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LIBERTY LAKE, WASHINGTON
ORDINANCE NO. 288

AN ORDINANCE OF THE CITY OF LIBERTY LAKE, WASHINGTON, GRANTING THE RIGHT OF FRANCHISE TO AVISTA CORPORATION, d/b/a AVISTA UTILITIES, A WASHINGTON CORPORATION, FOR THE OPERATION OF A NATURAL GAS DISTRIBUTION SYSTEM IN THE CITY OF LIBERTY LAKE.

WHEREAS, Avista Corporation dba Avista Utilities ("Avista"), is a Washington Corporation, engaged in the business of providing utility services consistent with applicable laws and regulations; and

WHEREAS, Avista has filed with the City of Liberty Lake, State of Washington (the "City") a written application for a renewal of its Franchise to locate, construct, operate, maintain and use such plants, works, underground pipe- lines, equipment and appurtenances over, under, along and across all of City's rights of way and public property in the City for the purposes of the transmission, distribution and sale of Gas; and

WHEREAS, the City has determined it is in the interest of persons and businesses in this jurisdiction to have access to Avista's services;

NOW THEREFORE, THE CITY OF LIBERTY LAKE DOES ORDAIN:

SECTION 1.0 DEFINITIONS

For the purposes of this Franchise the following terms, phrases, words and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning.

Avista: means Avista Corporation, dba Avista Utilities, a Washington Corporation, and its respective successors and assigns, agents and contractors.

City: means the City of Liberty Lake a municipal corporation of the State of Washington, and its respective successors, assigns, agents, and contractors.

Commission: means the Washington Utilities and Transportation Commission or such successor regulatory agency having jurisdiction over investor-owned public utilities in the State of Washing-

ton.

Days: means business days.

Effective Date: means the date of legal publication of this Ordinance, upon which the rights, duties and obligations of this Franchise shall come into effect, and the date from which the time requirement for any notice, extension and/or renewal shall be measured.

Facilities: means, collectively, any and all gas transmission, and distribution systems and appurtenances owned by Avista, now and in the future in the Franchise Area, including but not limited to, Gas plants, Gas pipes, pipelines, mains, services, laterals, conduits, regulators, valves, meters, meter-reading devices, fences, vehicular protection devices, communication and control systems and other equipment, appliances, fixtures, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing for the purposes of transmission, distribution, storage and sale of Gas.

Franchise: means the grant by the City of rights, privileges and authority embodied in this Ordinance.

Franchise Area: means the surface and space above and below all public property and rights-of-way owned or held by the City, including, without limitation, rights-of-way for:

- public roads, streets, avenues, alleys, bridges, tunnels, City-owned easements, and highways that may hereafter be laid out, platted, dedicated, acquired or improved; and
- all City-owned utility easements dedicated for the placement and location of various utilities, provided such easements would permit Avista to fully exercise the rights granted under this Franchise within the area covered by the easement.

Gas: means natural, manufactured, renewable and/or mixed gases.

Maintenance, maintaining, or maintain: means, without limit, repairing, replacing, upgrading, examining, testing, inspecting, and removing Avista Facilities, vegetation management, digging and excavating, and restoration of affected Right-of-way surfaces.

Parties: means City and Avista collectively.

Party: means either City or Avista individually.

Person: means a business entity or natural person.

Right-of-way: means the surface of and the space along, above, and below any street, road, highway, freeway, bridge, tunnel, lane, sidewalk, alley, City-owned utility easement and/or right-of-way now or hereafter held or administered by the City.

State: means the State of Washington.

Tariff: means the rate schedules, rules, and regulations relating to utility service, filed with and approved by the Commission in effect upon execution and throughout the term of this Franchise.

SECTION 2.0 GRANT OF FRANCHISE

2.1 Grant

Subject to the terms and conditions of this Franchise, City hereby grants to Avista the non-exclusive right, power, privilege and authority to enter upon all roads, rights- of-way, streets, alleys, highways, public places or structures, lying within the Franchise Area to locate, construct, operate and maintain its Facilities for the purpose of controlling, transmitting and distributing Gas, as may be necessary to provide Gas service. Avista accepts all areas in existing condition(s), and the City makes no express or implied assurances of the suitability of any area for Avista's needs or purposes, now or hereafter.

2.2 Effective Date

This Ordinance will be effective as of the date of approval, passage and publication as required bylaw.

