

RESOLUTION NO. 1079

A RESOLUTION ADOPTING 1993 AMENDMENTS TO PHASE II REGIONAL WATER SUPPLY STUDY INTERGOVERNMENTAL AGREEMENT, OUTLINING PROVISIONS FOR STEERING COMMITTEE MEMBER ALTERNATES AND CLARIFYING SHARED LIABILITY.

WHEREAS, a Phase II Regional Water Supply Study Agreement (IGA)) has been entered into by the City of Wilsonville and many of the water suppliers in this region; and

WHEREAS, a few issues have arisen requiring clarification of the IGA; and

WHEREAS, the parties to the IGA have established a subcommittee to review the clarification issue; and

WHEREAS, the subcommittee has met, reviewed and approved clarification language; and

WHEREAS, the nature of the clarifications are such that a formal amendment to the IGA is appropriate.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

The Phase II Regional Water Supply Study IGA shall be amended as follows:

Section B. ROLE OF THE STEERING COMMITTEE

1. The Steering Committee shall be made up of two primary Participants from each of the following areas:
 - Multnomah County (one member of which must be from the City of
 - Portland Water Bureau) - and one alternate.
 - Washington County - and two alternates.
 - Clackamas County - and two alternates.
2. (a) Members of the Steering Committee and alternates shall be selected by the members of the Participants Committee from each of the listed geographic areas.
(b) Alternates
"Alternates" are representatives of Participants who attend Steering

Committee meetings when the primary Steering Committee member cannot send a representative.

Selected alternates may attend Steering Committee meetings even when the selected Steering Committee member is present. At those times the alternate may participate in the Steering Committee discussion as desired by the Steering Committee but may not vote. Alternates may, however, represent a Participant as provided in Section B.7.

When a selected alternate is attending a Steering Committee meeting in the place of a primary Steering Committee member then the alternate may participate fully on the Committee and may vote.

As used in this section, "member" shall mean "Participant."

Section I. SHARED LIABILITY

Except for suits arising out of the willful and wanton acts or omissions of a Participant or its employees or agents or a suit challenging the legal authority of a Participant to enter into this Agreement, all Participants agree to share any costs or damages (including reasonable attorney's fees) from third party actions (including any action by the consultant) against any Participant arising out of the contract with the consultant or this Agreement.

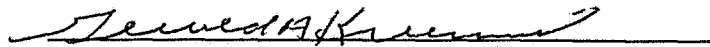
Payment obligations shall be proportional to each Participant's original contribution or such other proportion as is applicable if Participants have defaulted or other entities have joined as Participants pursuant to Section G.

Participants agree to assist and cooperate in the defense of such an action. Settlement of any action that would impose an obligation to pay upon the Participants under this provision must be approved by a majority of the Participants Committee subject to the ratification of individual Participants. Participants may only refuse to ratify a properly approved settlement, however, if ratification would be contrary to law. As used in this clause the term "law" does not include municipal ordinances, policies or other regulations voluntarily adopted by a Participant.

A Participant believing that ratification would be contrary to law, as that term is defined in this section, shall make this assertion to the Participant's Committee, in writing, setting out the specific basis for its belief within 10 days of receiving notice of a proposed Participants' vote

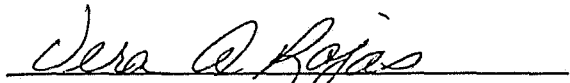
on the settlement, if such notice is sent, or within 10 days of any Participants' vote ratifying a settlement, if no notice of a proposed vote is received. Any Participant who participates in payment of the settlement may challenge any such assertion in court. Whichever side is sustained in such suit shall be entitled to its costs and reasonable attorneys fees incurred in such action. A defaulting Participant shall be liable to the other Participants for its pro rata share of any liability covered by this section.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 20th day of December, 1993, and filed with the Wilsonville City Recorder this date.



