

**CITY OF CHENEY, WASHINGTON
ORDINANCE NO. Y-25**

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, OPERATE, MAINTAIN, REPAIR, REPLACE, EXTEND, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF THE TRANSMISSION, DISTRIBUTION AND SALE OF GAS.

WHEREAS, the City of Cheney, Washington is a non-charter code city governed by Title 35A Revised Code of Washington;

WHEREAS, pursuant to RCW 35A.47.040, the grant of a non-exclusive franchise requires submission to the City attorney, an affirmative vote of at least a majority of the entire City Council and publication at least once in newspaper of general circulation;

WHEREAS, Avista Corporation dba Avista Utilities, a Washington Corporation, has filed with the City of Cheney, a non-charter code city in the State of Washington a written request for a renewal of its Franchise to locate, construct, operate and maintain and use such plants, works, underground pipelines, 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, control and distribution of Gas within the City; and the City has determined it is in the interest of persons and businesses in this jurisdiction to have access to Avista's services; and

WHEREAS, the City Council finds that the terms and conditions contained in this ordinance are in the public interest.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHENEY DOES
ORDAIN AS FOLLOWS:**

SECTION 1.0 DEFINITIONS

For the purposes of this Franchise the following terms, phrases, words and their derivations 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 will 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 Cheney, a non-charter code City 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 will come into effect, and the date from which the time requirement for any notice, extension and/or renewal will 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 Streets and Public Ways owned or held by the City, including 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, self-inspecting, and removing Avista Facilities, vegetation management, digging and excavating, and restoration of areas subject to this Franchise.

Parties: means City and Avista collectively.

Party: means either City or Avista individually.

Person: means a business entity or natural person.

Public Street: means any highway, street, alley or other public right-of-way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to such purposes.

Public Way: means and includes all public streets, utility easements, and other rights-of-way, now or hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a license or franchise to occupy and use such Public Way for Facilities. For land that has been platted but not dedicated to the City, Avista may install its Facilities which shall be subject to this Franchise upon conveyance of the Public Way. "Public way" does not include City property; State highways; or federally granted trust lands or tribal lands.

State: means the State of Washington.

Street Tree: means any tree located in, or that portion over-hanging, any Public Way and any tree planted on private property near a Public Way at the direction of the City.

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.

Underground Facilities: means facilities located under the surface of the ground, other than underground foundations and includes lines, conduit and associated equipment such as vaults.

SECTION 2.0 GRANT OF FRANCHISE

2.1 Grant

The City hereby grants to Avista the right, power, privilege and authority to enter upon all Public Streets, Public Ways and other designated areas 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. The services to be furnished hereunder by Avista shall be shall be furnished to the City and its inhabitants in compliance with any applicable tariffs, regulations or orders which lawfully regulate Avista.

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 twenty five (25) years from the Effective Date, and shall automatically renew for an additional 10 years unless terminated by either Party with not less than one hundred and eighty (180) days prior written notice to the other Party.

2.4 Non-Exclusive Franchise

This Franchise is a non-exclusive Franchise. This Franchise shall not prohibit the City from granting other franchises within the Franchise Area provided there is no interference with the grant set forth in Section 2.1 or Avista's right to use, operate, maintain and license (pursuant to reasonable and uniform practices) its Facilities. If the City grants a Gas franchise to another party under more favorable or less onerous terms than those of this Franchise the affected terms of this Franchise shall be renegotiated. Notwithstanding the above, if Avista within a reasonable period of time not to exceed thirty (30) days either rejects, accepts, or fails to respond to such terms offered to a franchisee, the City may proceed to enter into a franchise with the franchisee to include such offered terms. Any such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Avista.

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 term 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 or Transfer

Avista's rights, privileges, and authority under this Franchise including ownership of Facilities constructed or installed pursuant to this Franchise, may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of franchisee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. In the case of a merger, consolidation, sale of all or substantially all of Avista's assets or other business combination, the City shall not withhold or delay its approval as long as franchisee complies with the requirements in this Section 2.6. Any transfer, assignment or disposal of Avista's rights, privileges, and authority under this Franchise, or ownership or working control of facilities constructed or installed pursuant to this franchise, are subject to the following conditions:

A. Absent extraordinary and unforeseeable circumstances, no facility shall be assigned, transferred, or disposed of before construction of the facility has been completed and restoration has been performed to the satisfaction of the City.

B. Avista and the proposed assignee or transferee shall provide and certify the following information to the City not less than ninety (90) days prior to the proposed date of assignment, transfer, or disposal:

1. Complete information setting forth the nature, terms and condition of the proposed assignment, transfer, or disposal;

2. Any other information reasonably required by the City directly related to the standards set forth in subsection 24(C) below; and

3. A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal, not to exceed (i) five thousand dollars (\$5,000) in the case of any assignment, transfer or other disposition within twelve (12) months after the effective date of this Franchise, and (ii) one thousand dollars (\$1,000.00) in the case of any assignment, transfer or other disposition later than twelve (12) months after the effective date of this Franchise.

