

## OUTSIDE UTILITY EXTENSION AGREEMENT USER NOTES

The sample Outside Utility Extension Agreement is an agreement that could be used to condition certain things on the city's extension of utility outside its corporate boundaries. Assuming that the property is within an area able to be served by the city by its utilities or some of them (water and sewer most typically), the city may chose to extend its utilities to the developing property, but may want the property (preliminary plat?) to do certain things or meet (or more closely meet) city standards. Especially where the property is in the city's potential annexation area, it may be that the city would want the infrastructure that it could soon inherit to be more compatible with that already in the city limits.

Section 1.4 of the Sample Agreement is where the concessions and accommodations given up by the city could be inserted – thereby establishing the city's consideration – in the event that the Owner wishes to renege on the agreed-to obligations (Sections 4.1, 4.2, 4.3, etc.).

This is a political decision, and it may be that the county would be less than fully supportive of anything that pushes for a departure from county's standards. However, there is a legitimate argument that could be made (absent other contractual obligations to serve) that cities do not have an obligation to provide utility services outside their corporate boundaries. If those services are sought, cities may want to use that argument to negotiate for considerations beneficial to their interests.

### LEGAL ARGUMENTS (in Summary)

1. Cities Have No *Duty* to Provide Utility Service to Properties Outside Their City Limits, Though They *MAY* Do So Pursuant to *Contract* (agreed terms and conditions).

### STATUTES

- 35.67.310 Sewers – Outside City Connections.  
Every city or town *may* permit connections with any of its sewers, either directly or indirectly, from property *beyond its limits, upon such terms, conditions and payments* as may be prescribed by ordinance, which may be required by the city or town to be evidenced by a *written agreement between the city or town and the owner* of the property to be served by the connecting sewer. ... (Emphasis added.)
- RCW 35.91.020 Contracts with owners of real estate for water or sewer facilities-- Reimbursement of costs by subsequent users.  
The governing body of any city ... may contract with owners of real estate ... to serve [utilities to] the area in which the real estate of such owners is located, ... subject to such reasonable rules and regulations as the governing body of such municipality may provide or contract, and notwithstanding the provisions of any other law. To the extent it may require in the performance of such contract, such municipality may install said water or sewer facilities in and along the county streets in the area to be served as hereinabove provided. ... (Emphasis added.)
- RCW 35.92.170 City may extend water system outside limits.  
When a city or town owns or operates a municipal waterworks system and *desires to*

*extend such utility beyond its corporate limits it may* acquire, construct and maintain any addition to or extension of the system, and dispose of and distribute water to any other municipality, water-sewer district, community, or person desiring to purchase it.

(Emphasis added.)

- RCW 35.92.200 City *May* Extend Water System Outside Limits – *Contracts for Outside Service*.

A city or town *may* enter into a firm contract with *any outside* municipality, community, corporation, *or person*, for furnishing them with water without regard to whether said water shall be considered as surplus or not and regardless of the source from which said water is obtained, which contract may fix the terms upon which the outside distribution systems will be installed and the rates at which and the manner in which payment shall be made for the water supplied or for the service rendered. (Emphasis added.)

## CASE LAW

*Yakima County (West Valley) Fire Protection Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 381, 858 P.2d 245, 215 (1993).

“Under RCW 35.67.310, which provides that a city ‘*may* permit connections with any of its sewers ... from property beyond its limits’, the City has authority to provide service outside its borders. (Italics the court’s.) The use of ‘*may*’ in RCW 35.67.310 supports the City’s argument that the power granted by RCW 35.67.310 is discretionary and that the City is not bound to provide sewer service to persons residing outside its boundaries.” (Emphasis added.)

(NOTE: The court in that case held that requiring parties to sign an agreement to annex in the future was a reasonable and appropriate condition of supplying utilities.)

- *Harberd v. City of Kettle Falls*, 120 Wn. App. 498, 515-16, 84 P.3d 1241, 1250 *review denied* 152 Wn.2d 1025, 101 P.3d 421 (2004).

“The power to supply water beyond corporate limits is *permissive*, with supply being a matter of *contract* between the municipality and property owners. ... *In the absence of contract, express or implied, a municipality cannot be compelled to supply water outside its corporate limits. ... A city has no duty to extend sewer services beyond its borders.*” (Emphasis added, citations omitted.)

- *Nolte v. City of Olympia*, 96 Wn. App. 944, 958-59, 982 P.2d 659, 667 (1999).

