LATECOMERS AGREEMENT FOR REIMBURSEMENT FOR MUNICIPAL WATER SYSTEM EXTENSION

AGREEMENT, made this 27th day of June, 1999, between the Washington State Department of Corrections and the City of Gig Harbor, situate in Pierce County, Washington, the parties respectively referred to herein as "Owner" and "City".

WITNESSETH:

RECEITALS

1. The City owns and operates a water system within and adjacent to its City limits; and

2. The Owner has constructed, under agreement with the City, pursuant to the Municipal Water and Sewer Facilities Act, RCW 35.91.010, et seq., a certain extension to said water system, more particularly depicted on Exhibit "A," attached hereto and incorporated herein by this reference, which extension is capable of serving parcels now owned by the Owner and others; and

3. The area capable of being served directly by the extension to said water system—depicted in Exhibit "A," and to be subject to the provisions of this Latecomers Agreement, is herein referred to as the "benefited properties" or "benefited area," and is more particularly described in Exhibit "B," attached hereto and incorporated herein by this reference; and

4. The extension to said system depicted in Exhibit "A" is located within the City's existing water service area, and shall be subject to the City's public works standards for performance and maintenance bond requirements; and

5. The total project cost for design and construction of the extension depicted in Exhibit "A" under the provisions of said Municipal Water and Sewer Facilities Act amounts to $384,712.00; as more specifically itemized in Exhibit "C," attached hereto and
incorporated herein by this reference; and

6. The City has determined and the Owner has agreed that the fair pro rata share of the total project costs of said extension, to be collected from the owner or owners of the benefited properties, and who tap on or connect to said extension, shall be the amounts shown in Exhibits “C” and Exhibit “D,” which are attached hereto and incorporated herein by this reference; and

7. The City and Owner desire and intend by this Agreement to provide for collection, under the provisions of the Municipal Water and Sewer Facilities Act, of the fair pro rata share of the total project costs of said extension from the owner or owners of the benefited properties as described in Exhibit “B” and identified in Exhibit “D” who did not contribute to the original cost thereof, except such owners for whom the assessment fees have been waived or otherwise paid by the Owner as set forth herein

NOW, THEREFORE, in consideration of the mutual Covenants and agreements hereafter set forth, it is agreed by and between the parties hereto as follows:

A. All of the recitals set forth above are adopted by the parties as material elements of this Agreement.

B. The Owner shall transfer title, free and clear of all encumbrances, to said extension shown in Exhibit "A," by a Bill of Sale to be executed and delivered by the Owner to the City upon acceptance of said extension for ownership and maintenance by the City and delivery of a two-year maintenance bond in accordance with the City's requirements.

C. The Owner warrants that it is the owner in title absolute of said extension shown in Exhibit "A," that it has neither permitted nor suffered any person or other entity to tap onto said extension prior to the date of this Agreement, except customers of record for the pre-existing and now abandoned Owner water system and parcels owned by the Owner as identified in Exhibit "D" and described in Part “E” below; that the sums for each parcel as shown in Exhibit "D" are fair pro rata charges to be assessed against the owner or owners; of each parcel within the benefited area, as shown in Exhibit "A" and described in Exhibit "B," who subsequently tap onto or connect to or use said facility for water service; and do further warrant that there are no persons, firms or corporations who have filed or have the right to file a lien against said extension pursuant to the provisions of Title 60 of the Revised Code of Washington, other than those heretofore filed which have been satisfied. In the event that any lien or other claim against said extension are asserted after conveyance to the City, the Owner shall defend and save harmless the City from loss on account thereof. In the event the City shall be put to any expense in defense of such claim or otherwise, then the City shall have a lien against any funds then or thereafter deposited with it pursuant to this Agreement.
D. In consideration of the conveyance of the extension shown in Exhibit "A," the City agrees to accept said extension for ownership and maintenance as part of its facility, after inspection and testing by the City Engineer and his recommendation of acceptance, and delivery to the City of the Bill of Sale and two-year maintenance bond. Further, the City agrees to collect from the owner or owners of the parcels within the benefited area as shown in Exhibit "A" who have not heretofore contributed to the project costs thereof, and who subsequently tap onto or connect to or use the same, a latecomer's charge (assessment fee) equal to the fair pro rata share of the total project costs as set forth in Exhibit "D," and described in Part "E" below. The City shall charge, in addition to its usual and ordinary charges made against persons applying for service from said facility and in addition to the amount agreed to be collected by the City in this paragraph, a sum equal to fifteen percent (15%) of the assessment to be collected from the owner or owners of said properties tapping onto, connecting to, or using said facility, which sum shall be used by the City to defray the cost of labor, bookkeeping, and accounting, pursuant to the terms of this Agreement. Such fair pro rata share of the total project costs, and said fifteen (15)-percent administrative sum by and for the City, shall not be collected by the City from customers of record for the pre-existing and now abandoned Owner water system, and for parcels owned by the Owner as identified in Exhibit "D," and described in Part "E" below.