C. No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove Facilities constructed or installed pursuant to this franchise and to comply with the terms and conditions of this Franchise.

D. Any transfer, assignment, or disposal of rights, privileges, and authority under this franchise or ownership or working control of facilities constructed or installed pursuant to this franchise, without prior written approval of the City pursuant to this section shall be void and is cause for termination of this Franchise.

E. Any transactions which singularly or collectively result in a change of 50% or more of the ownership or working control of the franchisee, of the ownership or working control of affiliated entities having ownership or working control of Avista shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval. Avista shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of franchisee.

F. All terms and conditions of this Franchise shall be binding upon all successors and assigns of Avista and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

G. As permitted by 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.

2.7 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 permits to use, perform work or install Facilities in Public Streets and Public Ways, licenses or this Franchise; or
- (ii) preparing a detailed statement pursuant to Chapter 43.21C RCW, as the same exists now or may hereafter be amended.

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.

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.

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, ordinances, of any governmental entity with jurisdiction over Avista'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 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 by the City of any new rule, procedure or policy affecting Avista's operations under the Franchise, the City shall provide Avista a written draft document for comment with a response period of not less than thirty (30) 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 Facility Location by Avista and Non-Interference

Avista shall have the discretion, in cooperation with the City, 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.

3.2.1 Avista and City will work together to agree on a standard permitting process. Prior to excavation or relocation of any Avista Facilities, Avista will use reasonable, good faith efforts to adhere to the agreed upon permit process. 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 existing construction and maintenance of other utilities including lines, pipe, related facilities, drainage ditches and structures located therein, nor with the grading or improvement of the Franchise Area.

3.2.2 The owners of all utilities, public or private, installed in or on the Public Street or Public Way prior to the installation of Avista's Facilities shall, as determined by the City, have preference as to the positioning and location of such utilities so installed unless such utility has been abandoned or unused for a continuous period of one year. "Preference" means other utilities may locate adjacent to such facilities in conformance with the applicable law or other recognized national standard of practice.

3.2.3 If, during the course of work on its Facilities, Avista causes damage to or alters the Franchise Area or public property, Avista shall (at its own cost and expense and in a manner reasonably approved by the City) replace and restore it to a condition comparable to that which existed before the work commenced.

3.2.4 This Franchise does not confer on Avista any right, title, or interest in the Franchise Area that would constitute a conveyance or warranty of use or title. This Franchise shall in no way prevent or prohibit the City from using the Franchise Area or other City property for public purposes, with the City retaining the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, or dedication of the same as the City may determine in its reasonable discretion.

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 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 excavation, prior to commencing work.

3.4 Avista Construction

Annually, Avista shall hold a meeting to identify major planned construction for the upcoming year. The City and Avista shall also use reasonable efforts to confer as promptly as reasonably possible regarding major construction projects that may affect the Public Streets, Public Ways or City property.

3.5 City Construction

The City shall give reasonable advance notice to Avista of plans to open Public Streets and Public Ways for construction or installation of underground facilities; provided, however, the City shall not be liable for damages for failure to provide such notice. For purposes of this provision, the City's notice shall mean plans that are at least 60-70 percent complete. When such notice has been given, Avista shall provide information to the City regarding Avista's future plans for use of the Public Street/Public Way, and shall use reasonable best efforts to coordinate any planned work so as to avoid disturbance of the Public Street or Public Way for a reasonable period of time after completion of the City's project.

3.6 Vegetation Management -- Trimming/Removal of Trees

The right of Avista to maintain its Facilities and appurtenances under this Franchise shall accordingly include the right, as exercised in Avista's professional discretion, to utilize an integrated vegetation management program to minimize the likelihood that vegetation encroaching (either above or below the ground) on Avista's facilities can lead to outages and other threats to public safety and welfare. Avista or its agents may, without recourse or payment of compensation, inhibit 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 Public Streets/Public Ways. Nothing contained in this Section shall prevent Avista, when necessary from pruning or removing any trees in the Franchise Area that may interfere with Avista's Facilities.

Avista shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and its vegetation management program shall be conducted under the direction of an arborist certified with the International Society of Arboriculture. Nothing contained in this Section shall prevent Avista, when necessary as determined by industry standards and with the approval of the owner of the property on which they may be located, from cutting down and removing any Street

Trees which interfere with the provision of gas service. The City shall be consulted prior to removing a Street Tree located within the City's Public Ways.

3.7 Right of Excavation

For the purpose of implementing the privileges granted under this Franchise, and after any required notification is made to the City, Avista is authorized to make any necessary excavations in, under, over and across the Public Streets and Public Ways 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 Public Street/Public Way surface shall be restored by Avista to its original state of improvement after excavation, in accordance with applicable City and Avista specifications.

