

RESOLUTION NO. 2022-29

A RESOLUTION approving a request from Walter T. Coy II and Mary A. Coy for the connection of City of Ellensburg utilities pursuant to the provisions of Chapter 2.48 of the Ellensburg City Code.

WHEREAS, pursuant to the provisions of Chapter 2.48 ECC, Walter T. Coy II and Mary A. Coy ("Property Owners") have requested the connection to City of Ellensburg electric and water service to their property located in the City of Ellensburg's Urban Growth Area and described as Kittitas County Assessor Parcel Numbers 583033, and

WHEREAS, the City Council conducted a duly noticed public hearing on this request on August 15th, 2022, during a regularly scheduled council meeting, and

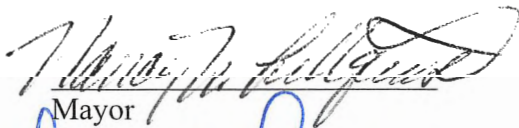
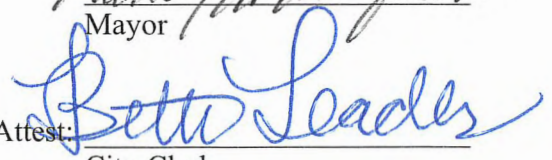
WHEREAS, the City Council finds the requested extension is consistent with the City's adopted water plans and that the City has the domestic water capacity to serve the request, and

WHEREAS, the Property Owner agrees to all of the terms of that certain Utility Extension Agreement and Agreement Waiving Right to Protest LID and Annexation (Exhibit 1- Agreement) made a part of the record in the August 15th, 2022 public hearing,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ellensburg, Washington, as follows:

The request from Walter T. Coy II and Mary A. Coy, Property Owners, for the connection of City of Ellensburg electric and water service to Kittitas County Assessor Parcel Numbers 583033 as fully described in Exhibit 1 (the Agreement), and is hereby approved, subject to the terms of that certain Utility Extension Agreement and Agreement Waiving Right to Protest LID and Annexation (the Agreement), and the Mayor is authorized to execute the Agreement on behalf of the City of Ellensburg.

ADOPTED by the City Council of the City of Ellensburg this 15th day of August, 2022.


Mayor

Attest: Betty Leades
City Clerk

COPY

EXHIBIT 1

After Recording, Return To:

Name: City of Ellensburg
Public Works & Utilities
Address: 501 N. Anderson Street
Ellensburg, WA 98926

**UTILITY EXTENSION AGREEMENT
AND AGREEMENT WAIVING RIGHT TO PROTEST LID AND ANNEXATION.**

THIS AGREEMENT is entered into on this 15th day of August, 2022, between the City of Ellensburg, Washington, hereinafter referred to as the "City", a Washington Municipal Corporation and Walter T. Coy II and Mary A. Coy, as husband and wife, hereinafter referred to as "the Owners."

RECITALS

WHEREAS, the Owners are the owners of certain real property located in Kittitas County which is legally described as set forth in Exhibit 'A' attached hereto and incorporated herein by this reference as though set forth in full, and

WHEREAS, the Owners' property is not currently within the City limits of the City, but is within the City Urban Growth Area; and

WHEREAS, properties connecting to City water, sewer or electric service are required pursuant to Ellensburg City Code ("ECC") 9.25.030(H) to connect to all three utilities if available; and

WHEREAS, the Owners desire to connect to the available City electric and water utility systems, hereinafter referred to as "the utility," and the City is willing to allow connection only upon certain terms and conditions in accordance with Chapter 2.48 of the Ellensburg City Code, as now enacted or hereinafter amended; and

WHEREAS, the Owners agree to connect to the City sewer utility within one (1) year of the utility becoming available; and

August 15, 2022, WHEREAS, the City Council held a public hearing on this Agreement on August 15, 2022, during a regularly scheduled Council meeting, and authorized the Mayor to execute this Agreement on behalf of the City;

NOW, THEREFORE,

AND IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties agree as follows:

TERMS

1. Warranty of Title. The Owners warrant that they are the Owners of the property described in Exhibit 'A', which is attached hereto and incorporated herein by this reference, and is authorized to enter into this Agreement.

