

**TOWN OF ODESSA, WASHINGTON
ORDINANCE NO. 712**

AN ORDINANCE GRANTING AVISTA CORPORATION, d/b/a AVISTA UTILITIES, A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO LOCATE, CONSTRUCT, INSTALL, OWN, MAINTAIN, REPAIR, REPLACE, EXTEND, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF THE DISTRIBUTION AND SALE OF GAS.

Avista Corporation dba Avista Utilities ("Avista"), a Washington Corporation, has filed with the Town of Odessa, State of Washington (the "Town") a written application for a renewal of its Franchise to locate, construct, operate, maintain and use such plants, works, underground pipelines, equipment and appurtenances over, under, along and across all of Town's rights of way and public property in the Town for the purposes of the distribution and sale of Gas; and the Town has determined it is in the interest of persons and businesses in this jurisdiction to have access to Avista's services;

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ODESSA:

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 Town of Odessa 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 Washington.

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 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 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.
- Any other specifically designated City-owned property.

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.

Public Project: means any City or other government-funded capital improvement project on the Rights-of-way or City property within the Franchise Area.

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

City hereby grants to Avista the 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.

2.2 Effective Date

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

2.3 Term

The rights, privileges and Franchise granted to Avista will extend for a term of 25 years from the Effective Date, and shall continue year-to-year thereafter, until it is otherwise renewed for another twenty-five (25) 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 within the Franchise Area that do not interfere with Avista's rights under this Franchise. 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.

2.5 City Reserves Right to Operate

City reserves the right to acquire, construct, own, operate, and maintain a municipal gas utility to serve all or any portion of the City, at any time during the term of this franchise and to fully exercise such right in accordance with applicable law.

2.6 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.

2.7 Assignment of Franchise

Avista shall have the right to assign its rights, benefits and privileges under this Franchise. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise. As permitted by federal and state law and Commission regulation, 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.

2.8 Franchise Fees, Costs, and Taxes

Avista shall pay all permitting license fees, costs, franchise fees to the extent permitted under RCW 35.21.860, and/or utility privilege taxes which 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. The City reserves the right to designate the time and manner of payment of such fees, costs, or taxes owed by Avista in connection with this Franchise. To the extent that any Franchise fees, taxes, or other costs are imposed on Avista, City shall impose equivalent charges, fees, taxes, or costs upon any other franchise in a comparable business or otherwise competing with Avista..

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. 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. Prior to the adoption of any new rule, procedure or policy, Avista shall be provided a written draft document for comment with a response period of not less than thirty days. 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 Restoration of City Roads, Rights-of-Way, and Property

Subject to the provisions contained in 3.3; any work which requires breaking of, or causes disturbance to the surface of City roads, right-of-way, or other City property subject to this Franchise for the purpose of laying, relaying, connecting, disconnecting, altering, operating, and/or repairing the said system, and/or making connections to other facilities of Avista, or its customers, now in existence or hereafter constructed, shall be restored in accordance with 1) current

WSDOT specifications for road, bridge, and municipal construction, and 2) adopted Town of Odessa pavement, sewer, and water plans, with all convenient speed and at Avista's sole expense.

All work done under this Franchise shall be done in a thorough and workmanlike manner. In the operation, maintenance, alteration, repair, or construction of overhead or underground lines or other system facilities, and the opening of trenches, or the tunneling under City roads or rights-of-way, Avista shall perform such work, and leave such trenches, excavations, ditches, tunnels, and work areas in such a way as to interfere as little as possible with the public travel and shall take all due and necessary precautions to guard the same, so that damage or other injury shall not occur or arise by reason of such work. Avista, their agents, or other third parties performing work shall be responsible to provide proper signing, barricades, flashing lights, or other methods necessary to warn of obstructions or other dangers to the public. Where any of such trenches, excavations, ditches, or tunnels are allowed to be left open at night, Avista shall be responsible to place warning lights, barricades, or other methods necessary to warn of the dangers. Traffic controls and warning devices for all work shall conform to the most current and applicable "Manual of Uniform Traffic Control Devices for Streets and Highways" (MUTCD) and modifications thereto.

