

CITY ORDINANCE NO. 4846

AN ORDINANCE OF THE CITY OF LEWISTON GRANTING A NON-EXCLUSIVE FRANCHISE TO AVISTA CORPORATION, DOING BUSINESS AS AVISTA UTILITIES, A WASHINGTON CORPORATION, FOR THE PROVISION OF ELECTRICITY AND GAS; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST SAID FRANCHISE AGREEMENT, RESPECTIVELY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Idaho Code §§ 50-301 and -329, the City of Lewiston and Avista Corporation, doing business as Avista Utilities, desire to enter into a non-exclusive franchise agreement for the provision of electricity and gas within the City of Lewiston.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEWISTON, IDAHO:

SECTION 1: The “Franchise Agreement for the Provision of Electricity and Gas between the City of Lewiston and Avista Corporation” (“Franchise Agreement”) is hereby approved. A copy of the Franchise Agreement is attached hereto and incorporated herein as Exhibit A.

SECTION 2: The Mayor and City Clerk are hereby authorized and directed to execute and attest the Franchise Agreement, respectively.

SECTION 3: This ordinance shall take effect and be in full force from and after its passage and publication. Additionally, the Franchise Agreement shall become effective as of the date of publication of this Ordinance No. 4846 and the execution of the Franchise Agreement by all parties thereto.

PASSED this _____ day of _____ 2022.

CITY OF LEWISTON

By: _____
Daniel G. Johnson, Mayor

ATTEST:

Kari J. Ravencroft, City Clerk

ORDINANCE NO. 4846

EXHIBIT A
TO ORDINANCE NO. 4846

**FRANCHISE AGREEMENT
FOR THE PROVISION OF ELECTRICITY AND GAS
BETWEEN THE CITY OF LEWISTON AND AVISTA CORPORATION**

Article I. Definitions 1

Article II. Grant of Franchise 3

 Section II. 1. Grant of Franchise 3

 Section II. 2. Non-Exclusive Franchise 3

 Section II. 3. Notice of City’s Intent to Compete with Franchisee 3

 Section II. 4. Assignment of Franchise 3

 Section II. 5. Franchise Fee 4

Article III. Term and Termination 4

Article IV. Franchisee’s Operations and Maintenance 4

 Section IV. 1. Compliance with Laws, Regulations, Codes, and Standards 4

 Section IV. 2. Facility Location by Franchisee and Non-Interference 4

 Section IV. 3. Facility Location Information 4

 Section IV. 4. Vegetation Management – Trimming/Removal of Trees/Vegetation
 Encroachment 5

 Section IV. 5. Right of Excavation and Requirement for Permits 5

 Section IV. 6. Emergency Work 5

Article V. Reservation of City’s Rights and Powers 6

 Section V. 1. Reservation of Rights 6

 Section V. 2. Necessary Construction/Maintenance by City 6

 Section V. 3. Expansion of Franchisee’s Facilities 6

 Section V. 4. Change of City’s Boundaries 6

 Section V. 5. Removal of Abandoned Facilities 6

 Section V. 6. Vacation of Properties by City 7

 Section V. 7. Pole Attachments by City 7

Article VI. Relocation or Conversion of Franchisee’s Facilities 7

 Section VI. 1. Relocation of Facilities Requested by City 7

Section VI. 2. Relocation of Facilities Requested by Third Parties	8
Section VI. 3. Availability of Other Funds	9
Section VI. 4. Temporary Relocation of Electric Facilities Requested by Third Parties	9
Section VI. 5. Conversion of Electric Distribution Facilities	9
Article VII. Indemnity	9
Section VII. 1. Indemnification of City	9
Section VII. 2. Indemnification of Franchisee	9
Article VIII. Franchise Dispute Resolution	10
Section VIII. 1. Non-Waiver	10
Section VIII. 2. Dispute Resolution by the Parties	10
Section VIII. 3. Right of Enforcement	10
Section VIII. 4. Attorneys' Fees and Costs	10
Article IX. General Provisions	11
Section IX. 1. Incorporation of Recitals	11
Section IX. 2. Franchise as Contract, No Third Party Beneficiaries	11
Section IX. 3. Force Majeure	11
Section IX. 4. Prior Franchises Superseded	11
Section IX. 5. Severability	11
Section IX. 6. Changes or Amendments	12
Section IX. 7. Supremacy and Governing Law	12
Section IX. 8. Headings	12
Section IX. 9. Abandonment or Suspension of Franchise Rights and Obligations	12
Section IX. 10. Contracting Authority	12
Section IX. 11. Insurance	12
Section IX. 12. Notices	13
Section IX. 13. Survival	13
Section IX. 14. Public Records	14
Section IX. 15. State of Idaho Requirements	14

THIS FRANCHISE AGREEMENT (“Franchise”) is entered into by and between the City of Lewiston, an Idaho municipal corporation (“City”), and Avista Corporation, doing business as Avista Utilities, a Washington corporation (“Franchisee”). City and Franchisee may also individually be referred to as “Party” or collectively as “Parties.”

