

# GUARANTY

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## INSTRUCTIONS AND GUIDELINES FOR COMPLETION AND USE

(Version dated February 2015)

Introduction: Before contracting with a business, agencies must determine them financially responsible. Many businesses use complex structures, e.g., multi-tiered wholly-owned subsidiaries. Sometimes, one of our potential vendors is a subordinate businesses that lacks capitalization and independent resources. On their own, such subordinate businesses may well be non-responsible. In order to assist vendors in relying on the resources of parent entities for purposes of responsibility, agencies may elect to consider the financial resources of a parent business, but only if the parent is unconditionally responsible for the obligations of the actual offeror. This guaranty and the accompanying instructions are designed to facilitate such reliance, but to do so within the limited resources agencies can dedicate to transactional costs.

### A. Documentation That Must Accompany Guaranty

We do not accept a Guaranty unless accompanied by proof of authority to execute a Guaranty. Why? Because agreeing to guaranty the performance of a separate business is usually NOT an act for “apparently carrying on in the ordinary course of business” of the kind carried on by the guarantor. In other words, it is an extraordinary action that may require an extraordinary delegation of authority from whomever ultimately controls the guarantor – say, a corporate board of directors, all the general partners of a partnership, etc. To address this concern, we impose the following requirement.

1. Guaranty by Corporation. If the Guarantor is a corporation, you must acquire the following documents:

a. An original, signed, and witnessed certificate from the corporate secretary certifying (i) the incumbency and authority of the individuals who sign the guaranty on behalf of the corporation, and (ii) the authenticity of the corporate board resolution referenced below (see **Exhibit 1** for sample).

b. An original, signed opinion letter, on corporate letterhead, from the guarantor’s corporate counsel confirming, among other things, the corporate authority and delegated responsibility to execute the guaranty (see **Exhibit 2** for sample).

c. A copy of a resolution of the corporation’s board of directors authorizing the guaranty and reciting its relationship to corporate purposes (see **Exhibit 3** for sample).

2. Guaranty by Non-corporation. If the Guarantor is any other type of business form (e.g., a partnership, limited partnership, professional corporation, limited liability company), you must acquire an original letter, on firm letterhead, from a lawyer licensed in the jurisdiction in which the guarantor was established (see item B.3 below). The letter must provide a written opinion to the effect that the guaranty is properly executed. Again, why? An improperly executed guaranty may be worthless. Not all states impose identical requirements regarding business forms, and these rules can be complex. For example, in South Carolina, a guaranty issued by a limited liability company should be signed by every member of the LLC, or accompanied by proof that all members of the LLC authorized the member signing to execute the guaranty. (§ 33-44-301). A similar approach is advisable for member-managed LLCs. (§ 33-44-1005(a)). Same

approach for partnerships; all partners must sign. (§ 33-41-310). Accordingly, this requirement for an opinion letter is not excusable.

a copy of the partnership agreement that has been certified as authentic. The partnership agreement should show the authority of the person signing to execute a guaranty of the type signed (for related or owned entities).

**B. Completion of Guaranty**

1. “[DATE]” should be replaced with a calendar date that is the same as or precedes the date identified on the Cover Page of the Solicitation for “SUBMIT OFFER BY (Opening Date/Time).”

2. “[GUARANTOR]” should be replaced with the full legal name of the business agreeing to guaranty the contractor’s obligations.

3. “[GUARANTOR\_STATE\_INC]” should be replace with the full name of the state in which the Guarantor was established. For example, a business incorporated in Texas would identify Texas, even if its principle place of business is Ohio. A partnership formed and recorded in Georgia would identify Georgia, even if its principle place of business is Idaho.

4. “[GUARANTOR\_STATE\_PRINPLC]” should be replaced with the full name of the state in which the Guarantor has its principle place of business.

5. “[GUARANTOR’S TIN]” should be replaced with the Guarantor’s Taxpayer Identification Number.

6. “[GUARANTY\_BIZ\_FORM]” should identify the Guarantor’s business form. For example, partnership, corporation, LLC. Identifying the Guarantor as a division or subsidiary of some other entity is unacceptable.