3.3 Notification Required

Avista shall remain responsible and liable whether the work is done by Avista, its contractors, or by third parties. All lines and facilities shall be installed and maintained at such location and position so as to least interfere with maintenance and improvement of the City road and right-of-way, free and safe passage of traffic, existing and planned utilities, and in accordance with all federal, state, and local laws and regulations, conditions of this Franchise, and all other application Industry and City requirements and standards regulating such construction and maintenance. All impacts stemming from Avista's work to City roads, rights-of-way, or other property work shall remain subject to inspection and approval by the City.

3.4 Facility Location by Avista and Non-Interference

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 the construction and maintenance of other utilities, drains, drainage and irrigation ditches and structures, and City-owned property within the Franchise Area.

3.5 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 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 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.

3.6 Vegetation Management – Removal of Trees/Vegetation Encroachment

The right of Avista to maintain its Facilities shall include the right, as exercised in Avista's professional discretion to minimize the likelihood that encroaching (either above or below the ground) vegetation can interfere with or limit access to Avista's Facilities, or pose a threat to public safety and welfare. Avista or its agents may accordingly remove or limit, without recourse or payment of compensation, the growth of vegetation which encroaches upon its Facilities and/or Gas distribution corridors within the Franchise Area. Avista shall notify the City at least ten (10) days prior to removing any vegetation.

3.7 Reference, Monuments, and Markers

Before any work is performed under this Franchise which may affect an existing monuments or markers of any nature relating to subdivisions, plats, roads, and all other surveys, Avista shall reference all such monuments and markers. The reference points shall be located so that they will not be disturbed during Avista's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the City. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the City. The costs of monuments or other markers lost, destroyed, or disturbed and the expense of replacement by approved monuments shall be borne by Avista.

3.8 Right of Excavation

For the purpose of implementing the privileges granted under this Franchise, and subject to the conditions described herein, Avista 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. Avista shall remove all debris stemming from excavation and construction. The Right-of-way surface shall be restored by Avista after excavation, in accordance with 1) current WSDOT specifications for road, bridge, and municipal construction, and 2) adopted Town of Odessa pavement, sewer, and water plans, with all convenient speed and at Avista's sole expense.

3.9 Emergency Work

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

Franchise Area, Avista may immediately proceed with excavation or other Right-of-way work, with concurrent notice to the City to the extent possible.

3.10 Emergency Management

Annually, upon the request of the City, Avista will meet with the City's Police/Fire and EMT's to coordinate emergency management operations. This training is without charge and will be scheduled during mutually agreeable training hours convenient to the local volunteers.

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 employees, agents or its contractors, from improving or changing any City road, rights-of-way, or other City Property subject to this Franchise by grading or re-grading, paving the same, changing the grade, widening, altering, changing, blasting, repairing, or relocating the same or by construction or reconstruction of roads, bridges, and appurtenant drainage facilities, or doing any other necessary work. Should any of Avista's Facilities need to be relocated due to the City's improvements, changes, or work above enumerated, that relocation should be in the manner set forth in Section 5.1 of this Agreement.

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 Emergency Removal by City

Reserved

4.6 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 in the manner set forth in Section 5.1 of this Agreement. 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; provided that such franchisee, utility, or person is subject to the prior sentence.

4.7 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 existing Facilities on the affected property. The City shall, in its vacation procedure, reserve and grant said easement to Avista for Avista's existing 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. HOWEVER, if said vacation shall be for the purpose of acquiring the fee or other property interest in said road or right-of-way for the use of the City, in either its proprietary or governmental capacity, or for such other reason that the City finds to be in the best interests of health, safety, or welfare of the public, then the City, at its option, by giving ninety (90) days written notice to Avista and after granting an alternate route, may terminate this Franchise with reference to such City road, rights-of-way, or other City Property so vacated and City shall not be liable for any damages or loss to Avista by reasons of such termination.

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. 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, no more 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.

Any relocation requested under this section shall be at no cost to the City. If any relocation to accommodate the City forces Avista off a right-of-way, then the City will make reasonable efforts to accommodate said relocation on an alternative public right-of-way or, if a public right-of-way is not available, will make reasonable efforts for an acceptable, alternate location.

If the City requires the subsequent relocation of any of Avista's Facilities within five (5) 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; provided that after receipt of notice, Avista will use reasonable best efforts to relocate its Facilities at least ten (10) days prior to the commencement of the project, or shall relocate those facilities by an agreed upon date by both parties. Should the parties choose to have an agreed upon date in which the relocation must be completed, that date shall not exceed the time normally needed for construction projects of the nature of the City's relocation request unless otherwise mutually agreed.