WHEREAS, City is a municipal corporation and political subdivision of the State of Idaho and has authority to enter into this Franchise pursuant to Idaho Code §§ 50-301, 50-329, and 50-329A;

WHEREAS, on March 10, 1997, pursuant to Ordinance No. 4187, City granted a non-exclusive franchise to Washington Water Power Company for the provision of gas utility service for a term of twenty-five (25) years, which expired on March 9, 2022 (“Gas Franchise”);

WHEREAS, in November 1999, Washington Water Power Company assigned its Gas Franchise to Avista Corporation;

WHEREAS, on November 29, 1999, pursuant to Ordinance No. 4255, City granted a non-exclusive franchise to Avista Corporation for the provision of electrical service for a term of twenty-five (25) years, expiring on December 1, 2024 (“Electricity Franchise”);

WHEREAS, on November 29, 1999, pursuant to Ordinance No. 4256, City enacted a one percent (1%) franchise fee on the gross revenues of electrical and natural gas service providers operating in the City of Lewiston, which continues to be in effect;

WHEREAS, the Parties now desire to terminate the existing Electricity Franchise, and enter into a new, combined franchise agreement wherein City grants Franchisee a non-exclusive franchise for the provision of electricity and gas for a term of twenty-five (25) years; and

WHEREAS, City Ordinance No. 4846 authorizes City to enter into this Franchise with Franchisee for the provision of electricity and gas.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

ARTICLE I DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meanings set forth below. 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, doing business as Avista Utilities, a Washington corporation, and its respective successors, assigns, agents, and contractors.

City means the City of Lewiston, a political subdivision of the State of Idaho and a municipal corporation.

Commission means the Idaho Public Utilities Commission or such successor regulatory agency having jurisdiction over investor-owned public utilities in the State of Idaho.

Effective Date means the date of legal publication of City Ordinance No. 4846, following its adoption, upon which the rights, duties, and obligations of this Franchise will take effect.

Electric Facilities means, collectively, any and all electric transmission and distribution systems and appurtenances owned by Franchisee, now and in the future in the Franchise Area, including, but not limited to, poles, towers, overhead and underground wires and cables, conduits, services, vaults, transformers, 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, and control of electricity, whether the same be located above or below ground.

Facilities means, collectively, any and all Electric Facilities and Gas Facilities owned by Franchisee.

Franchise means this Franchise Agreement, by which City grants to Franchisee those rights, privileges, authorities, and responsibilities set forth herein and authorized pursuant to City Ordinance No. 4846.

Franchise Area means the surface and space above and below all public property and rights-of-way owned or held by City, including, without limitation, rights-of-way for: (1) public roads, streets, avenues, alleys, bridges, tunnels, City-owned easements, and highways that may hereafter be laid out, platted, dedicated, acquired, or improved; (2) all City-owned utility easements dedicated for the placement and location of various utilities, provided such easements would permit Franchisee to fully exercise the rights granted under this Franchise within the area covered by the easement; and (3) any other specifically designated City-owned property.

Franchisee means Avista Corporation, doing business as Avista Utilities, a Washington corporation.

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

Gas Facilities means, collectively, any and all gas transmission and distribution systems and appurtenances owned by Franchisee, now and in the future, in the Franchise Area, including, but not limited to, Gas plants, Gas pipes, pipelines, mains, laterals, conduits, services, 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.

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

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 City.

State means the State of Idaho.

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

ARTICLE II GRANT OF FRANCHISE

Section II.1. Grant of Franchise

City hereby grants to Franchisee the non-exclusive right, power, privilege, and authority to enter upon all roads, Rights-of-way, streets, alleys, highways, public places or structures, bridges, tunnels, and City-owned easements lying within the Franchise Area to locate, construct, operate, and maintain Facilities for the purpose of controlling, transmitting, and distributing electricity and/or Gas, as may be necessary to provide electric and/or Gas service.