7. “[SOLICITATION\_NO]” should be replaced with the number identified as the “Solicitation Number” on the Cover Page of the Solicitation. Likewise, every occurrence of “[SOLICITATION\_DESCRIPTION]” should be replace with the phrase identified as the “DESCRIPTION” on the Cover Page of the solicitation to which the Contractor has submitted an Offer.

8. “[CONTRACTOR]” should be replaced with the name appearing in the box identified as “NAME OF OFFEROR” on the signed version of the Cover Page submitted with the Contractor’s bid or proposal.

9. “[CONTRACTOR\_STATE]” should be replace with the full name of the state in which the Contractor was established. For example, a business incorporated in Texas would identify Texas, even if its principle place of business is Ohio. A partnership formed and recorded in Georgia would identify Georgia, even if its principle place of business is Idaho. *The state identified here must match the state identified in the box labeled as STATE OF*

*INCORPORATION on the signed version of the Cover Page submitted with the Contractor's bid or proposal, unless the box is blank. If they do not match, there is a problem.*

10. “[CONTRACTOR\_BIZ\_FORM]” should identify the Guarantor’s business form. For example, partnership, corporation, LLC. If the Guarantor is identified solely as a division or subsidiary of some other entity, the Guaranty is probably unacceptable. *The business form identified here must match the business form identified in the box labeled as OFFEROR’S TYPE OF ENTITY” on the signed version of the Cover Page submitted with the Contractor’s bid or proposal. If they do not match, there is a problem.*

11. “[GUARANTOR\_CONTRACTOR\_BIZ\_RELATIONSHIP]” should explain the relationship between these two entities – an important piece of information to the overall context. For example, is the Guarantor a parent company that owns all or a part of the Contractor? Are the Guarantor and Contractor sister companies wholly-owned by some third-party parent company? Does the Guarantor have some other relationship that would indicate the interest of the Guarantor and its level of knowledge regarding the Contractor? For example, will the Guarantor be providing the Contractor with any resources (facilities, capital, personnel, intellectual property rights, etc.) that will be used by Contractor to perform the contract? Will the Contractor be paying the Guarantor for such resources? This ties in with the significance of showing the Guarantor is receiving real economic benefit from inducing the State to enter an agreement with the Contractor.

12. “[USING GOVERNMENTAL UNITS]” should be replaced with the exact same text appearing on the Cover Page of the Solicitation next to the words “Using Governmental Unit”.

13. “[NOTICE ADDRESS]” should be replaced with the address provided by Guarantor for notices related to the Guaranty.

### **C. Procurement Officer’s Due Diligence**

1. Prior to award, review every single word of the Guaranty to confirm that (i) no modifications were made to the form, and (ii) the form was completed as required by these instructions. You cannot accept a guaranty executed after issuance of the notice of intent to award as it creates doubt as to the consideration for the guaranty.

2. One of the Recitations provides that the State intends for the Solicitation to result in the execution of one or more contracts, including any purchase orders issued against such contracts and any associated contracts contemplated or allowed by the Solicitation. Many variations are possible. Some solicitations result in a single contract with a single government entity. Some solicitations result in contracts with every government entity that issues a purchase order against a master agreement. Solicitations of either type may involve additional associated contracts between the government entity and the contractor, such as a software license, equipment lease, or nondisclosure agreement. To the extent this Guaranty extends to Contractor’s obligations under such agreements, the Guaranty will be clearer if such agreements are referenced with greater specificity.

3. Take steps to determine the financial responsibility of the Guarantor.

a. Consider a review of multiple resources such as financial statements (particularly audited statements), Dunn & Bradstreet, a general internet search, and for a publicly traded company, filings with the Securities and Exchange Commission. For a smaller business, look at court filings in a county or counties in which they operate or live (e.g., Richland County 5<sup>th</sup> Judicial Circuit Public Index at <http://www5.rcgov.us/SCJDWEB/PublicIndex/PISearch.aspx>)

b. Necessarily, this process involves taking steps to confirm the identity of the Guarantor. To assist with this inquiry, the Recitals & Representations should include the Guarantor's taxpayer identification number. The opening paragraph should identify the Guarantor's business model (corporation, LLC, partnership, etc.)

c. If Guarantor's TIN matches the Contractor's TIN, *find out why*.

