County. In the event that the State fails to comply with the Notice of Deficiencies, or any term or provision of this Agreement, the County may, but shall not be required to, pay to comply with said provision and bill the State for the cost of same plus 15% overhead.

The State may enter upon the property of the County and the Hiyu for purposes of inspecting the vessel at any time during the Term of this Agreement, provided such inspections are reasonably designed to minimize material interference with the County's use and operation of the vessel.

14. TERMINATION AND DEFAULT. The following provisions shall govern the parties' rights and obligations with regard to Termination of this Agreement.

14.1 County's Termination for Failure of Contingency. In the event that County determines that its contingencies to Charter are not and will not be satisfied in a timely manner, the County may terminate this Agreement upon notice to the State. In such event, the Steilacoom II and any materials related thereto shall, within twenty four (24) hours after notice, be returned by the State to the County at the Steilacoom ferry dock and the parties shall have no further rights or obligations with regard to one another.

14.2 County's Termination for Convenience. As the primary function of the County ferry system is to provide safe, timely and uninterrupted ferry transportation for the public within Pierce County, the County reserves the right to terminate this Charter Agreement for convenience at any time in event that the County determines, in the County's sole discretion, that the Steilacoom II is necessary or otherwise required for the safe, timely and uninterrupted ferry service for the public within Pierce County. In the event that the County elects to terminate this Agreement for convenience, the County shall deliver notice of same to the State and the State shall return the Steilacoom II within twenty-four (24) hours of demand. In such event, the Off Hire Survey shall be completed, the County shall return the Hiyu to the State, the County shall deliver final invoices to the State for amounts owed through the date of termination, the State shall pay such invoices, and the parties shall have no further rights or obligations with regard to one another, except as otherwise provided in this Agreement.

14.3 County's Termination for State Default. The State shall be in default of this Agreement if it breaches any material term, covenant or obligation of the State and fails to cure said default within five (5) business days of notice from County, or if such breach is incapable of cure within five (5) business days, the State fails to commence such cure within five (5) business days and complete cure of such breach within sixty (60) days thereafter. Notwithstanding the foregoing, the State shall only have the right to cure a specific type of default once during the Term of this Agreement; and the State shall have no cure right for a default that results in a material risk of death or bodily harm or which results in a material risk of significant casualty or loss of the Steilacoom II. In the event of a State Default, the County shall have all rights and remedies at law and in equity and, without limiting any of its other remedies,

may enter upon the property of the State or its agents for the purpose of retaking possession of the Steilacoom II. In the event that the State withholds possession of the Steilacoom II after demand has been made for the vessel's return pursuant to Section 12, Section 14.2 or this Section 14.3, the County may elect to require the State to pay liquidated damages in the amount of Two Thousand Five Hundred Dollars (\$2,500) for each of the first five (5) days in which possession is improperly withheld, Five Thousand Dollars (\$5,000) for each of the second five days in which possession is improperly withheld, and Ten Thousand Dollars (\$10,000) for each day in which possession is improperly withheld thereafter. The County and the State agree and acknowledge that the State's damages in the event that a State default prohibits use of the Steilacoom II when needed will be difficult to anticipate and that the liquidated damage amounts set forth herein are fair and reasonable.

14.4 State's Termination for Convenience. The State may terminate this Agreement for convenience by giving the County written notice at least twenty-four (24) hours prior to the date the State wishes to terminate. In the event that the State terminates for convenience, the State shall promptly pay all amounts required by this Agreement prorated to the date of termination. To compensate the County for the time and effort incurred in entering into this Agreement, the State further agrees to pay a Termination for Convenience fee in the amount of Fifty Thousand Dollars (\$50,000) IF, AND ONLY IF, the State terminates for convenience within the first ninety (90) days after the date of this Agreement. In the event that the State terminates for convenience from and after the ninety first day no terminate fee shall be due.

14.5 State's Termination for Default. The County shall be in default of this Agreement if it breaches any term, covenant or obligation of the County and fails to cure said default within a reasonable time after written notice from the State, which such period shall be at least five (5) business days from receipt of written notice from the State, extended as necessary to cure. In the event of an uncured default of the County, the State, as its sole remedy, may elect either to pursue a judgment for specific performance of this Agreement or sue for the State's actual damages directly and proximately resulting from the County's uncured default.

14.6 Off Hire Survey; Restoration and Charter Fee. In the event this Agreement is terminated pursuant to this Section 14, the Off Hire Survey procedures set forth in Section 7 shall be performed and the State shall have the restoration obligations contained in Section 2.3. Upon termination of this Agreement, any unpaid Charter Fee shall be immediately due and payable.