E. The total project costs for said extension including costs eligible for reimbursement under this agreement, shall be as itemized in Exhibit "C." Said eligible portion of the total project costs includes costs for design engineering, surveying, construction, construction inspection, and construction contract administration incurred and paid by the Owner. The latecomer's charge (assessment fee) for each of the parcels in the benefited area as shown in Exhibit "A" shall be a fair pro rata share of said total project costs, and shall be based on a distribution of 75-percent of the total project costs to the total area of the benefited properties, and 25-percent of the total project costs to the total length of the parcel frontages adjacent said extension within the benefited area. Said pro rata share of the total project costs to be assessed against each parcel in the benefited area shall be calculated by multiplying the ratio of the parcel's area to the total area of the benefited properties by the portion of the total project costs distributed to the total area of the benefited properties, and adding the ratio of the parcel's front footage (length of the parcel's frontage adjacent the extension) to the total length of the parcel frontages adjacent said extension within the benefited area multiplied by the portion of the total project costs distributed to the total length of the parcel frontages adjacent the extension within the benefited area. In consideration of their double frontages as corner lots, Parcel's "H" and "I-1" as shown in Exhibit "A," each have their front footages reduced by 300-feet a factor of two for their average frontage. In consideration of their status as previous customers, the Owner has agreed to waive the assessment fee payment requirements for Parcels N, O, P, Q, and T, as identified in Exhibit "D." Connection assessments for parcels R and S have been paid by the Owner as the owner of the parcels.
F. The City agrees not to allow an owner or owners of a parcel within the benefited area as shown in Exhibit “A,” and as set forth in Parts “D” and “E” above, to tap onto, connect to, or use said facility without such owner or owners having first paid to the City the latecomer’s charge, and such other charges as set forth in Parts “D” and “E” above.

G. The City shall pay to the Owner the sums agreed by it to be collected pursuant to the provisions of Part “D” above, within sixty (60) days after receipt thereof at the address of the Owner as set forth hereinafter or at such other addresses as the Owner shall provide by Certified Mail. If said payments are returned to the City unclaimed by the Owner, or if the City is unable to locate the Owner after six (6) months, the City shall retain all sums then received and all future sums collected under this Agreement.

H. In the event of the assignment or transfer of the rights of the Owner voluntarily, involuntarily, or by operation of law, then the City shall pay all benefits accruing hereunder, after notice, to such successor of the Owner as the City, in its sole judgment, deems entitled to such benefits; and in the event conflicting demands are made upon the City for benefits accruing under this Agreement, then the City may, at its option, commence an action in interpleader joining any party claiming rights under this contract, or other parties which the City believes to be necessary or proper, and the City shall be discharged from further liability upon paying the person or persons whom any court having jurisdiction of such interpleader action shall determine, and in such action the City shall be entitled to recover its reasonable attorney's fees and cost, which fees and costs shall constitute a lien upon all funds accrued or accruing pursuant to this Agreement.