2.3 Term

The rights, privileges and Franchise granted to Avista will extend for a term of ten (10) years from the Effective Date, and shall continue month-to-month thereafter, until it is otherwise renewed for another ten-year (10-year) term, or terminated by either Party, with not less than 180 days prior written notice to the other Party.

2.4 Non-Exclusive Franchise

This Franchise is not an exclusive Franchise. This Franchise shall not prohibit the City from granting other franchises of a like nature or franchises for other public or private utilities over, along, across under and upon any right of way or public property, and shall in no way prevent or prohibit City from using any of said right of way or other public property, or affect its jurisdiction over them or any part of them, with full power to make all necessary changes, relocations, repairs, maintenance, etc. of same as City deems fit. City may not, however, award a Gas Franchise to another party under more favorable or less onerous terms than those of this Franchise without this Franchise being amended to reflect such more favorable or less onerous terms.

By granting this franchise, the City is not assuming any risks or liabilities, therefrom, which shall be solely and separately borne by Avista. Avista, at its sole cost and expense, shall take all necessary and prudent steps to protect, support, and keep safe from harm its Facilities, or any part thereof, when necessary to protect the public health and safety.

This Franchise is only intended to convey a limited right and interest. It is not a warranty of title or interest in the Franchise Area or any City-owned property. None of the rights granted herein shall affect the City's jurisdiction over its property, including but not limited to the Franchise Area.

2.5 Notice of City's Intent to Compete with Avista

In consideration of Avista's undertaking pursuant to this Franchise, the City agrees that in the event the City intends to engage in the business of providing Gas service during the life of this Franchise or any extension of this Franchise, in competition with Avista, the City will provide Avista with six (6) months' notice of such action.

2.6 Assignment of Franchise

All of the provisions, conditions and requirements herein contained shall be binding upon Avista and City. Avista shall not assign or otherwise transfer its Franchise herein without the prior written authorization and approval of the City Council, which shall not be unreasonably withheld. The prohibition stated in the immediately preceding sentence shall not apply to transfer to a parent, subsidiary, or affiliate of Avista unless such transfer is intended to avoid application of the prohibition on assignment. Notwithstanding the foregoing, Avista shall have the right, without notice to or consent of the City, to mortgage or hypothecate its rights, benefits and privileges in and under this Franchise as security for indebtedness.

2.7 Recovery of Franchise Cost

2.7.1 Authority

So long as provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon Avista, except a fee as provided in RCW 35.21.860 that recovers from Avista actual administrative expenses incurred by the City that are directly related to:

- i. receiving and approving a permit, license or this Franchise;
- ii. preparing a detailed statement pursuant to Chapter 43.21C RCW, as the same exists now or may hereafter be amended.
- iii. Consistent with this section, Avista agrees to pay City \$2,500 as an administrative fee to cover the cost incurred by the City in preparing this Franchise.

2.7.2 Fee

The Parties understand that the restrictions of RCW 35.21.860 forbid the imposition of a franchise fee. If, at some time, the restrictions of this statute should be removed, Avista and the City shall negotiate a fair and reasonable franchise fee.

2.7.3 Additional Fees

Nothing in this Section shall preclude the City from collecting from Avista fees lawfully imposed by the City (related to this Franchise or otherwise) including fees for permits and inspections.

2.8 Utility Tax

Avista acknowledges that the City is authorized under the laws of the State of Washington to impose certain taxes upon Avista. Nothing in this Section shall exempt (nor shall be construed to

exempt) Avista from payment of any and all such taxes lawfully imposed by the City Municipal Code, City Ordinance, or City Resolution, as any may hereafter be lawfully amended, adopted, or superseded, and due from Avista; provided, nothing in this Section shall be construed in any way as a waiver of Avista's rights to contest the validity of any such tax or the amount of any tax due. In the event payment of such taxes is not made by Avista in a timely manner, the City reserves the right, at its sole option, to suspend the rights granted to Avista by this Franchise until such time that Avista pays such taxes, or Avista and the City otherwise resolve any matter concerning payment thereof.

SECTION 3.0 AVISTA'S OPERATIONS AND MAINTENANCE

3.1 Compliance with Laws, Regulations, Codes and Standards

In carrying out any authorized activities under the privileges granted by this Franchise, Avista shall meet accepted industry standards and codes and shall comply with all applicable laws, regulations and ordinances of any governmental entity with jurisdiction over Avista's Facilities in the Franchise Area. This includes all applicable laws, regulations and ordinances existing as of the Effective Date or may be subsequently enacted by any governmental entity with jurisdiction over Avista's operations within the Franchise Area. These requirements also include applicable requirements of City Municipal Code and Adopted City Standards. The City shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of Avista's operations within the Franchise Area. Service shall be supplied to the City and its inhabitants in accordance with Avista's rules and regulations and Tariffs currently or subsequently filed with and approved by the Commission.