Section II.2. Non-Exclusive Franchise

This Franchise is not an exclusive Franchise. This Franchise shall not prohibit City from granting other franchises within the Franchise Area that do not interfere with Franchisee's rights under this Franchise. City may not, however, award an electric and/or 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.

Section II.3. Notice of City's Intent to Compete with Franchisee

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

Section II.4. Assignment of Franchise

Franchisee shall have the right to assign its rights, benefits, and privileges under this Franchise. Any assignee shall, within thirty (30) calendar days of the date of any assignment, file written notice of the assignment with City together with its written acceptance of all terms and conditions of this Franchise. As permitted by federal and State law and Commission regulation, Franchisee shall have the right, without notice to or consent of City, to mortgage or hypothecate its rights, benefits, and privileges in and under this Franchise as security for indebtedness.

Section II.5. Franchise Fee

Franchisee shall pay all franchise fees that it might be required to pay in connection with the issuance, maintenance, existence, continuation, or use of this Franchise, to the extent permitted by State law or City ordinance now in effect or enacted during the term of this Franchise.

ARTICLE III TERM AND TERMINATION

The rights, privileges, and Franchise granted to Franchisee will extend for a term of twenty-five (25) years from the Effective Date, and shall continue year-to-year thereafter, until: (a) it is otherwise renewed for another twenty-five (25) year term, or (b) terminated by either Party, with not less than one hundred eighty (180) calendar days' prior written notice to the other Party.

ARTICLE IV FRANCHISEE'S OPERATIONS AND MAINTENANCE

Section IV.1. Compliance with Laws, Regulations, Codes, and Standards

In carrying out any authorized activities under the privileges granted by this Franchise, Franchisee shall meet accepted industry standards and codes and shall comply with all applicable laws, regulations, and ordinances of any governmental entity with jurisdiction over Franchisee's Facilities and operations 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 Franchisee's operations within the Franchise Area. City shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of Franchisee's operations within the Franchise Area and shall provide any prior notice to Franchisee in accordance with applicable law.

Section IV.2. Facility Location by Franchisee and Non-Interference

Franchisee shall have the discretion to determine the placement of its Facilities as may be necessary to provide safe and reliable electric and Gas service, subject to the following non-interference requirements. All construction, installation, repair, or relocation of Franchisee's Facilities performed by Franchisee in the Franchise Area shall be done in such a manner as not to interfere with the existing construction and maintenance of other utilities, public or private, drains, drainage ditches and structures, irrigation ditches and structures located therein, nor with the grading or improvement of roads, Rights-of-Way, or other City-owned property within the Franchise Area.

Section IV.3. Facility Location Information

Franchisee shall provide City, upon City's reasonable request, Facility location information in electronic or hard copy showing the location of its Facilities at specific locations within the Franchise Area, to the extent such information is reasonably available. Franchisee does not warrant the accuracy of any such Facility location information provided and, to the extent the location of Facilities are shown, such Facilities may be shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of Franchisee or 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.

Section IV.4. Vegetation Management -- Trimming/Removal of Trees/Vegetation Encroachment

State law requires electric utilities to comply with the National Electric Safety Code, including the guidance in the Code for the trimming or removal of vegetation interfering or potentially interfering with energized power lines. The right of Franchisee to maintain its Facilities and appurtenances under this Franchise shall accordingly include the right, as exercised in Franchisee's professional discretion, to minimize the likelihood that encroaching (either above or below the ground) vegetation can interfere with or limit access to Franchisee's Facilities, lead to power outages, or pose a threat to public safety and welfare. Franchisee or its agents may, without recourse or payment of compensation, inhibit or limit the growth of, prune, or remove any trees and vegetation which overhangs or encroaches upon its Facilities and/or Gas transmission and distribution corridors within the Franchise Area, whether such trees or vegetation originate within or outside of the Right-of-way; provided, however, that City shall not be responsible for damage to trees or vegetation caused by Franchisee or its agents. Franchisee shall ensure that any person who trims, prunes, or removes trees and/or vegetation on Franchisee's behalf has the required training and certifications to perform such work and follows all applicable standards set forth by applicable local, state, federal, and tribal rules, laws, and regulations. Such work shall follow the most current versions of ISA (International Society of Arboriculture), ANSI (American National Standards Institute), and OSHA (Occupational Safety and Health Administration) approved standards for UVM (Utility Vegetation Management). Nothing contained in this Section shall prevent Franchisee, when necessary, from pruning or removing any trees which overhang the Franchise Area and may interfere with Franchisee's Facilities.