#### **D. Resources Notes**

1. The recitals provide that Guarantor will receive a significant economic benefit of reasonably equivalent value. If the Guarantor does not receive reasonably equivalent value and later files bankruptcy, the bankruptcy trustee may seek to avoid the obligation. See discussion above about the recital of the relationship between guarantor and contractor.

2. The State will not agree to modifications of the guaranty form. To illustrate:

a. The scope of the guaranty cannot be limited to obligations arising out of the contract because much of the liability the state may incur could arise from other than the contract. Examples would include personal injury or property damage occurring while the contractor is on-premises, liability arising from a claim by the State for fraudulent inducement or conversion.

b. The waivers cannot be removed because it might mean that the Guarantor could assert any counter-claim or set-off the Contractor might have as a defense to enforcement of the Guaranty. For one, this would allow the Guarantor to litigate in circuit court, and perhaps before a jury, a claim that the General Assembly specified could be heard only by the CPO under 11-35-4230. For another, the counter-claim or set-off may bear no relationship to the contract covered by this guaranty and could be the result of artful drafting of irrelevant defenses designed to avoid the guaranty obligation.

c. The requirement that Guarantor's obligations remain even if the Contractor's Obligations are released or discharged will not be removed. If the Contractor's obligations to the State are discharged in bankruptcy, the State would need to proceed against the Guarantor.

#### **E. Research Notes**

1. Generally – Revisiting the 24 Defenses of the Guarantor – 24 Years Later, 28 No. 1 *Practical Real Estate Lawyer* 9 (January 2012); Robert A. Feldman and Raymond T. Nimmer, *Drafting Effective Contracts: A Practitioner's Guide* (Wolters Kluwer, 2<sup>nd</sup> ed. 2014). For a

discussion of why a surety's performance bond is better than a guaranty, see *General Motors Acceptance Corp. v. Daniels*, 492 A.2d 1306 (Md. 1985).

2. Waiver of Jury Trial - *Wachovia Bank, Nat. Ass'n v. Blackburn*, 755 S.E.2d 437 (S.C. 2014) (waiver of jury trial for counter claims); *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 170, 551 S.E.2d 263, 270 (2001) ("The right to a jury trial does not apply to actions against the sovereign that were not recognized in 1868.").

3. Estoppel Certificate – "A point which counsel might easily fail to note is the fact that there is authority to the effect that an agreement not to plead the statute of limitations is itself subject to the applicable statutory limitation period." 43 A.L.R.3d 756 (1972).

4. Procurement & Responsibility – Regulation 19-445.2125(C)(3) provides that "[t]he prospective contractor may demonstrate the availability of necessary *financing*, equipment, facilities, expertise, and personnel by submitting upon request: . . . (3) *a documented commitment from*, or explicit arrangement with, a satisfactory source to provide the necessary item."

5. Annotation:

Recital ¶ 4 & 5 – Feldman § 9.02[A][1], 9.04[A][1]-[4]

¶ 1(a)(1) & 2(a) – Feldman § 9.03[A]

¶ 1(a)(2) & 2(j) – Feldman § 9.01[B][2]

¶ 2(a) & (b) – Feldman § 8.03[A],[C],[F][1]; 8.04[G] {also see ¶ 1(a)(1)}

¶ 2(i) – Feldman § 8.02[D]&[E]; 8.04[A][2], [B] (2012)

¶ 2(d) – Feldman § 8.04[C]

¶ 3(e) – Feldman § 9.06[A][2][c]; 9.06[B][3]

¶ 3(k) & 2(b) – Feldman § 9.10[A][3]

¶ 3(m) – Feldman § 9.10[A][5]

¶ 3(d) – Feldman § 9.10[A][6]

**THIS GUARANTY MUST BE EXECUTED PRIOR TO ISSUANCE OF A NOTICE OF INTENT TO AWARD.**

## **GUARANTY**

THIS GUARANTY is made and entered into as of [DATE], by [GUARANTOR], a [GUARANTOR\_STATE\_INC] [GUARANTY\_BIZ\_FORM] (“Guarantor”), in favor of the Using Governmental Unit(s).

### **Recitals & Representations**

1. [GUARANTOR\_STATE\_PRINPLC] is [GUARANTOR]’s principal place of business. [GUARANTOR’S TIN] is [GUARANTOR]’s Taxpayer Identification Number.