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 accordance with Section 5.2 below.

This Section shall not apply to Facilities in place pursuant to private easement held by Avista, 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, 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.

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 may apply for such 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, indemnify, and hold the City, its appointed and elected officers, officials, representatives, engineers, consultants, volunteers, and employees or agents (“indemnities”) harmless 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 injury, harm, death, or damage which is caused by, in whole or in part and then only to the extent of, the intentional, willfully tortuous, or the negligent acts, or negligent omissions of Avista, its officers, employees or agents, representatives, servants, employees, contractors, subcontractors, and/or volunteers 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 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 the 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 RCW 4.24.115.

6.2 Liability

6.2.1 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 officer, directors, agents representatives, servants, employees, or volunteers; provided, that the insurance requirements set forth herein may be met with a combination of self-insured retention and excess coverage. Avista shall provide certificate(s) of insurance naming the City as an additional insured, and to the City for its inspection and approval prior to the Effective Date of 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.

6.2.2 Duration of Coverage

The liability insurance policies required by the Section shall be maintained by Avista throughout the term of this Franchise. 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.

6.2.3 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.

6.2.4 Proof of Continued Coverage

On or before sixty (60) days of the expiration of an insurance policy as required in Section 6.3, 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 covered 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. Within ten (10) days of a written request by the City, Avista shall provide said Certificate of Insurance to the City.

SECTION 7.0 FRANCHISE DISPUTE RESOLUTION

7.1 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.

7.2 Revocation and Forfeiture of Franchise

If Avista shall willfully violate or fail to comply with any of the provisions of this Franchise through willful and unreasonable neglect or willful and unreasonable failure to heed or comply with any notice given Avista under the provisions of this grant, this Franchise may be revoked by the City and Avista shall forfeit all rights conferred under the Franchise; provided, however, the City shall give 90-days' written notice of its intention to revoke the Franchise during which period Avista shall have the opportunity to remedy any breach.

7.3 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's Attorney and an attorney representing Avista 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 by the Parties.

7.4 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 7.4. 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.

7.5 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 8.0 GENERAL PROVISIONS

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

8.2 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.

8.3 Prior Franchises Superseded

As of the Effective Date this Franchise shall supersede all prior gas franchises for the Franchise Area previously granted to Avista or its predecessors by City, 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 outstanding indemnity, reimbursement or administrative fee payment obligations.

8.4 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 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.

8.5 Changes or Amendments

Changes or amendments to this Franchise shall not be effective until lawfully adopted by the City and agreed to by Avista.

8.6 Supremacy and Governing Law

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

8.7 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.

8.8 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.

8.9 Franchise Effective Date

The Effective Date of this Franchise shall be the date it is accepted by Avista as specified above, after passage, approval and legal publication of this ordinance as provided by law.

PASSED by the Town Council of the Town of Odessa at a regular council meeting thereof
on the 27th day of April, 2020

William Crossley
William Crossley, Mayor, Town of Odessa

ATTEST:

Denise Snead
Denise Snead, Town Clerk, Town of Odessa

Date of Publication: April 16th & 23rd, 2020

Letter of Acceptance by Avista

HONORABLE MAYOR AND CITY COUNCIL
TOWN OF ODESSA, COUNTY OF LINCOLN, WASHINGTON

IN RE: Town of Odessa Ordinance No. 712

“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 accepts the terms and conditions of the Franchise Agreement contained in the subject Ordinance and files this written acceptance with the Town of Odessa. This acceptance is executed on JUNE 16, 2020.

Avista Corporation dba Avista Utilities
By: 
Dennis Vermillion
President and CEO, Avista Corporation

Copy Received for the Town of Odessa

On: _____

By: _____

Town Representative - Name

Gas Franchise Ordinance Summary for Publication

**NOTICE: TOWN OF ODESSA
PROPOSED FRANCHISE ORDINANCE NO. _____ SUMMARY**

Ordinance No. _____ 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 Town's public right of way [the Franchise Area] for the purposes of the storage, control and distribution of natural gas within the Town for a term of 25 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 Town 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 Town's request. Avista may remedy encroachment of vegetation in connection with franchised activities. Provisions are made for informal dispute resolution.

(Final Reading of Ordinance No. _____ is anticipated to be held before the Odessa Town Council on _____, 20____ at _____ [am / pm] in the Town Council Chambers).