Section IV.5. Right of Excavation and Requirement for Permits

For the purpose of implementing the privileges granted under this Franchise, and subject to the conditions described herein, including the requirement for permits, Franchisee is authorized to make any necessary excavations in, under and across the streets, alleys, roads, Rights-of-way and public grounds within the Franchise Area. Such excavation shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the public as may be feasible. Franchisee shall remove all debris stemming from excavation and construction. The Right-of-way surface shall be restored by Franchisee to its original state of improvement after excavation, in accordance with applicable City and Franchisee standards and specifications. In the event Franchisee fails to restore the Right-of-way surface in accordance with applicable City and Franchisee standards and specifications, then City shall notify Franchisee, in writing, and Franchisee shall promptly complete such work in accordance with applicable City and Franchisee standards and specifications at Franchisee's sole expense.

Franchisee shall obtain any and all permits required to perform work in the Right-of-way, unless an emergency exists, as described in Section IV.6. below.

Section IV.6. Emergency Work

In the event of an emergency requiring immediate action by Franchisee to protect the public health and safety or for the protection of its Facilities, or the property of City or other persons in the

Franchise Area, Franchisee may immediately proceed with excavation or other Right-of-way work, without first obtaining the required permits from City, with concurrent notice to City to the extent possible.

ARTICLE V RESERVATION OF CITY'S RIGHTS AND POWERS

Section V.1. Reservation of Rights

City, in granting this Franchise, does not waive any rights which it may now have or may subsequently acquire with respect to Rights-of-way or other property of City under this Franchise, and this Franchise shall not be construed to deprive City of any such powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control 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 City from exercising at any time any power of eminent domain granted to it under the laws of this State.

Section V.2. Necessary Construction/Maintenance by City

The construction, operation, and maintenance of Franchisee's Facilities authorized by this Franchise shall not preclude City, its agents or its contractors, from grading, excavating, or doing other road work contiguous to Franchisee's Facilities; provided that Franchisee 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 City will make reasonable efforts to contact Franchisee prior to doing said work; and provided further that City, its agents and contractors, shall be liable for any damages caused by said work to any Facilities belonging to Franchisee.

Section V.3. Expansion of Franchisee'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 Franchisee shall be subject to all provisions of this Franchise.

Section V.4. Change of City's Boundaries

Any subsequent additions or modifications of the boundaries of City, whether by annexation, consolidation, or otherwise, shall be subject to the provisions of this Franchise as to all such areas. City shall notify Franchisee of the scope of any change of boundaries 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.

Section V.5. Removal of Abandoned Facilities

During the term of this Franchise, or upon termination or non-renewal of this Franchise, City may direct Franchisee 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. Franchisee 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 Franchisee's facilities.

Section V.6. Vacation of Properties by City

If, at any time, City shall vacate any road, Right-of-way or other public property wherein Franchisee has existing Facilities and has notified City of such existing Facilities, such vacation shall be subject to the reservation of a perpetual easement to Franchisee for the purpose of constructing, reconstructing, operating, repairing, upgrading, and maintaining Franchisee's Facilities on the affected property. City shall, in its vacation procedure, reserve and grant said easement to Franchisee for Franchisee's Facilities, which easement may be in the form of a general public utility easement for all utility providers, and shall also expressly prohibit any use of the vacated properties which will interfere with Franchisee's full enjoyment and use of said easement. Notice of a proposed vacation shall be provided to Franchisee in accordance with the applicable provisions of the Lewiston City Code.

Section V.7. Pole Attachments by City

City shall be permitted, upon reasonable notice to Franchisee, to attach its traffic control fire and police communications signal cables to Franchisee's poles in the Franchise Area, provided that City signs and meets all conditions of a Joint Use Master License Agreement ("Joint Use Agreement") with Franchisee. Per the Joint Use Agreement, Franchisee will not charge a pole rental fee for City's non-revenue producing pole attachments that are dedicated for the public's benefit. All pole attachments by City are at City's own risk and must be attached in strict accordance with standard safety practices, codes and Franchisee specifications.