2. Previously, the Using Governmental Unit solicited offers to contract by issuing Solicitation No. [SOLICITATION\_NO] entitled [SOLICITATION\_DESCRIPTION] (hereinafter the “Solicitation”). With the Solicitation, the Using Governmental Unit seeks to award a Contract (defined below).

3. By submitting a bid or proposal in response to the Solicitation, [CONTRACTOR], a [CONTRACTOR\_STATE] [CONTRACTOR\_BIZ\_FORM] (“Contractor”), seeks to enter into a Contract with the Using Governmental Unit.

4. [GUARANTOR\_CONTRACTOR\_BIZ\_RELATIONSHIP]

5. If the Using Governmental Unit enters into a Contract with Contractor, Guarantor will receive a significant economic benefit of reasonably equivalent value by virtue of its relationship with Contractor; accordingly, Guarantor seeks to induce Using Governmental Unit to enter into a Contract with Contractor. Guarantor acknowledges that Using Governmental Unit would not have awarded the Contract to Contractor but for this Guaranty.

In consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in reliance on the foregoing, the materiality of which is hereby acknowledged, the parties hereto agree as follows:

### **Agreement**

#### **1. General**

##### **a. Definitions.**

(1) As used herein, the term “Contract” collectively refers to all the contractual agreements arising out of or resulting from the Solicitation, including without limitation, any purchase orders issued against such agreements and any associated agreements contemplated by or related to the Solicitation, and further includes any modifications, extensions, amendments and renewals of the foregoing, or substitutions thereof.

(2) As used herein, the term “Contractor” includes any of Contractor’s successors or assigns.

(3) As used herein, the term “Using Governmental Unit” means the following entity or entities of government: [USING GOVERNMENTAL UNITS].<sup>1</sup>

b. Headings. The headings contained in this Guaranty are inserted for convenience only and will not affect the meaning or interpretation of this Guaranty.

c. Interpretation. Any question of interpretation or construction shall not be resolved by any rule providing for interpretation or construction against the party who causes the uncertainty to exist or against the drafters of this Guaranty.

d. Representation & Warranty. Guarantor represents and warrants to the Using Governmental Unit that the Recitals are true, accurate and complete, and that this Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

## 2. Guaranty.

a. Guaranty; Scope; Contractor's Obligation Defined. As an inducement to, and in consideration of, Using Governmental Unit's entry into a Contract with Contractor, Guarantor absolutely, unconditionally and irrevocably guaranties, without notice or demand, the full and timely payment and performance of any debt, liability or obligation of Contractor, howsoever arising, which Contractor presently or hereafter may have to the Using Governmental Unit arising out of or related to the Contract or the Contractor's performance of the Contract (collectively "Contractor's Obligations").

b. Unconditional; No Right to Require Failure of Collection; Limited Right to Require Action Against Primary Debtor; Waiver of Contractor's Counterclaims. This guaranty is a guaranty of payment and performance and not of collection. Except as otherwise provided herein, Using Governmental Unit may not proceed against Guarantor without first acquiring, from either the Chief Procurement Officer, the South Carolina Procurement Review Panel or a court, an order allowing Using Governmental Unit to recover from Contractor. The foregoing order shall be conclusive evidence of the amount and validity of Contractor's Obligations. Guarantor waives any right to assert any defense, counterclaim, affirmative defense, or set-off of the Contractor. Without limiting the generality of the foregoing, Guarantor will not assert, plead or enforce against Using Governmental Unit any defense of waiver, release, statute of limitations, res judicata, or illegality. This guaranty will be binding and enforceable against Guarantor without regard to the enforceability or validity of the Contract, the obligation it evidences, or any fact which would constitute a legal or equitable defense or discharge of a guarantor. This Guaranty in no way alters the respective obligations, rights, defenses, setoffs, counterclaims, or privileges of the Contractor. Notwithstanding anything to the contrary in this paragraph, Using Governmental Unit may proceed against Guarantor without first having recourse to the Contractor or pursuing any other right or remedy if and upon the filing by Contractor or Guarantor of a petition in bankruptcy or insolvency or upon the initiation of any other proceeding or action by or against Contractor or Guarantor under the relevant law on insolvency or bankruptcy, or after the making by Contractor or Guarantor of any assignment or attempted assignment for the benefit of creditors or upon or after the institution of any proceedings for the liquidation or winding up of Contractor's or Guarantor's business or for the termination of either's corporate charter.