3.2 Facility Location by Avista and Non-Interference

City shall have prior and superior right to the use of its street, alleys, and public properties for installation and maintenance of its property and improvements for government purposes, and should a conflict arise with Avista's facilities that affects the interest of public health, safety, and welfare, Avista shall, at its own expense and cost, unless otherwise provided by law or provided herein, relocate its facility to accommodate such uses and purposes of the City. Avista shall have the discretion to determine the placement of its Facilities as may be necessary to provide safe and reliable Gas service, subject to the following non-interference requirements. All construction, installation, repair or relocation of Avista's Facilities performed by Avista in the Franchise Area will be done in such a manner as not to interfere with any public use, or the construction and maintenance of other utilities, drains, drainage and irrigation ditches and structures, and City-owned property within the Franchise Area.

3.3 Facility Location Information

Avista shall provide the City, upon the City's reasonable request, Facility location information in electronic or hard copy showing the location of its Facilities at specific locations within the Franchised Area, to the extent such information is reasonably available. Avista does not warrant, and the

City agrees it will not rely upon, the accuracy of any Facility location information provided in an electronic or hard copy map; to the extent the location of Facilities are shown in an electronic or hard copy map, such Facilities may be shown in their approximate location. Upon City's reasonable request, Avista will cooperate with the City to complete underground locates of Avista's Facilities, whether for design or construction purposes. With respect to any excavations within the Franchise Area undertaken by or on behalf of Avista or the City, nothing stated in this Franchise is intended (nor shall be construed) to relieve either party of their respective obligations arising under the State one-call law with respect to determining the location of existing underground utility facilities in the vicinity of such excavations prior to commencing work.

3.4 Vegetation Management - Removal of Trees Vegetation Encroachment

Avista may operate and maintain its facilities and appurtenances in the Franchise Area, including the use of an integrated vegetation management program to cut, trim, or remove any and all trees or vegetation originating within or outside said Franchise Area that interfere with Avista's Facilities subject to City Development Code, Ordinances or applicable regulations, as now or hereafter amended. All tree pruning and removal work shall be done under the direction of a Certified Arborist (International Society of Arboriculture) and in compliance with ANSI A300 and Z1333 Safety Standards. Nothing contained in this section shall prevent Avista, when necessary, and with notice to the record owner of the property from cutting down and removing any vegetation in the Franchise Area within City ROW that may interfere with Avista's facilities; provided that any such action is not inconsistent with the City Development Code, Ordinances, or applicable regulations, as now or hereafter amended. Avista recognizes that the City does not have authority to grant Avista consent to remove trees or vegetation originating outside the Franchise Area and Avista agrees that it will defend and indemnify the City against any claims brought against the City relating to Avista's removal of trees or vegetation originating outside the Franchise Area.

3.5 Excavation

3.5.1 Permit Requirement

Avista shall only commence non-emergency excavation work upon issuance of applicable permits by the City. Avista also acknowledges that excavation required in arterial streets, especially during peak hours of operation, or during special events, require substantial coordination with the City prior to issuance of a permit. Avista agrees to coordinate such activity prior to commencing excavation as necessary to minimize impacts to the public as required by the City.

3.5.2 Emergency Work

In the event of an emergency requiring immediate action by Avista for the protection of the Facilities, City property, or other persons or property, Avista may proceed without first obtaining the normally required permits. In the event of such an emergency requiring immediate action, Avista shall: (i) take all necessary and prudent steps to protect, support, and keep safe from harm its facilities, or any part thereof, the City's property, or other

persons or property, and to protect the public health and safety; (ii) as soon as possible thereafter, obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit; and (iii) except to the extent the emergency arises from the actions of City or its employees, agents, or contractors, City shall not be responsible for any and all costs associated with such emergency action.

3.5.3. Workman-like Completion

Any excavation work performed in the Franchise Area shall be carried out in accordance with all City permit requirements, rules, and procedures. Additionally, such excavation work shall be performed without unreasonable delay, in a workmanlike manner, and with as little interference or inconvenience to the rights of the public as may be reasonable.