If there is not sufficient space available on Franchisee's structures, such structures may be changed, altered, or rearranged at the expense of City so as to provide proper clearance and capacity for City facilities. Such City facilities shall be subject to removal or repositioning by Franchisee at City's expense to the extent necessary for utility worker safety and the proper construction, maintenance, operation or repair of Franchisee's Facilities and appurtenances. City assumes all responsibility for the installation and maintenance of City's facilities installed on Franchisee's Facilities.

ARTICLE VI RELOCATION OR CONVERSION OF FRANCHISEE'S FACILITIES

Section VI.1. Relocation of Facilities Requested by City

Upon written request of City, Franchisee shall relocate its Facilities as necessary within the Franchise Area or other City-owned property as specifically designated in design plans that are no less than sixty (60) percent complete by City for such purpose. For purposes of this provision, all reasonable efforts shall be made by City, with input from Franchisee, to minimize the impacts of potential relocation. City shall provide Franchisee reasonable written notice of any intended or expected requirement or request to relocate Franchisee'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 Franchisee sufficient time to arrange for relocation. In cases of emergency, or where not otherwise reasonably foreseeable by City, the notice requirements of this Section may be shortened by discussion and written agreement between the Parties. City shall use reasonable efforts to cause any such relocation to be consistent with any applicable long-term

development plan(s) of City. If, at any time, City shall cause or require the alteration or the improvement of any road, Right-of-way or other public property which is subject to rights granted by this Franchise within the Franchise Area as specifically designated in design plans that are no less than sixty (60) percent complete by City for such purpose, Franchisee shall, upon written notice from City, change the location or readjust the elevation of its system and other Facilities so that the same shall not interfere with such work and so that such equipment and Facilities shall conform to such new grades or routes as may be established.

In the event a relocation forces Franchisee off City's existing Right-of-way then City shall accommodate such relocation by securing an acceptable, alternate location for utilities and removing any obstructions, including, without limitation, trees, vegetation, or other objects that may interfere with the installation, operation, repair, upgrade or maintenance of Franchisee's Facilities on the affected Property.

If City requires the subsequent relocation of any of Franchisee'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, then City shall bear the entire cost of such subsequent relocation.

Franchisee agrees to relocate all Facilities promptly within a reasonable time. Upon notice from 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 City's relocation request unless otherwise mutually agreed.

Notwithstanding the above, Franchisee shall not be required to relocate facilities of other entities that were: (i) granted access to Franchisee's Facilities through a Joint Use Agreement, or (ii) abandoned to another franchisee. Such relocation of these types of facilities shall be in accordance with Section VI.2 below.

This Section shall not apply to Facilities in place pursuant to private easement held by Franchisee, regardless of whether such Facilities are also located within the Franchise Area. In the event City requests relocation of Facilities that are in place pursuant to an existing easement, said relocation shall be treated in the same manner as a relocation requested by third parties under Section VI.2, below, with City bearing the expense of relocation.

Section VI.2. Relocation of Facilities Requested by Third Parties

City acknowledges that Franchisee is obligated to provide electric and gas service and related line extension, or relocation or conversion 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, City shall not require Franchisee 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 Franchisee for its reasonable costs of relocation.

Section VI.3. Availability of Other Funds

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

Section VI.4. Temporary Relocation of Electric Facilities Requested by Third Parties

At the request of any Person holding a valid permit or other written permission from City, and upon reasonable advance notice and payment by the permit holder of Franchisee's expenses of such temporary change, Franchisee will temporarily raise, lower or remove its Electric Facilities as necessary to accommodate a permittee of City desiring to move over-sized structures or equipment along or across the Right-of-way in the Franchise Area.

Section VI.5 Conversion of Electric Distribution Facilities

City, subject to applicable laws, rules, regulations and tariffs, may request that Franchisee convert from above ground to below ground wires for the distribution of electricity underground after joint review with Franchisee and mutual written agreement that such installation is feasible, practical and required for the public interest and safety. The incremental cost of such conversion of existing Electric Facilities shall be borne and paid by City or other party requesting the same, unless the Parties agree otherwise in writing, subject to law and such rules, regulations, and Tariffs of the Commission. It is expressly agreed by both Parties that this Section VI.5 does not apply to any conversion of electric transmission (69KV or above) infrastructure.

ARTICLE VII INDEMNITY

Section VII.1. Indemnification of City

Franchisee agrees to defend, indemnify, and hold harmless City, its appointed and elected officers, employees, officials, representatives, and agents, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's fees, that City may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the acts or omissions of Franchisee, its officers, employees or agents in connection with Franchisee'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 City, or its appointed and elected officers, employees, officials, representatives, or agents.