GERALD A. KRUMMEL, Mayor

ATTEST:



VERA A. ROJAS, CMC/AE, City Recorder

SUMMARY OF VOTES:

Mayor Krummel	<u>AYE</u>
Councilor Van Eck	<u>AYE</u>
Councilor Carter	<u>AYE</u>
Councilor Hawkins	<u>AYE</u>
Councilor Lehan	<u>AYE</u>

City of
WILSONVILLE
in OREGON




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PUBLIC WORKS DEPARTMENT

MEMORANDUM

DATE: DECEMBER 6, 1993

TO: CITY OF WILSONVILLE
HONORABLE MAYOR AND CITY COUNCILORS

FROM: STEVE STARNER, PUBLIC WORKS DIRECTOR 

SUBJECT: REGIONAL WATER SUPPLY STUDY -
1993 INTERGOVERNMENTAL AGREEMENT
AMENDMENT (IGA)

Summary

Due to language conflicts between their adopted City Charter and the IGA, the City of Beaverton entered into the Regional Study IGA and paid their share of the study costs (\$61,971.00) with the condition that the Participants Committee pursue an amendment to Section I of the IGA language pertaining to shared liability. During a regular participants meeting on May 4, 1993, a subcommittee was formed to address the Beaverton amendment issue and review any other potential IGA ambiguities. The results of the work of the subcommittee are contained within the body of Resolution No. CB-R-678-93.

Recommended Action

Adopt Resolution No. CB-R-678-93 as presented.

Discussion

Based on discussion during regular meetings of the Participants Committee and further review by a special subcommittee, two sections of the adopted IGA are proposed to be revised and acted upon by each Participant. The two sections proposed for revision may be presented as follows:

Memo: Honorable Mayor & City Councilors
Re: Regional Water Supply Study -
1993 IGA Amendment

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1. Role of the Steering Committee

The main purpose of the Steering Committee is to provide the Participants with a representative body to review the work of the consultant and to participate, with Portland, in managing the project contract. In addition to meeting twice per month with the consultant, the Steering Committee members are also expected to attend the monthly Participants meeting in order to provide update reports and be available to answer questions.

Given the onerous meeting schedule, Steering Committee members have expressed a concern about maintaining active representation in the face of unavoidable schedule conflicts. As adopted, the IGA may cause a Steering Committee member to lose their standing if they fail on more than four occasions in any six month period to send a representative from their own jurisdiction.

The revised language would provide one designated alternate which may be from another jurisdiction for each Steering Committee position, other than City of Portland. In the event of an unavoidable absence, the alternate may attend the Steering Committee meeting and vote on items requiring action. This change is intended to ensure maximum representation and participation throughout the study process.

2. Shared Liability

The adopted IGA language contains a shared liability clause intended to address the unlikely event of a third party action against any Participant as it relates to the project. The clause also states that "Settlement of any action that would impose an obligation to pay upon the Participants . . . must be approved by a majority of the Participants Committee." Therefore, a majority vote of the Participants Committee may approve cost increases arising from a law suit which would be allocated to a participant who may have taken a position which was in accordance with the majority. Also, Beaverton felt that while it is appropriate to be liable for the consequences of acts done for its benefit under common law principles, the description of acts in the adopted IGA for which liability is shared by all was too broad.

As described above, the delegation of spending and settlement authority is assigned to the majority of participants and is deemed an improper delegation under the City of Beaverton's Charter.

The language of the IGA amendment is intended to address Beaverton's concerns. Described briefly, the amendment would accomplish the following:

- * Eliminate shared liability for willful and wanton acts of a Participant or its employees.
- * A settlement which would impose an obligation to pay must be approved by a majority of the Participants subject to the approval of individual Participants.

Memo: Honorable Mayor & City Councilors
Re: Regional Water Supply Plan
1993 IGA Amendment

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- * A Participant may refuse to approve a settlement only if the approval would be contrary to law.
- * The term "law" does not include ordinances or regulations voluntarily adopted by a Participant (but would include a City Charter, for example).
- * Upon receiving notice of a settlement by a majority of the committee members, a Participant has ten days to provide written basis for a decision to not approve a settlement.
- * Any participant who contributes payment to the majority settlement may legally challenge the basis of the written decision to not participate in the settlement.

Conclusion

While evaluating the concerns raised by the City of Beaverton, the Participants Committee discussed three options:

1. Construct a separate agreement with Beaverton to indicate an understanding that Beaverton may be excluded from future shared liability.
2. Simply delete Beaverton from a participant's role in the water study project.
3. Enter into the IGA with Beaverton and agree that the IGA language would be revisited in the near future.

The first option would have required formal ratification by each of the participants. Having just completed IGA adoption in 26 jurisdictions, the concern of the technical representatives and the study consultant was that an additional review in each jurisdiction would create a project delay of 30 to 60 days.

The second option would have resulted in a loss of project revenue, \$61,971, which was Beaverton's share of the study cost. For Wilsonville, this would have been a project cost increase of \$2,243.35.

The third option is the preferred course of action and is represented as the 1993 IGA amendment.

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