3.5.4 Restoration of Franchise Area

Upon completion of any phase of an excavation project within the Franchise Area, Avista shall, without delay, and at Avista's sole expense, remove all debris and restore the surface of the Franchise Area to as good or better condition as it was in before the work began. Avista shall replace any property corner monuments, survey references, or hubs that were disturbed, damaged, or destroyed during Avista's work in the Franchise Area.

The City reserves the right to not allow open trenching for five (5) years following a street overlay or improvement project. Avista shall be given written notice at least ninety (90) days prior to the commencement of the project, provided that the City will endeavor to provide greater than ninety (90) days when possible. Required trenching due to an emergency, or in the case that no commercially viable alternative route exists, will not be subject to the five (5) year street trenching moratorium, however the required pavement restoration in such instances shall include a trench patch meeting City standards set forth below, as well as City approval of the asphalt overlay of the street itself.

3.5.4.1 Open trenching within five (5) years following a street overlay or improvement project. The following standards apply to open trenches within five (5) years following a street overlay or improvement project:

(a) For trenches which cross the street pavement or portions thereof, the limits of the overlay shall extend one hundred (100) linear feet along said street, as measured in both directions from the centerline of the trench patch. Further, prior to installing the overlay, the existing pavement within the area to be overlaid shall first be ground down to the anticipated thickness of the overlay, including along any curbs (if such curbs are present), such that the final driving surface, with respect to ride and appearance, shall be almost indistinguishable from the before condition, as reasonably determined by the City.

(b) For trenches which parallel the roadway, the overlay shall encompass the full roadway width and like crossings. The existing roadway pavement shall first

be ground down to thickness of the anticipated overlay, including along any curbs (if such curbs are present), such that the final roadway driving surface, with respect to ride and appearance, shall be almost indistinguishable from the before condition, as reasonably determined by the City. The limits of the full roadway width overlay shall extend one hundred (100) linear feet beyond the ends of the roadway trench cut. Where the paralleling trench is limited to one side or the other of the roadway centerline, then subject to the approval of the City, the grinding and asphalt overlay may be limited to the effected half of the street portion.

3.5.5 Compliance with Rules and Regulations

Avista shall comply with all ordinances, codes, rules, regulations, and policies now or hereafter adopted by the City now or hereafter adopted by the City regarding excavations in the Franchise Area and the Facilities contained therein.

SECTION 4.0 RESERVATION OF CITY'S RIGHTS AND POWERS

4.1 Reservation of Right

The City, in granting this Franchise, does not waive any rights which it may not have or may subsequently acquire with respect to road rights-of-way or other property of City under this Franchise, and this Franchise shall not be construed to deprive the City of any such powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the City's roads, rights-of-way and other public property covered by this Franchise. Nothing in the terms of this Franchise shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain granted to it under the laws of the State.

4.2 Necessary Construction/Maintenance by City

The construction, operation and maintenance of Avista's Facilities authorized by this Franchise shall not preclude the City, its agents or its contractors, from grading, excavating, or doing other necessary road work contiguous to Avista's Facilities; provided that Avista shall be given not less than ten (10) business days' notice of said work, except in events of emergency when there exists an unforeseen and substantial risk or threat to public health, safety, welfare, or waste of resources, in which case the City will make reasonable efforts to contact Avista prior to doing said work; and provided further that the City, its agents and contractors, shall be liable for any damages, including any consequential damages to third parties, caused by said work to any Facilities belonging to Avista.

4.3 Expansion of Avista's Facilities

Facilities in the City's Franchise Area that are incidental to the Franchise Area, or that have been, or are at any future time acquired, newly constructed, leased, or utilized in any manner by Avista shall be subject to all provisions of this Franchise.

4.4 Change of Boundaries of the City

Any subsequent additions or modifications of the boundaries of the City, whether by annexation, consolidation, or otherwise, shall be subject to the provisions of this Franchise as to all such areas. The City shall notify Avista of the scope of any change of boundaries not less than thirty (30) days prior to such change becoming effective or in accordance with applicable state laws, and shall affirm, authorize and ratify all prior installations authorized by permits or other action not previously covered by this Franchise.

4.5 Removal of Abandoned Facilities

During the Term of this Franchise, or upon a revocation or non-renewal of this Franchise, the City may direct Avista to remove designated abandoned Facilities from the Franchise Area at its own expense and as soon as practicable, but only where such abandoned Facilities constitute a demonstrated threat to public health and safety. Avista shall not be required to remove, or pay for the removal of facilities it has previously abandoned to another franchisee, or utility under a joint use agreement, or Person granted permission to access Avista's facilities.