2. Extension Authorized. The property described in Exhibit 'A' is not currently within the City limits, but is located in the boundaries of City's Urban Growth Area. The City hereby authorizes the Owners to extend service to Owners' property (as legally described in Exhibit 'A') from existing utility facilities to be determined by the City.

3. Costs. Owners will pay all costs of designing, engineering, constructing and field inspection of the construction of the public improvements covered by this agreement. All construction shall be done to City standards and according to plans approved by the City Public Works & Utilities Director. Any and all costs incurred by the City in reviewing plans and inspecting construction shall be paid for by the Owners.

4. Permits - Easements. Owners shall secure and obtain, at Owners' sole cost and expense, any necessary permits, easements and licenses to construct the extension, including, but not limited to, all necessary easements, excavation permits, street use permits, or other permits required by federal, state, county and city governmental departments including, but not limited to, the Kittitas County Public Works Department, Kittitas County Health Department, State Department of Ecology, and City of Ellensburg.

5. Turn Over of Capital Facilities. If the extension of utility service to Owners' property involves the construction of electric, water or sewer main lines, pump stations, wells, and/or other City required capital facilities, the Owners agree if required by the City to turn over and dedicate such facilities to the City, at no cost, upon the completion of construction and approval and acceptance of the same by the City. As a prerequisite to such turn over and acceptance, the Owners will furnish to the City the following:

- A. As built plans or drawings in a form acceptable to the City Public Works Department;
- B. Any necessary easements, permits or licenses for the continued operation, maintenance, repair or reconstruction of such facilities by the City, in a form approved by the City Attorney;
- C. A bill of sale in a form approved by the City Attorney; and
- D. A bond or other suitable security in a form approved by the City Attorney and in an amount approved by the City Public Works Director, ensuring that the facilities will remain free from defects in workmanship and materials for a period of one (1) year.

6. Connection Charges. The Owners agree to pay the connection charges for electric and water utility systems, in addition to any costs of construction as a condition of connecting to the City utility system at the rate schedules applicable at the time the Owners request to actually connect their property to the system. The Owners will also be responsible for connection to City sewer within one (1) year of written notification by the City of the utility becoming available, along with all connection and service charges

applicable at the time the Owners connect to the system. Any commitment payment that has not been forfeited shall be applied to the City's connection charges.

7. Service Charges. In addition to the charges for connection, the Owners agree to pay for utility service rendered according to the rates for services applicable to properties outside the city limits as such rates exist, or as they may be hereafter amended or modified.

8. Petition and Covenant for Annexation. Owners understand that annexation of the property described on Exhibit 'A' to the City will result in the following:

- A. In general, Kittitas County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;
- B. In general, City of Ellensburg ordinances, resolutions, rules and regulations will begin to apply to the property upon the effective date of annexation;
- C. Governmental services, such as police and other utility service, will be provided to the property by the City of Ellensburg upon the effective date of annexation;
- D. The property may be required to assume all or any portion of the existing City of Ellensburg indebtedness, and property tax rates and assessments applicable to the property may be different from those applicable prior to the effective date of annexation;
- E. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and
- F. The property may be annexed in conjunction with, or at the same time as, other property in the vicinity.