(Paraphrased) Even where the city is considered to be “exclusive” provider of utility service, it owes a duty to serve utilities outside its jurisdiction *only* where such service is “*subject to such reasonable conditions, if any, as the law may allow*”

(NOTE: As stated in *Harberd*, at 517, (when talking about *Nolte*) “a municipality may be under a general duty to provide water and sewer services where it is the exclusive supplier of sewer or water service in a region extending beyond the borders of the city. ... But that duty is not absolute” [e.g., may deny if there is a lack of capacity]. *Harberd* further distinguishable *Nolte* for a number of reasons, including: (1) “in *Nolte*, Olympia admitted that it was the sole provider of water and sewer service to the affected area”

[something denied in that case by Kettle Falls]; (2) ‘the dispute in *Nolte* revolved around the payment of impact fees.’ [There, they had a valid, executed, express agreement for utilities. In *Harberd* and in this case, there are no valid express agreement, and the question then turned on whether an implied contract exists for water and sewer services, which *Harberd* said did not exist]; and (3) [again] “although the *Nolte* court recognized a municipality has a general duty to supply water and sewer service when it is the exclusive provider to a defined area, such service is *subject to such reasonable conditions, if any, as the law may allow.*” (Emphasis added, citations omitted.)

- *People for Preservation and Development of Five Mile Prairie v. City of Spokane*, 51 Wn. App. 816, 821, 755 P.2d 836, 839-40 (1988).  
“[A] city is under no obligation to sell or furnish water or sewer services to anyone outside its corporate limits, but, if it elects to do so, it acts in a *proprietary* capacity, and the relationship entered into between a city as a supplier and such users is purely contractual.” (Italics the court’s, citations omitted.)
- *Brookens v. City of Yakima*, 15 Wn. App. 464, 465-66, 550 P.2d 30, 31-32 (1976).  
“The power to supply water beyond corporate limits such that supply is a matter contract between municipality and property owners ... (citing the statutes).”
- *Vine Street Commercial Partnership v. City of Marysville*, 98 Wn. App. 541, 547, 552, 989 P.2d 1238, 1241-42 (1999), *rev. den.* 141 Wn.2d 1006, 10 P.3d 1075 (2000).  
“A city has *no duty* to extend utility services beyond its borders. ... But a city *may contract* to provide such services. ... [A] city is under *no obligation* to furnish water or sewer services outside corporate limits; if it elects to do so, relationship is *purely contractual* ... power to supply water beyond corporate limits is permissive; supply is a matter of contract between municipality and property owners.” (Emphasis added, citations omitted.)

## 2. The Growth Management Act (GMA) Does Not Obligate the City to Unconditionally Serve Utilities to Properties Within Urban Growth Boundaries.

- WAC 365-195-750 lists the statutes amended by the GMA but does not include the above listed utility statutes.

## 3. The Conditions and Requirements of any Contract to Provide Outside Utilities DO NOT Need to Relate *Directly* (exclusively) to the Utilities to be provided. The Conditions and Requirements of Any Contract Can Include a Requirement to Annex and Comply With City Comprehensive Plans.

- The conditions of the utility contract in *Fire Protection Dist. No. 12*, 122 Wn.2d at 381, (and other cases, e.g., *Vine Street Commercial Partnership*, 98 Wn. App. at 550, 552, included a promise to agree to annexation. Annexation is not related to utility extensions.
- *Vine Street* (supra) also spoke of reasonable regulations “relating to cost of service *or* to public health and safety issues relating to the provision of utility services.” *Vine Street*, 98 Wn. App. at 552. (Emphasis added).

- *Brookens v. City of Yakima, (supra)*. A city may require property owners to agree to comply with the City's land use regulations as a condition a contract for provision of utility service to properties outside corporate limits. Illustrative of that are the following:

Once the city extends supply of water outside its corporate limits by contract, may it refuse to increase the supply of water for *failure of the user to comply with city land use regulations* in that area, even though that area is presently outside the city? We answer in the affirmative. (Emphasis added.) *Id.* at 465.

On the contrary, adoption by the city of a 1968 resolution to supply water only *when the user complies with the Yakima General Plan for land use* clearly manifests an intent not to supply the general area indiscriminately, nor expand any prior agreement with the Brookens. The 1968 resolution predates this action by three years. (Emphasis added.) *Id.* at 466-67

The motives of the city in the present action are immaterial but we note that the *denial of water was based upon failure of the proposed mobile home park to comply with the Yakima General Plan. This decision may indirectly extend the police power of the city beyond its corporate limits by allowing the withholding of water to compel compliance with these land use regulations. Even so, we cannot compel the city to contract, pursuant to RCW 35.91.020, against its will.* (Emphasis added.) *Id.* at 467

In the absence of contract, express or implied, a municipality cannot be compelled to supply water outside its corporate limits. ... [A] city has *no duty* to extend sewer service beyond its borders. .... (Emphasis added.) *Id.* at 516.

Ultimately, no Washington Court has held that a City cannot condition extra territorial utility services on compliance with City development requirements for road, fire or safety standards.