4.6 Vacation of Properties by City

If, at any time, the City shall vacate any road, right-of-way or other public property which is subject to rights granted by this Franchise, such vacation shall be subject to the reservation of a perpetual easement to Avista for the purpose of constructing, reconstructing, operating, repairing, upgrading and maintaining Avista's Facilities on the affected property. The City shall, in its vacation procedure, reserve and grant said easement to Avista for Avista's Facilities and shall also expressly prohibit any use of the vacated properties which will interfere with Avista's full enjoyment and use of said easement.

SECTION 5.0 RELOCATION OF AVISTA'S FACILITIES

5.1 Relocation of Facilities Requested by City

Upon request of the City, Avista shall relocate its Facilities as necessary within the Franchise Area as specifically designated in design plans that are no less than sixty (60) percent complete by the City for such purpose. For purposes of this provision, all reasonable efforts shall be made by the City, with input from Avista, to minimize the impacts of potential relocation. Whether relocation is necessary shall be determined by the City in its sole discretion, which discretion shall be reasonably exercised taking into account all facts and circumstances. The City shall provide Avista reasonable notice of any intended or expected requirement or request to relocate Avista's Facilities. Said notice shall not be less than ninety (90) calendar days prior to any such relocation and, depending on the circumstances, may be greater than one hundred twenty (120) calendar days if necessary to allow Avista sufficient time to arrange for relocation. In cases of emergency, or where not otherwise reasonably foreseeable by the City, the notice requirements of this Section may be shortened by discussion and agreement between the Parties. The City shall use reasonable efforts to cause any such relocation to be consistent with any applicable long-term

development plan(s) of the City.

In the event a relocation forces Avista off City's existing Public Right(s) of Way then the City shall make a reasonable effort to accommodate said relocation on alternative Public Right(s) of Way.

If the City requires the subsequent relocation of any of Avista's Facilities within three (3) years from the date of relocation of such Facilities or installation of new Facilities, regardless of the cause for either the initial or subsequent relocation, the City shall bear the entire cost of such subsequent relocation.

Avista agrees to relocate all Facilities promptly within a reasonable time. Upon notice from the City, the parties agree to meet and determine a reasonable relocation time, which shall not exceed the time normally needed for construction projects of the nature of the City's relocation request unless otherwise mutually agreed. The City shall have no responsibility for the costs of such relocations, except as set forth above.

Notwithstanding the above, Avista shall not be required to relocate facilities of other entities that were abandoned to another franchisee. Such relocation of these types of facilities shall be in accordance with Section 5.2 below.

This Section shall not apply to Facilities in place pursuant to a private easement naming Avista as the benefitted party, regardless of whether such Facilities are also located within the Franchise Area. In the event the City requests relocation of Facilities that are in place pursuant to an existing easement benefitting Avista, said relocation shall be treated in the same manner as a relocation requested by third parties under Section 5.2, below, with the City bearing the expense of relocation. In the event of any conflict between this Section 5.1 and any City ordinance, regulation or permit, the provisions of this Section 5.1 shall control.

5.2 Relocation of Facilities Requested by Third Parties

City acknowledges that Avista is obligated to provide gas service and related line extension or relocation of Facilities for the benefit of its customers and to require compensation for such services on a non-preferential basis in accordance with applicable Tariffs.

If Facilities are to be relocated at the request of or for the primary benefit of a third party, the City shall not require Avista to relocate its Facilities until such time as a suitable location can be found and the third party has entered into an agreement to reimburse Avista for its reasonable costs of relocation.

5.3 Availability of Other Funds

In the event federal, state or other funds are available in whole or in part for utility relocating purposes, the City agrees to use reasonable efforts to apply for such funds if it has knowledge of the funds or if Avista makes written request that the City apply for the funds, provided such funds do not interfere with the City's right to obtain the same or similar funds, or otherwise create any expense or detriment to the City. The City may recover all costs, including internal costs, associated with obtaining such funds.

SECTION 6.0 INDEMNITY

6.1 Indemnification of City

Avista agrees to defend and indemnify the City, its appointed and elected officers and employees or agents, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's fees, that the City may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of Avista, its officers, employees or agents in connection with Avista's obligations under this Franchise; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages and losses were caused by or result from the negligence of the City, elected officers and employees or agents.