With full knowledge and understanding of these consequences of annexation and with full knowledge and understanding of Owners' decision to forego opposition to annexation of the property to the City of Ellensburg, Owners covenant and agree to sign a petition for annexation to the City of the Owners' property as provided in RCW 35A.14.120, as it now exists or as it may hereafter be amended, at such time as the Owners are requested by the City to do so. The Owners also agree and appoint the Mayor of the City as Owners' attorney-in-fact to execute an annexation petition on Owners' behalf in the event that Owners shall fail or refuse to do so, and agree that such signature shall constitute full authority from the Owners for annexation as if Owners had signed the petition for themselves. Owners further agree not to litigate, challenge or in any manner contest, annexation to the City. This Agreement shall be deemed to be continuing, and if Owners' property is not annexed for whatever reason, including a decision by the City not to annex, Owners agree to sign any and all subsequent petitions for annexations. In the event that any of Owners' property is subdivided into smaller lots, the purchasers of each subdivided lot shall be bound by the provisions of this paragraph.

9. Land Use. The Owners agree that as long as the property has not been

annexed to the City, any development of the property shall meet the requirements of the Kittitas County Comprehensive Plan, and the applicable Kittitas County zoning.

10. Public Works Development Standards. The development or redevelopment of the property shall comply with all Ellensburg Public Works Development Standards, as these standards now exist or may hereafter be amended, applicable to the construction of electric, water, sanitary sewer, and street improvements, which street improvements include, but are not limited to, street, sidewalk, curb and gutter, surface water treatment/flow control and associated conveyance systems, street signs, street lighting, hot or warm mix asphalt, gravel base course, gravel top course, geotextile fabric, excavation, sawcutting, roadway fill material, striping, and street light improvements. All other items of work necessary to the construction of the improvements included in this paragraph, but not specifically listed, shall be considered incidental to this Agreement and shall be designed and constructed in accordance with the engineer's design and approved by the Public Works Director. The intent of this section is that future annexation of the property to the City of Ellensburg shall result in a development which conforms to these cited Public Works Development Standards.

11. Liens. The Owners understand and agree that delinquent payments under this agreement shall constitute a lien upon the above-described property. If the extension is for sewer service, the lien shall be as provided in RCW 35.67.200, and shall be enforced in accordance with RCW 35.67.220 through RCW 35.67.290, all as now enacted or hereafter amended. If the extension is for water service, the lien shall be as provided in RCW 35.21.290 and enforced as provided in RCW 35.21.300, all as currently enacted or hereafter amended. If the extension is for electric service, the lien shall be as provided in RCW 35.21.290 and enforced as provided in RCW 35.21.300, all as currently enacted or hereafter amended.

12. Termination for Non-Compliance. In the event Owners fail to comply with any term or condition of this Agreement, the City shall have the right, at any time, to enter onto the Owners' property and for that purpose disconnect the electric, sewer and/or water, in addition to any other remedies available to the City.

13. Waiver of Right to Protest Local Improvement District ("LID") or Utility Local Improvement District ("ULID") or When Improvements Are Required By City Council. Owners acknowledge that the entire property legally described in Exhibit 'A' would be specially benefited by the following improvements:

electric, water, sanitary sewer, surface water flow control and treatment, street improvements, and other improvements identified in paragraph 10 above

- A. Owners agree to sign a petition for the formation of an LID or ULID for the specified improvements at such time as one is circulated and Owners hereby appoint the Mayor of the City as their attorney-in-fact to sign such a petition in the event Owners fail or refuse to do so.
- B. With full understanding of Owners' right to protest formation of an LID or ULID to construct such improvements pursuant to RCW 35.43.180, Owners agree to participate in any such LID or ULID and to waive the right to protest formation of the same. Owners shall retain the right to contest the method

of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court.

- C. Owners also acknowledge and agree that the City Council has the authority to require construction of any and all of the improvements identified in paragraph 10 above even in the absence of a LID or ULID. In such instance, Owners agree to participate in paying for the cost of such improvements to the same extent and manner as if a LID or ULID had been formed, and without in any manner protesting, objecting to, or otherwise opposing the City Council's decision to require construction of the improvements.