c. Waiver of Notice of Acceptance, Transactions, Default, and Other. Guarantor waives any right to notice of acceptance of this guaranty; notice of any modification, extension, renewal or substitution of the Contract; notice of default by Contractors; and any other notice, whether similar or dissimilar to the foregoing.

d. No Duty to Avoid Impairment of Recourse. Any of the Contractor's Obligations may be compromised, settled, released, discharged, renewed, extended, altered, waived, exchanged, modified, substituted, or otherwise dealt with in such a manner as Using Governmental Unit sees fit and such action shall not affect Guarantor's liability. Without limiting the foregoing, Guarantor acknowledges that the Contract inherently involves significant potential for modification, consents to any such future modification, and expressly waives any defense arising out of any modification.

e. No Right to Rely on Surety Status. Guarantor does not have surety status and waives any surety defenses.

f. Waiver of Discharge, No Right to Rely on Debtor's Defenses, and Counterclaims. Guarantor waives all rights to assert any discharge, defense, counterclaim, or set-off with respect to this guaranty, including but not limited to, any which might arise out of a failure to disclose any present or future information to Guarantor

concerning the risks of this guaranty, the release by Using Governmental Unit of Contractor, or the Using Governmental Unit's nonperformance.

h. No Rights Under Contract. Guarantor denies any status or right as a third-party beneficiary of the Contract and waives any right to enforce the Contract.

i. Duty to Disclose, Notice of Acceptance, and Waiver. Guarantor is completely familiar with Contractor, its financial and business affairs, and all its dealings with Using Governmental Unit. Guarantor will look solely to Contractor for notice that a Contract has been awarded. Guarantor will obtain all information it deems necessary or advisable concerning Contractor or which might otherwise bear on the guaranty directly from Contractor or other sources with regard to all risks involved in the entry into and continuation of the coverage of this guaranty. Guarantor waives all rights which it has now, or in the future may have, to any disclosure by Using Governmental Unit.

j. Bankruptcy, Merger, or Change of Control in Guarantor or Contractor. Without limitation, Guarantor agrees that the obligations of Guarantor pursuant to this Guaranty shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by any of the following (whether or not Guarantor shall have any knowledge thereof): (a) any dissolution of or any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to Contractor or Guarantor, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding; (b) any merger or consolidation of Contractor or Guarantor, as applicable, into or with any person, or any sale, lease or transfer of any of the assets of Contractor or Guarantor, as applicable, to any other person; or (c) any change in the ownership of the capital stock of Contractor or Guarantor, as applicable, or any change in the relationship between Contractor or Guarantor, or any termination of any such relationship. In addition, if Contractor or Guarantor is a partnership, the obligations of all partners shall remain in full force and effect even if there are changes in the members of the partnership, and the guaranty shall, as applicable, extend to or apply with respect to the partnership both before and after any changes.

3. Miscellaneous.

a. Substitute Performance. The Using Governmental Unit has no obligation to accept substitute performance and may elect to recover only payment from the Guarantor.

b. Duty to Provide Information. The Using Governmental Unit may request information from Guarantor in order to evaluate Guarantor's financial circumstances. Upon request, Guarantor shall cooperate with this effort and respond promptly to any such request. If Guarantor provides the Using Governmental Unit with any information it believes is exempt from public disclosure pursuant to the South Carolina Freedom of Information Act, Guarantor shall so designate such information. The Using Governmental Unit accepts no liability for the disclosure of information provided by Guarantor.

c. Choice-of-Law. The Guaranty, any action, suit or proceeding relating to the Guaranty, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice-of-law rules.

d. Choice-of-Forum. Any action, suit or proceeding relating to the Guaranty shall be resolved exclusively in the Court of Common Pleas for Richland County, State of South Carolina. Guarantor agrees that any act by the Using Governmental Unit regarding the Guaranty is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution.