Avista's indemnification obligations pursuant to this Section shall include assuming liability for actions brought by Avista's own employees and the employees of Avista's agents, representatives, contractors, and subcontractors even though Avista might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of Avista's exercise of rights set forth in this Franchise. The obligations of Avista under this Section have been mutually negotiated by the Parties hereto, and Avista acknowledges that the City would not enter into this Franchise without Avista's waiver thereof. To the extent required to provide this indemnification, and this indemnification only, Avista waives its immunity under Title 51 RCW, as provided in RCW2.24.115.

6.2 Indemnification of Avista

To the extent permitted by law, City agrees to defend and indemnify Avista, its officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's fees, that Avista may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of the City, its appointed and elected officers and employees or agents in connection with City's obligations under this Franchise; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of Avista, its employees or agents.

SECTION 7.0 INSURANCE

In the event of any conflict between this Section 7 and any City ordinance, regulation or permit, the provisions of this Section 7 shall control.

7.1 Coverage Required

Avista shall procure and maintain for the duration of the Franchise, insurance against all claims for

injuries to persons or damages to property which may arise from or in connection with the exercise of the Franchise granted herein to Avista, its officers, directors, agents, representatives, servants, employees, or volunteers. Avista shall provide certificate(s) of insurance and all policy endorsements naming the City as an additional insured, and to the City for its inspection and approval prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such certificate(s) of insurance shall evidence the following minimum coverage amounts:

- (i) Comprehensive general liability insurance including coverage for premises - operations, explosions, and collapse hazard, underground hazard and product completed hazard, written on an occurrence basis, with limits not less than: \$10,000,000 for bodily injury or death to each person; and \$10,000,000 for property damage resulting from any one accident.
- (ii) Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000 for each person and \$5,000,000 for each accident.

The parties mutually agree that, Avista can meet the above insurance requirements through self-insurance and can satisfy the certificate of insurance requirements by providing a letter confirming self-insurance coverage.

7.2 Duration of Coverage

The liability insurance policies required by this Section shall be maintained by Avista throughout the term of this Franchise. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of Avista. Such coverage shall continue to apply after termination, cancellation, or expiration of the Franchise as to all claims accruing during any hold-over period for a minimum of three (3) years, or longer if the Facilities remain in the ground.

7.3 Primary Coverage

Avista's insurance with respect to Avista's Franchise obligations and indemnity to the City shall be primary insurance with respect to the City, its officers, elected officials, agents, representatives, engineers, consultants, employees, and volunteers. Any insurance, including self-insured retention maintained by the City, its officers, elected officials, agents, representatives, engineers, consultants, employees, and/or volunteers shall be in excess of Avista's insurance and shall not contribute with it.

7.4 Proof of Continued Coverage

On or before sixty (60) days of the anniversary Effective Date of the Franchise, Avista shall file with the City Clerk/Treasurer proof of continued insurance coverage, at least in the amounts required in this Section, through a Certificate of Insurance, indicating City coverage required herein and a provision that

the coverage may not be cancelled or reduced without at least thirty (30) days prior written notice to the City.

SECTION 8.0 FRANCHISE DISPUTE RESOLUTION

In the event of any conflict between this Franchise and any City ordinance, regulation or permit, the parties shall utilize the dispute resolution mechanisms of this section to address and resolve such conflict.

8.1 Non-waiver

Failure of a Party to declare any breach or default of this Franchise immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but the Party shall have the right to declare any such breach or default at any time. Failure of a Party to declare one breach or default does not act as a waiver of the Party's right to declare another breach or default. In addition, the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation and forfeiture for breach of the conditions of the Franchise.

8.2 Forfeiture

If Avista shall materially violate any of the provisions of this Franchise through material or unreasonable neglect or material or unreasonable failure to heed or comply with any notice given Avista under the provisions of this Franchise, then Avista shall forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the City; provided, however, the City shall give ninety (90) days written notice of its intention to revoke or annul the Franchise during which period Avista shall have the opportunity to remedy any breach. No forbearance by the City shall constitute a waiver of the City's right to enforce any provision of this Franchise.

8.3 Dispute Resolution by the Parties

Except in cases of forfeiture under Section 8.2, disputes regarding the interpretation or execution of the terms of this Franchise shall be resolved by direct discussion between a decision-making representative of Avista and the City Director of Planning & Engineering, or their designee. Such discussion shall take place as soon as reasonably possible once the Parties are aware of the dispute.