Section VII.2. Indemnification of Franchisee

To the extent permitted by law, City agrees to defend, indemnify, and hold harmless Franchisee, 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 Franchisee may sustain, incur, become

liable for, or be required to pay, as a consequence of or arising from the acts or omissions of City, its appointed and elected officers, 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, and losses and were caused by or result from the negligence of Franchisee, its officers or employees.

ARTICLE VIII FRANCHISE DISPUTE RESOLUTION

Section VIII.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 City shall not prevent City from thereafter declaring a revocation and forfeiture for breach of the conditions of the Franchise.

Section VIII.2. Dispute Resolution by the Parties

Disputes regarding the interpretation or execution of the terms of this Franchise that cannot be resolved by department counterparts representing the Parties, shall be submitted to the City Attorney and an attorney representing Franchisee for resolution. If a mutually satisfactory or timely resolution cannot then be reached by the above process, prior to resorting to a court of competent jurisdiction, the Parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to, in writing, by the Parties.

Section VIII.3. Right of Enforcement

No provision of this Franchise shall be deemed to bar the right of City or Franchisee 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, subject to Sections VIII.2. and VIII.4. Any litigation between the City and Franchisee arising under or regarding this Franchise shall occur, if in the state courts, in a court of competent jurisdiction in Nez Perce County, Idaho, and if in the federal courts, in the United States District Court for the District of Idaho in Coeur d'Alene, Idaho.

Section VIII.4. 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.

ARTICLE IX GENERAL PROVISIONS

Section IX.1. Incorporation of Recitals

The recitals to this Franchise are hereby incorporated into and made part of this Franchise, including all defined terms therein.

Section IX.2. 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 Franchise does not and is not intended to confer any rights or remedies upon any persons, entities, or beneficiaries other than the Parties.

Section IX.3. Force Majeure

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

Section IX.4. Prior Franchises Superseded

As of the Effective Date, this Franchise shall supersede all prior electric and gas franchises for the Franchise Area previously granted to Franchisee or its predecessors by City. The Parties expressly understand and agree that the Electricity Franchise previously entered into by the Parties shall terminate as of the Effective Date of this Franchise, and that no additional notice, written or otherwise, shall be required for the termination of said Electricity Franchise. Termination of the prior Electricity Franchise shall not, however, relieve the Parties from any obligations which accrued under said Electricity Franchise prior to its termination, including, but not limited to, any outstanding indemnity, reimbursement, or administrative fee payment obligations.

Section IX.5. Severability

This Franchise is granted pursuant to the laws of the State of Idaho 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 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 Franchisee.

Section IX.6. Changes or Amendments

Changes or amendments to this Franchise shall not be effective unless agreed to, in writing, by both Parties.

Section IX.7. Supremacy and Governing Law

This Franchise shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Idaho. In the event of any conflict between this Franchise and any City ordinance, regulation, or permit, the provisions of the City ordinance, regulation, or permit shall control. In the event of a conflict between the provisions of this Franchise and Franchisee's applicable Tariff on file with the Commission, the Tariff shall control.

Section IX.8. 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.

Section IX.9. Abandonment or Suspension of Franchise Rights and Obligations

Franchisee 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 IX.7. and in the event a conflict exists between the terms of this Franchise and Franchisee's Tariff with the Commission that cannot be resolved, Franchisee may suspend or abandon the rights and obligations of this Franchise upon reasonable written notice to City.

Section IX.10. Contracting Authority

Each Party warrants that the person or persons executing this Franchise on behalf of such Party has the full right, power, and authority to enter into and execute this Franchise on such Party's behalf, and that no consent from any other person or entity is necessary to effectuate this Franchise.

Section IX.11. Insurance

Franchisee shall procure and maintain for the duration of this Franchise, insurance, or evidence of self-insurance, against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted hereunder to Franchisee, its agents, representatives, or employees. Franchisee shall provide a copy of confirmation of such insurance to City for its inspection prior to the Effective Date, and such insurance shall evidence:

- (a) Comprehensive general liability insurance, written on a claims made basis, with limits not less than: (i) \$2,000,000 for bodily injury or death to each person; (ii) \$2,000,000 for property damage resulting from any one accident; and (iii) \$2,000,000 for all other types of liability;
- (b) Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 for each person and \$1,000,000 for each accident;

(c) Worker's compensation coverage in accordance with the applicable laws of the State of Idaho; and

(d) Excess liability insurance providing liability coverage of \$5,000,000 each occurrence and \$5,000,000 aggregate.