14. Enforcement. In addition to any other remedy provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

15. Covenant. The conditions and covenants set forth in this Agreement shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties and their heirs, successors and assigns. The Owners, and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee, transferee, or successor shall observe and fully perform all of the duties and obligations of the Owners contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it. All costs of recording this Agreement with the Kittitas County Auditor shall be borne by the Owners.

16. Attorney's Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. In any suit or action seeking to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other remedy provided by law or this Agreement. Venue of such action shall lie in Kittitas County Superior Court or the U.S. District Court for Eastern Washington.

17. Notices. Notices and correspondence to the City and Owners shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated below. Notice to the City shall be to the attention of both the City Manager and City Attorney. Notice to any person who purchases any portion of the Property from the Owners shall be required to be given by the City only for those property purchasers who provide the City with written notice of their address. The parties hereto may, from time to time, advise the other of any new addresses for notice and correspondence.

TO THE CITY:

City Manager
Ellensburg City Hall
501 North Anderson St
Ellensburg, WA 98926

TO THE OWNERS:

Walter T. Coy II and Mary A. Coy
2004 E 1st Ave.
Ellensburg, WA 98926

City Attorney
Ellensburg City Hall
501 North Anderson St.
Ellensburg, WA 98926

18. Severability and Integration. This Agreement and the Exhibits attached hereto constitute the agreement between the parties on this subject matter, and there are no other understandings, verbal or written, that modify the terms of this Agreement. If any phrase, provision, or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the resolution or ordinance adopting this Agreement, such invalidity shall not affect the other terms of this Agreement.

19. Recording. This Agreement shall be filed for record with the Kittitas County Auditor.

DATED this 16th day of August, 2022.

OWNER

Walter T. Coy II
Name: Walter T. Coy II

STATE OF WASHINGTON)
) ss.
COUNTY OF KITTITAS)

I certify that I know or have satisfactory evidence that He are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it as the Owners of the property described in Exhibit A to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: 8-16-2022

Signature Cathy D Fisher
Print Name: CATHY D FISHER

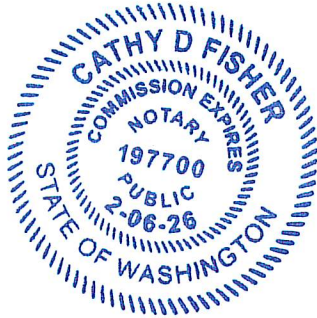
NOTARY PUBLIC for the State of Washington,
residing at Ellensburg
My commission expires: 2-6-2026

OWNER

Mary A. Coy
Name: Mary A. Coy

STATE OF WASHINGTON)
) ss.
COUNTY OF KITTITAS)

I certify that I know or have satisfactory evidence that she are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it as the Owners of the property described in Exhibit A to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: 8-16-2022

Signature Cathy D Fisher
Print Name: CATHY D FISHER

NOTARY PUBLIC for the State of Washington,
residing at Ellensburg
My commission expires: 2-6-2026

CITY OF ELLENSBURG

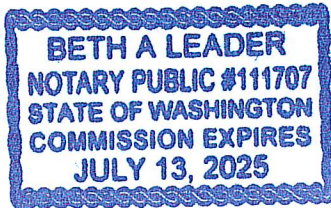

Mayor: Nancy Lillquist

STATE OF WASHINGTON)

) ss:

COUNTY OF KITTITAS)

I certify that I know or have satisfactory evidence that Nancy Lillquist is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it as the Mayor of the City of Ellensburg, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: 8-15-2022

Signature: 

Print Name: Beth A. Leader

NOTARY PUBLIC for the State of Washington,
residing at Ellensburg
My commission expires: 7-13-2025

EXHIBIT "A"

That portion of land lying within Kittitas County, State of Washington, Section 35, of Township 18 North, Range 18 East, more particularly described as follows:

400 W Helena Avenue

Kittitas County Parcel Number: 583033
Kittitas County Map Number: 18-18-35054-0205

Containing 0.22 acres more or less