In the event that direct discussions do not result in resolution of the dispute, the Parties shall in good faith attempt resolution of the matter through mediation. The Parties shall select a mediator as soon as reasonably possible after the failure of direct discussions. Should the Parties not agree on mediator selection, either of them may request that one be appointed by the Seattle office of the American Arbitration Association. Once a mediator is appointed, the Parties shall abide by the rules and instructions of the mediator. A mediation session shall be held as soon as

reasonably possible after appointment of the mediator, and decision makers with authority to resolve the dispute shall personally attend the mediation session.

Participation in direct discussions and mediation shall be conditions precedent to the commencement of any other form of dispute resolution. The Parties shall share the cost of mediation fees and expenses equally. If the Parties are unable to resolve the dispute through informal means or mediation, then they shall be entitled to seek judicial or equitable relief. Venue for any legal action arising out of the existence of this Franchise shall be in the state or federal court located in Spokane County, Washington. No provision of this Franchise shall be deemed to bar the right of the City or Avista to seek judicial or equitable relief from a violation of any provision of the Franchise or to seek enforcement of the other party's obligations under this Franchise by means of specific performance, injunctive relief or any other remedy at law or in equity.

8.4 Right of Enforcement

No provision of this Franchise shall be deemed to bar the right of the City or Avista to seek judicial relief from a violation of any provision of the Franchise to recover monetary damages for such violations by the other Party or to seek enforcement of the other Party's obligations under this Franchise by means of specific performance, injunctive relief or any other remedy at law or in equity pursuant to Section 8.3. Any litigation between the City and Avista arising under or regarding this Franchise shall occur, if in the state courts, in a court of competent jurisdiction, and if in the federal courts, in the United States District Court for the Eastern District of Washington.

8.5 Attorneys' Fees and Costs

Each Party shall pay for its own attorneys' fees and costs incurred in any dispute resolution process or legal action arising out of the existence of this Franchise.

SECTION 9.0 GENERAL PROVISIONS

9.1 Franchise as Contract, No Third Party Beneficiaries

This Franchise is a contract between the Parties and binds and benefits the Parties and their respective successors and assigns. This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington. This Franchise does not and is not intended to confer any rights or remedies upon any persons, entities or beneficiaries other than the Parties. The contract (Franchise) shall be in the form of an ordinance and shall incorporate the requirements of City Municipal Code §8-8, Franchise Terms and Conditions, unless otherwise provided. In the event of a conflict between the provisions of City Municipal Code §8-8 and this Franchise, the provisions of City Municipal Code §8-8 shall govern, unless the Franchise clearly states the Parties intent to have the provisions of the Franchise control over the provisions of City Municipal Code §8-8. Each Party shall be deemed to have contractually committed itself to comply with the terms, conditions, and provisions of a Franchise, and Avista shall further comply with all Ordinances, written rules, orders, and regulations applicable and not inconsistent with a Franchise. In the event of a conflict between the provisions of this Franchise

or the City Municipal Code and Avista's applicable Tariff on file with the Commission, the Tariff shall control.

9.2 Force Majeure

In the event that Avista is delayed in or prevented from the performance of any of its obligations under the Franchise by circumstances beyond Avista's control (Force Majeure) including, without limitation, third party labor disputes, fire, explosion, flood, earthquake, power outage, acts of God, war or other hostilities and civil commotion, then Avista's performance shall be excused during the period of the Force Majeure occurrence. Avista will use all commercially reasonable efforts to minimize the period of the disability due to the occurrence. Upon removal or termination of the occurrence Avista will promptly resume performance of the affected Franchise obligations in an orderly and expeditious manner.

9.3 Prior Franchises Superseded

As of the Effective Date this Franchise shall supersede all prior gas franchises for the Franchise Area previously granted to Avista by the City (Ordinance No. 36 and Ordinance No. 199), and shall affirm, authorize and ratify all prior installations authorized by permits or other action not previously covered by franchise. Termination of the prior Franchise shall not, however, relieve the Parties from any obligations which accrued under said Franchise prior to its termination, including but not limited to, any out- standing indemnity, reimbursement or administrative fee payment obligations.

9.4 Severability

The Franchise is granted pursuant to the laws of the State of Washington relating to the granting of such rights and privileges by City. If any article, section, sentence, clause, or phrase of this Franchise is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity, enforceability, or constitutionality of the Franchise or any of the remaining portions. The invalidity of any portion of this Franchise shall not abate, reduce, or otherwise affect any obligation required of Avista.

9.5 Changes or Amendments

Changes or amendments to this Franchise shall not be effective until lawfully adopted by the City and agreed to by Avista. In the event that the City adopts an ordinance that will result in a change to the terms or conditions of this Franchise, the City and Avista will meet and confer to determine whether a conflict exists and will cooperate to resolve the conflict and mutually agree upon the modified terms to the Franchise through written amendment.