I. In the event of any claims arising as a result of the negligent acts or omissions of the City, its officers, officials, employees representatives and agents, in the performance of the services described in this Agreement, the Owner hereby agrees to release, indemnify, defend and hold the City, its officers, officials, employees, agents and representatives, harmless from any and all claims, costs, judgments, awards or liabilities to any person, to the extent allowed by law.

J. The City shall be entitled to rely with acquittance on the provisions of this Agreement with respect to the fairness of the pro rata charges, and upon the determination of the benefited properties as provided herein. The Owner agrees to indemnify, hold harmless, and defend the City in any challenge to the method used to calculate the fair pro rata share applied to the parcels as set forth in this Agreement.

K. Nothing contained herein shall be construed to affect or impair in any manner the right of the City to regulate the use of its water system, of which the extension described in Exhibit "A" shall become a part under the terms of this Agreement, pursuant to the provisions of any ordinance, resolution, or policy now or hereafter in effect. The imposition by the City of any such requirement shall not be deemed an impairment of this Agreement though it may be imposed in such a manner as to refuse service to an owner or owners of a
parcel in the benefited area in order to secure compliance with any such requirement of the City.

L. This Agreement shall become operative upon its being recorded with the Pierce County Auditor at the expense of the Owner, and shall remain in full force and effect for a period of fifteen (15) years after the date of such recording, or until the Owner, or its successors or assigns, shall have been fully reimbursed as aforesaid, whichever event occurs earlier; provided, that in the event the water system extension shown in Exhibit "A," or any portions thereof, shall during the term of this Agreement, be rendered useless by the redesign or reconstruction of a portion of said extension, or of the City's water system, as determined by and at the absolute discretion of the City Engineer, then the City's obligation to collect for the Owner the latecomers charges (assessment fees) provided pursuant to this Agreement shall cease.

M. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Owner.

N. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary.

City Administrator (City) Department of Corrections (Owner)
City of Gig Harbor Contracts, Engineering, and Capital
3105 Judson Street Programs/Team Program
Gig Harbor, WA 98335 PO Box 41112

O. All of the provisions, conditions, regulations and requirements of this Agreement shall be binding upon the successors and assigns of the Owner, as if they were specifically mentioned herein.

P. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any resulting dispute shall be in Pierce County Superior Court, Pierce County, Washington. The prevailing party in any legal action arising from this Agreement shall be entitled to all costs and expenses, including attorneys' fees, expert witness fees or other witness fees and any such fees and expenses incurred on appeal.

Q. Any invalidity, in whole or in part, of any of the provisions of this Agreement shall not affect the validity of any other of its provisions.

R. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have
waived or consented.

S. This Agreement, including its exhibits and all documents referenced herein, constitutes the entire agreement between the City and the Owner, and supersedes all proposals, oral or written, between the parties on the subject.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF GIG HARBOR

By: 

Its: Mayor Pro Tem

OWNER

[Signature]

Print Name: Gary Banning
Title: Contracts Administrator
Department of Corrections
PO Box 41112
Olympia, WA 98504-1112

ATTEST:

Molly Towslee
City Clerk, Molly Towslee

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY

Carol A. Morris

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STATE OF WASHINGTON 

COUNTY OF Pierce 

I certify that I know or have satisfactory evidence that Nikolai Markovich is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor Pro Tem of the City of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 11/23/99

MOLLY M. TOWSLEE
NOTARY PUBLIC-STATE OF WASHINGTON
My Commission Expires December 2, 2003

STATE OF WASHINGTON 

COUNTY OF Thurston 

I certify that I know or have satisfactory evidence that Gary Banning is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Contract Admin of D.O.C., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 11/22/99

PAMULA J. DITTMAN-KOTWICK
NOTARY PUBLIC-STATE OF WASHINGTON
My Commission Expires November 30, 2001

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