14.7 Except as otherwise provided in this Section 14, upon termination of this Agreement by either party for any reason, the State shall return the Steilacoom II to the County, the Off Hire Survey shall be completed, the County shall return the Hiyu to the State, the County shall deliver final invoices to the State for amounts owed through the date of termination, the State shall pay such invoices, and the parties shall have no further rights or obligations with regard to one another, except as otherwise provided in this Agreement.

15. **LIENS.** The State shall not suffer, create or permit to be imposed upon the Steilacoom II any lien or encumbrance.

16. **NOTICES.** Notices shall be delivered via personal delivery, national overnight courier, certified mail, confirmed facsimile or confirmed email; provided, however, Notices concerning payments, defaults or termination may not be delivered via facsimile or email unless they are also delivered by way of personal delivery, national overnight courier or certified mail.

Notices to the County shall be delivered to:

Toby Rickman, P.E.
Deputy Director
Public Works and Utilities - Transportation Division
2702 South 42nd Street, Suite 201
Tacoma, WA 98409

With a copy to:

Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98110
Attn: John E. D. Powell
Telephone: (206) 254-4425
Facsimile: (206) 587-2308

Notices to the State shall be delivered to:

Steve Rodgers
Director of Operations
Washington State Ferries
2901 Third Ave. Suite 500
Seattle, WA 98121-3014

With a copy to:

Tim McGuigan
Director of Legal Services & Contracts
Washington State Ferries
2901 Third Ave. Suite 500
Seattle, WA 98121-3014

17. **REPORTS.** On or before the last day of each month for duration of this Agreement, the State will send reports to the County regarding the status, condition, and operation of the Steilacoom II along with reports of any maintenance performed on the vessel. This reporting will include the daily vessel engine logs maintained by the State.

18. **CHOICE OF LAW, JURISDICTION, AND VENUE.** This Agreement shall be governed by, construed, and enforced in accordance with the laws and regulations of the United States, the State of Washington, and the ordinances of Pierce County. The venue of any action arising out of or in any way relating to this Agreement shall be in the Superior Court of Pierce County, Washington.

19. **NO WAIVER.** The failure of party to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

20. **ATTORNEY FEES AND COSTS.** In the event of any controversy, claim, or dispute arising out of or in any way relating to this Agreement or its breach, the substantially prevailing party shall be entitled to recover its costs, litigation expenses and reasonable attorney fees from the other party.

21. **AUTHORIZATION TO SIGN; COUNTERPARTS.** The parties hereto each represent and warrant that all necessary signatures and consents to enter this Agreement and to assume and perform the obligations hereunder have been duly and properly obtained. This Agreement may be executed in counterparts so that when taken together, such counterparts constitute a single, fully executed document.

22. **EFFECT OF PARTIAL INVALIDITY.** The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any other portion of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

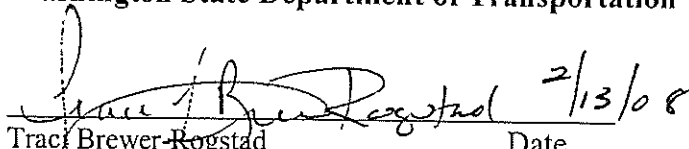
23. **NO ASSIGNMENT.** Neither party may assign this Agreement without the consent of the other.

24. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement between the parties and any prior oral understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.


[SIGNATURES ON NEXT PAGE]

IN WITNESS WHERE OF, the parties have caused this Agreement to be executed effective as of the date first above written.


WASHINGTON STATE FERRIES
Washington State Department of Transportation


Traci Brewer Rogstad Date 2/13/08
Chief of Staff
Deputy Director

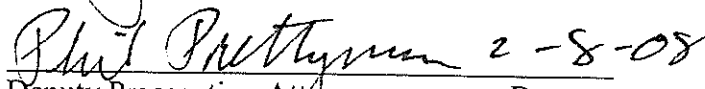
Approved as to form only:

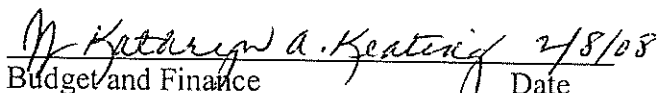

Mark S. Lyon, Esq. Date 2/8/08
Assistant Attorney General

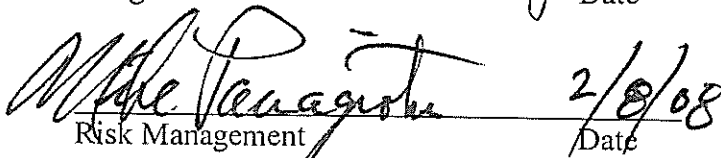
PIERCE COUNTY, WASHINGTON


Pierce County Executive Date


Public Works Director Date 2/8/08


Deputy Prosecuting Attorney Date 2-8-08
(as to legal form only)


Budget and Finance Date 2/8/08


Risk Management Date 2/8/08