

RESOLUTION R- 4088

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A COVENANT NOT TO SUE AND HOLD HARMLESS AGREEMENT REGARDING THE WATER PURVEYOR CONTRACT BETWEEN THE CITY OF KIRKLAND AND THE CITY OF SEATTLE.

Whereas, the City of Seattle supplies water to the City of Kirkland pursuant to a Purveyor Contract; and

Whereas, the City of Seattle would like to enter into an agreement with the Covington Water District ("Covington") to provide back-up water to Covington so that Covington can lift its moratorium on water connections; and

Whereas, the City of Seattle has requested that Covington, the City of Kirkland and other purveyors indemnify and hold the City of Seattle harmless for claims which any purveyor may have against Seattle under its water purveyor contract as a result of the agreement between Seattle and Covington; and

Whereas, the City of Kirkland is committed to cooperating in solutions to water supply problems on a regional basis, and is therefore willing to enter into a covenant not to sue and hold harmless agreement; and


Whereas, the City of Kirkland is authorized to enter into this agreement pursuant to RCW 39.34, the Interlocal Cooperation Act;

Now, therefore, be it resolved by the City Council of the City of Kirkland as follows:


Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City a Covenant Not to Sue and Hold Harmless Agreement with the City of Seattle substantially similar to the agreement attached hereto as Exhibit A.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 15th day of July, 1997.

Signed in authentication thereof this 5 day of ^{AUGUST} ~~July~~, 1997.


MAYOR

Attest:


City Clerk
Reso\covnts

WHEREAS, the signatories to this Agreement are willing to enter into a covenant not to sue Seattle and additionally to indemnify and hold Seattle harmless and on that basis, Seattle is willing to approve the agreement between Cedar River and Covington; and

WHEREAS, as a condition of this indemnification, the Purveyors agree to establish a joint defense fund; and

NOW THEREFORE, the undersigned Water Purveyor and Seattle agree as follows:

Section 1. Approval of backup water supply agreement by Seattle. Seattle agrees to approve the agreement between Cedar River and Covington under which agreement Cedar River would provide Covington with up to 1.5 million gallons of water per day (mgd) as a backup to the water to be supplied by Auburn to Covington.

Section 2. Covenant not to sue. The City of Kirkland agrees not to sue Seattle for any claim or cause of action which may arise under the Purveyor Contract between the City of Kirkland and Seattle as a result of Seattle's actions in approving the agreement between Cedar River and Covington and in supplying the water necessary to fulfill the terms of that agreement.

Section 3. Indemnification, hold harmless and defend. Additionally, the City of Kirkland agrees to indemnify, hold harmless and defend Seattle from any and all claims or causes of action which any Purveyor may have under the Purveyor Contract as a result of Seattle's actions in approving the agreement between Cedar River and Covington and in supplying the water necessary to fulfill the terms of that agreement. The City of Kirkland's financial responsibility under this section shall be limited by and subject to the provisions of the Joint Defense Fund set forth in Section 4 herein.

Section 4. Joint Defense Fund. A joint defense fund shall be established to pay any judgment entered against Seattle as a result of the approval given in Section 1 and to pay for any expenses incurred in defending litigation brought against Seattle because of such approval, including legal fees, expert witness fees and any fees related to appeals. The undersigned Purveyors and Covington shall be responsible to pay any amounts incurred pursuant to Sections 3 and 4 of this Agreement in the following proportions:

- A. Covington shall be responsible to pay the first fifteen percent (15%) of such amounts required to be paid to Seattle.
- B. Each Purveyor shall be responsible to pay that portion of the remaining eighty-five (85%) of such amounts required to be paid to Seattle that such Purveyor's 1996 Seattle water sales bears to the total 1996 Seattle water sales of all Purveyors executing this Agreement.

Seattle shall be considered to be a third-party beneficiary for the purpose of enforcing payment under this section.

Section 5. Term of Agreement. The term of this Agreement shall be coextensive with the term of the current Water Purveyor Contract between the City of Kirkland and Seattle which terminates on 12/31/2011 or the term of the water supply agreements with Auburn for water to Covington remains in effect, whichever is shorter. Notwithstanding the foregoing, this Agreement shall terminate earlier in the event and at the time that the agreement between Cedar River and Covington to provide water to Covington is terminated, or upon the conclusion of an agreement for and formation of the Cascade Water Alliance and the assumption by the Alliance of responsibility for Purveyor contracts with Seattle, assuming that Cedar River is part of the Alliance and agrees to get its water from the Alliance.

Section 6. Effective Date. This Agreement shall become effective upon the execution of this Agreement by Covington, Seattle and by Purveyors representing at least fifty percent (50%) of the 1996 Seattle water sales by volume to Purveyors.

Section 7. Additional Parties. Additional parties may execute this Agreement and be bound thereby after the effective date of this Agreement.

Section 8. Retain and Direct Counsel. The parties executing this Agreement shall retain the option to retain, direct and directly pay legal counsel defending Seattle pursuant to the terms of this Agreement.

Section 9. Execution in counterparts. This Agreement may be executed in counterparts.

CITY OF KIRKLAND

CITY OF SEATTLE

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Assistant City Attorney

Assistant City Attorney

COVENANT NOT TO SUE AND HOLD HARMLESS AGREEMENT

WHEREAS, the Growth Management Act directs that necessary infrastructure be provided in order to serve areas of population and employment growth; and

WHEREAS, adequate water supplies are essential to support future growth; should water supplies not be available, moratoria on further development may be declared; and

WHEREAS, the Covington Water District (Covington) has declared a connection moratoria for its water service area due to its current lack of adequate water supply; and

WHEREAS, in order to address such water supply shortage, Covington has arranged to purchase an additional 2.5 million gallons per day of water supplies from the City of Auburn (Auburn), which water supply could under certain circumstances be interrupted; and

WHEREAS, the Cedar River Water and Sewer District (Cedar River) has interties with Covington and could augment Covington's water supplies; and

WHEREAS, Cedar River and twenty seven other cities and special purpose districts (Purveyors) receive water supplies through a contract with the City of Seattle (Seattle) and Seattle must agree to any arrangement whereby Cedar River would supplement water supplies to Covington should supplies from Auburn be interrupted; and

WHEREAS, Seattle and Purveyors agree that it is a regionally responsible action to allow Cedar River to supplement Covington's water supplies in the unlikely event that water supply from Auburn is interrupted; and

WHEREAS, Seattle desires, as a condition of approving an agreement between Cedar River and Covington, that the Purveyors and Covington agree not to sue Seattle for any claims or causes of action which any Purveyor may have against Seattle under its Water Purveyor Contract (Purveyor Contract) with Seattle, as a result of the approval of said agreement between Cedar River and Covington and that Covington and the Purveyors additionally agree to indemnify and hold Seattle harmless from any and all claims and causes of action which any Purveyor may have against Seattle as a result of the approval of said agreement between Cedar River and Covington or in any way related to Seattle's provision of water pursuant to said agreement; and