9.6 Headings

The headings or titles in this Franchise are for the purpose of reference only and shall not in any way affect the interpretation or construction of this Franchise.

9.7 Acceptance of Franchise.

Avista shall, within thirty (30) days after passage of this Ordinance, file with the City Clerk, its acceptance of the terms and conditions of this Franchise.

9.8 Abandonment or Suspension of Franchise Rights and Obligations

Avista may at any time abandon the rights and authorities granted hereunder, provided that six (6) months' written notice of intention to abandon is given to City. In addition, pursuant to Section 8.6 and in the event a conflict exists between the terms of this Franchise and Avista's Tariff with the Commission that cannot be resolved, Avista may suspend or abandon the rights and obligations of this Franchise upon reasonable notice to the City.

9.9 Notice

Notwithstanding any other provision in this Franchise, the City shall not be liable for any failure or alleged failure to provide notice or timely notice to Avista unless Avista can demonstrate that it has been substantially harmed by the City's failure to provide such notice. For purposes of this Franchise, the contact information and addresses for the City and Avista shall be as follows:

If to the City: Director of Planning & Engineering
 22710 E Country Vista Drive
 Liberty Lake, WA 99019

With Copy to: Sean P. Boutz, City Attorney
 Evans, Craven & Lackie, P.S.
 818 W Riverside Avenue, Suite 250
 Spokane, WA 99201

If to Avista: Director of Community Engagement & Strategic Initiatives
 P.O. Box 3727, MSC-68
 Spokane, WA 99220-3727

From time to time, the City and Avista may designate another person and/or address for all purposes of this Franchise by a notice given to the other party in accordance with the provisions hereof.

9.10 Franchise Effective Date

This Ordinance shall be in full force and effect five (5) days after publication of this Ordinance or a summary thereof in the official newspaper of the City as provided by law.

PASSED by the City Council this 1st day of November, 2022.

Crist Kaminskas

Cristella Kaminskas, Mayor

ATTEST:

Kelsey Hardy

Kelsey Hardy, City Clerk

APPROVED AS TO FORM:

SPB

Sean P. Boutz, City Attorney

Date of Publication: November 11, 2022

Effective Date: November 16, 2022

Letter of Acceptance by Avista

HONORABLE MAYOR AND CITY COUNCIL
CITY OF LIBERTY LAKE COUNTY OF SPOKANE, WASHINGTON

IN RE: City of Liberty Lake Ordinance No. 288

"Granting a Franchise to Avista Corporation for the Construction, Operation and Maintenance of Natural Gas Facilities within the City."

Avista Corporation dba Avista Utilities, for itself, its successors and assigns, hereby unconditionally accepts the terms and conditions of the Franchise Agreement contained in the subject Ordinance and files this written acceptance with the City of Liberty Lake This acceptance is executed on _____, 2022.

Avista Corporation dba Avista Utilities

By _____
Dennis Vermillion
President and CEO, Avista Corporation

Copy Received for the City of Liberty Lake

On:

By:

City Representative - Name

Gas Franchise Ordinance Summary for Publication

**NOTICE: CITY OF LIBERTY LAKE
PROPOSED FRANCHISE ORDINANCE NO. 288 SUMMARY**

Ordinance No 288 will grant Avista Corporation dba Avista Utilities a non-exclusive public utility franchise to locate, construct, install, own, maintain, repair, reconstruct, operate and use facilities within the City's public right of way [the Franchise Area] for the purposes of the storage, transmission, control and distribution of natural gas within the City for a term of 10 years. Avista agrees to meet accepted industry standards and conform with applicable federal and state laws, as well as the regulations of the appropriate state regulatory body with jurisdiction, in the conduct of its operations under the Franchise. The City reserves the right to make reasonable rules and regulations pertaining to the conduct of Avista's operations within the Franchise Area. Avista must not interfere with any existing facilities of other utilities. Avista is authorized to make necessary excavations within the Franchise Area; excavations must be carried out with reasonable dispatch, and the area restored, with as little interference to the public as may be reasonable. Avista must relocate its facilities in the franchise area at the City's request. Avista may remedy encroachment of vegetation in connection with franchised activities. Provisions are made for in- formal dispute resolution.

(Final Reading of Ordinance 288 is anticipated to be held before the Liberty Lake City Council on _____, 2022 at _____ [am/ pm] in the City Council Chambers).