e. Waiver of Right to Jury Trial. To the extent permitted by law, Guarantor knowingly, voluntarily, and intentionally waives any right to a trial by jury in respect of any litigation based on, arising out of, under or in connection with this Guaranty or any agreement contemplated to be executed in connection with this Guaranty (e.g., the Contract), or any course of conduct, course of dealing, statements, or actions of any party with respect hereto.

f. Costs and Attorney Fees. Guarantor shall reimburse Using Governmental Unit for all costs and expenses, including attorneys' fees, reasonably incurred in enforcing the Using Governmental Unit's rights under this Guaranty.

g. No Third Party Benefits. Nothing in this Guaranty is intended, and it shall not be construed, to confer any rights or benefits upon any person other than the Using Governmental Unit and no other third party shall have any rights or remedies hereunder.

h. Notice To Guarantor. All notices and other communications to Guarantor under this Guaranty shall be sufficiently given for all purposes hereunder if in writing and: (i) delivered personally; or (ii) sent by documented overnight delivery service, in each case, to the following: **[NOTICE ADDRESS]** or to such other address and/or to the attention of such other person as Guarantor may designate by written notice to the Using Governmental Unit.

i. Notice to Government. As long as the Contract is in effect, any notice or other communication to Using Governmental Unit regarding this Guaranty may be provided solely to the following address or, if another address is designated by written notice to the Guarantor, solely to the address most recently designated. In order to be effective, any notice to the Using Governmental Unit must identify the Solicitation by name and number. If the Contract is not in effect, notice must be given directly to Using Governmental Unit.

Procurement Services Division  
State Budget & Control Board  
1201 Main Street, Suite 430  
Columbia, SC 29201

j. Binding Effect; Assignment. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that no party hereto may assign its rights or delegate its obligations under this Guaranty without the express written consent of the other party hereto.

k. Estoppel Certificate. Guarantor shall, within ten days after Using Governmental Unit's request, deliver to Using Governmental Unit a certificate, in form and substance reasonably satisfactory to Using Governmental Unit, confirming that Guarantor will not assert any defense to enforcement of the Guaranty based upon the expiration of any statute of limitations. Failure to deliver a certificate constitutes a default.

l. Amendment; No Waiver. This Guaranty may not be modified or amended except by an instrument in writing signed by the party against whom enforcement of any such modification or amendment is sought. Any party hereto may, only by an instrument in writing, waive compliance by the other party hereto with any term or provision of this Guaranty. The waiver by any party hereto of a breach of any term or provision of this Guaranty shall not be construed as a waiver of any subsequent breach.

m. Integration. This guaranty is a completely integrated guaranty. Notwithstanding any contrary term, there are no oral or written conditions precedent or concurrent to the effectiveness of this guaranty. There are no terms or conditions other than those in this writing. This writing supersedes all prior or contemporaneous terms, conditions, and representations.

IN WITNESS WHEREOF, Guarantor has set its hand and seal hereto as of the date above written.

[GUARANTOR]

By: \_\_\_\_\_ L.S.  
(signature)

Name: \_\_\_\_\_  
(typed/printed name of person signing above)

Its: \_\_\_\_\_  
(title / position of person signing above, e.g., president)

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<sup>i</sup> [Add the following at the end of item #2 only if the contract is a statewide term contract: The term “Using Governmental Unit” may be defined to mean “Statewide Term Contract” or “State Term Contract” or “Statewide Contract,” and if so defined, these terms mean any governmental entity that submits a purchase order that is accepted by Contractor pursuant to the Contract. If the term “Using Governmental Unit” is defined to mean more than one entity (e.g., multiple entities are listed or the term “Statewide Contract” is used), this Guaranty extends and applies to each entity separately, the same as if a distinct guaranty had been separately executed with each individual entity. Guarantor’s obligations to each entity is independent of its obligations to every other entity. Each entity’s rights, obligations and liabilities are independent of every other entity’s rights, obligations, and liabilities.]

## **Exhibit List**

### Exhibit 1 – Certificate of Corporate Secretary

Sample of certificate from the corporate secretary certifying (i) the authenticity of the corporate board resolution and corporate by-laws referenced, and (ii) the incumbency and authority of the individuals who sign on behalf of the corporation.

### Exhibit 2 – Opinion Letter of Corporate Counsel

Sample opinion of corporate counsel.