Provisions (a) through (c) above may be met through a combination of policies and self-insurance.

Franchisee shall name City, its officers, officials, employees, and volunteers ("Additional Insureds") as additional insureds on Franchisee's commercial general liability insurance policy and all other liability insurance policies with the exception of the professional liability policy, if applicable, with respect to liability arising out of work or operations performed by or on behalf of Franchisee, including materials, parts, or equipment furnished in connection with such work or operations. Such policy provision(s) or endorsement(s) shall further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the Additional Insureds.

Franchisee waives all rights against City, its officers, officials, employees, and volunteers for recovery of damages to the extent that damages are covered by commercial general liability, commercial excess/umbrella liability, business automobile liability, or workers' compensation insurance maintained pursuant to the requirements of this Franchise.

Section IX.12. Notices

All notices, requests, demands, statements, and consents required or permitted to be given pursuant to this Franchise shall be in writing and signed by or on behalf of the Party giving the notice. Such communications shall be deemed delivered: (a) immediately if hand-delivered; (b) seventy-two (72) hours after depositing the same in the U.S. mail, certified or registered, addressed to the respective addresses set forth below; or (c) one (1) business day after depositing the same with a recognized commercial air courier or express service, addressed to the respective addresses set forth below.

Franchisee: Real Estate Manager
Avista Corporation
1411 East Mission Avenue
Spokane, Washington 99202

City: Public Works Director
City of Lewiston
1134 F Street
P.O. Box 617
Lewiston, Idaho 83501

Section IX.13. Survival

All covenants, conditions, indemnifications, and other elements in this Franchise that might involve performance subsequent to any termination or expiration of this Franchise or that cannot be reasonably ascertained or fully performed until after termination or expiration of this Franchise shall survive.

Section IX.14. Public Records

The Parties herein understand and acknowledge that this Franchise, its exhibits and attachments, and communications between them are subject to the Idaho Public Records Act, I.C. §§ 74-101, *et seq.*, and other applicable federal and state laws, and might be subject to disclosure.

Section IX.15. State of Idaho Requirements

The following provisions are required by the State of Idaho. The inclusion of these provisions in this Franchise does not indicate City's or Franchisee's support or opposition to these provisions nor agreement by City or Franchisee that these clauses are relevant to the subject matter of this Franchise. Rather, these provisions are included solely to comply with the laws of the State of Idaho.

A. Anti-Boycott Against Israel Act: If this Franchise: (1) is to acquire or dispose of services, supplies, information technology, or construction; (2) has a total potential value of One Hundred Thousand Dollars (\$100,000) or more; and (3) Franchisee is a company with ten (10) or more employees, then, pursuant to Idaho Code § 67-2346, Franchisee certifies that Franchisee is not currently engaged in, and will not for the duration of this Franchise engage in, a boycott of goods or services from Israel or territories under Israel's control. The terms "company" and "boycott Israel" shall have the meanings ascribed to them in Idaho Code § 67-2346.

B. No Public Funds for Abortion Act: Pursuant to Idaho Code § 18-8703, Franchisee certifies that it is not, and will not for the duration of this Franchise become, an abortion provider or an affiliate or an abortion provider, as those terms are defined in the "No Public Funds for Abortion Act," Idaho Code §§ 18-8701 *et seq.* This provision is included solely to comply with the laws of the State of Idaho and does not indicate Franchisee's support or opposition to this provision nor agreement by Franchisee that these clauses are relevant to the subject matter of this Franchise.

IN WITNESS WHEREOF, the Parties have executed this Franchise on the last day and year written below.

Signature page to follow

DATED this _____ day of _____ 2022.

CITY OF LEWISTON

By: _____
Daniel G. Johnson, Mayor

ATTEST:

Kari J. Ravencroft, City Clerk

DATED this _____ day of _____ 2022.

AVISTA CORPORATION

Dennis Vermillion, President and CEO

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____ 2022, before me, a Notary Public, personally appeared Dennis Vermillion, known or identified to me as the President and CEO of Avista Corporation, and stated he has the authority to execute this instrument on behalf of Avista Corporation and did execute this instrument on behalf of Avista Corporation.

Notary Public for State of _____
Commission Expires _____