### Exhibit 3 – Board of Director’s Corporate Resolution of Authorization

Sample of a resolution of the corporation’s board of directors authorizing the guaranty and reciting its relationship to corporate purposes.

For a non-corporate guaranty, these forms are inapplicable. Reference paragraph A.2. of the instructions.

**Exhibit 1 – Certificate of Corporate Secretary**

[Please complete this form in accordance with the accompanying Instructions and Guidelines for Completion and Use (Version dated February 2015).]

**CERTIFICATE OF SECRETARY of [GUARANTOR], a [GUARANTOR\_STATE\_INC] corporation**

I, the undersigned, *[name of corporate secretary]*, Secretary of [GUARANTOR], a [GUARANTOR\_STATE\_INC] corporation (“Corporation”), certify the following:

1. Attached to this Certificate as Attachment #1 is a correct copy of resolutions adopted by the board of directors of Corporation at its meeting held on *[date]*, at which a quorum was present and acting throughout. These resolutions have not been revoked, modified, amended, or rescinded, and are still in effect.
  
2. As of the date of this Certificate, the persons whose names appear on Attachment #2 hereto are the elected and qualified officers of Corporation occupying the offices set forth opposite their respective names, who are authorized by the board of directors of Corporation to execute documents on behalf of Corporation, and the signatures set forth above their respective names are their genuine signatures.

I have so certified this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Secretary

**WITNESS**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the Company, and that appearing above is the true signature of \_\_\_\_\_, the Secretary of the Company.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

**Exhibit 2 – Opinion Letter of Corporate Counsel**

[Please complete this form in accordance with the accompanying Instructions  
and Guidelines for Completion and Use (Version dated February 2015).]

[LETTERHEAD OF COMPANY'S COUNSEL]

\_\_\_\_\_, 20\_\_

To: STATE

Re: CONTRACTOR

Ladies and Gentlemen:

We are of the opinion that:

1. The [GUARANTOR] is a corporation duly incorporated, validly existing and in good standing under the laws of the State of [GUARANTOR\_STATE\_INC], with corporate powers adequate for the execution, delivery and performance of the Guaranty regarding Solicitation No. [SOLICITATION\_NO] entitled [SOLICITATION\_DESCRIPTION].
2. All corporate proceedings required to be taken to authorize the execution and performance of this guaranty, including without limitation, a resolution by [GUARANTOR]'s Board of Directors authorizing this guaranty, have been taken.
3. The Guaranty has been duly authorized and executed by the [GUARANTOR], constitutes the legal, valid and binding obligation of the [GUARANTOR], and is enforceable against the Company in accordance with its terms.
4. The execution, delivery, and performance of the Guaranty does not, and will not, result in any violation of, be in conflict with, constitute a default under, give rise to any obligation to redeem securities under, or result in the creation of a lien or encumbrance under, any term or provision of (i) any court order or any presently existing federal or [GUARANTOR\_STATE\_INC] law, statute, ordinance, or governmental regulation, (ii) [GUARANTOR]'s Articles or Certificate of Incorporation or By-laws, (iii) the general corporation law of the State of [GUARANTOR\_STATE\_INC\_INCORPORATION] or (d) any license, judgment, decree, order, agreement, indenture, deed, lease or other instrument known to us that is applicable to it.

Very truly yours,

[Name of Counsel]

**Exhibit 3 – Board of Director’s Corporate Resolution of Authorization**

[Please complete this form in accordance with the accompanying Instructions and Guidelines for Completion and Use (Version dated February 2015).]

**Attachment #1 to Certificate of Corporate Secretary**

**RESOLUTION OF BOARD OF DIRECTORS OF [GUARANTOR], a [GUARANTOR\_STATE\_INC] corporation (“Corporation”)**

*[key language below]*

*[recitals reflecting guaranty’s relationship to corporate purposes]*

Therefore, it is resolved that the form, terms, and provisions of the Guaranty to be executed concurrently with the execution of the Guaranty have been reviewed by the directors of Corporation and are approved; and

It is further resolved, that any of the following officers of Corporation are authorized, on behalf of Corporation, to execute the Guaranty:

*[names and titles of officers authorized to bind the guarantor]; and*

[GUARANTOR]

\_\_\_\_\_

[Name]

\_\_\_\_\_

[Name]

\_\_\_\_\_

[Name]