3.7.1 Avista's Facilities shall be constructed and maintained so they do not interfere, at the time of installation, with the free passage of traffic, both vehicular and pedestrian, or the public's need for municipal infrastructure and facilities, including the City's sewer, water and electric utility infrastructure, provided, however, that Avista may require such interference on a temporary basis when performing emergency response and other repairs as set forth herein.

3.8 Additional Casings and Conduits

When Avista undertakes new construction of its Facilities, it will cooperate with the City for construction and installation of additional casings and conduits as reasonably requested by the City within such new construction and related structures necessary to access the casings and conduits; provided, however, the City and Avista first enter into a mutually agreed contract to reimburse Avista for the incremental costs associated with installing casings and conduits. The City shall not be charged or responsible for any more than the incremental costs to design, engineer, construct and install such casings and conduits.

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 work, with concurrent notice to the City to the extent possible.

Annually, upon request of the City, Avista will meet with City emergency response personnel to coordinate emergency management operations and contact information, and, at least once a year, at the request of the City and actively participate in emergency training and preparations.

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 now have or may subsequently acquire with respect to Public Streets/Public Ways 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 Public Streets/Public Ways 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 Constitution and laws of this 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 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 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

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 Public Street/Public 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.

4.7 Subdivision Plat Relocation

Upon receipt of an application and prior to final City approval of any new subdivision, the City shall use reasonable efforts to mail (via email or US Postal Service) notification of such application and final approval to Avista for its consent.

SECTION 5.0 RELOCATION OF AVISTA'S FACILITIES

5.1 Relocation of Facilities Requested by City

If the City causes Public Streets/Public Ways or public property within the Franchise Area to be constructed, improved, repaired, realigned or otherwise changed, including traffic control devices

and existing utilities upon request of the City, Avista, at its sole cost, shall relocate its Facilities as necessary within the Franchise Area or other City-owned property as specifically designated 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 use reasonable efforts to cause any such relocation to be consistent with any applicable long-term development plan(s) of the City.

5.1.1 The City shall provide Avista reasonable notice of any intended or expected requirement or request to relocate Avista's Facilities ("Notice of Relocation"). Said notice shall not be less than one hundred 120 (120) 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.

5.1.2 If, at any time, the City shall cause or require the alteration or the improvement of any Public Street/Public Way or other public property which is subject to rights granted by this Franchise within the Franchise Area, Avista shall, upon written notice from the 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. For purposes of this provision, "written notice" from the City shall include plans that are at least 60%-70% complete.

In the event a relocation forces Avista off City's existing Public Right(s) of Way then the City shall cooperate with Avista and use good faith efforts to 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 Avista's Facilities on the affected Property

5.1.3 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.

5.1.4 Avista agrees to relocate all Facilities promptly within a reasonable time which shall not exceed 120 days from the Notice of Relocation. Upon notice from Avista that the relocation date is insufficient and does not accommodate the relocation of Avista Facilities consistent with Avista's general practices for similar projects, the Parties shall meet and confer in order to reach agreement upon a modified date of relocation.

5.1.5 Notwithstanding the above, Avista shall not be required to relocate facilities of other entities that were (i) granted access to Avista'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 5.2 below.

5.1.6 This Section shall not apply to Facilities in place pursuant to private easement held by Avista or other independent right or right-of-way which are not located in the Public Street/Public Way, regardless of whether such Facilities are also located within the Franchise Area.

5.2 Relocation of Facilities Requested by Third Parties

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 is established and the third party has entered into an agreement to reimburse Avista for its reasonable costs of relocation. The City shall not be responsible for any cost or expense associated with the relocation of Avista's Facilities under this Section.

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, 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.

5.4 Temporary Relocation Requested by Third Parties

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

5.5 Abandonment of Facilities

The City may direct Avista to remove abandoned Facilities and restore the Public Way to its pre-removal condition when:

- a) a City project involves excavation that will encounter the abandoned Facility and the location of the abandoned Facility will impede the progress of such project:
 - b) the abandoned Facility poses a hazard to the health, safety, or welfare of the public;
- or
- c) the Facilities are owned by Avista and have not been in continuous use for a 24-month period.

Avista may delay removal of the abandoned Facility until such time as the City commences a construction project in the Public Streets/Public Ways unless Section (b) above applies. When (b) applies, Avista shall remove the abandoned Facility from the Public Streets/Public Ways as soon as weather conditions allow, unless the City expressly allows otherwise in writing. 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.

Underground Facilities may be abandoned in place provided such abandonment is in compliance with accepted industry standards, national codes, Washington State tariffs, and federal or state laws.

SECTION 6.0 INDEMNITY

Avista shall defend, hold harmless and indemnify the City, its appointed and elected officers employees, agents, from and against any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's fees (collectively a "Loss"), that the City may sustain, incur, become liable for, or be required to pay, that are caused by or result 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 further releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the City, its officers and employees from any and all claims, costs, judgments, awards, or liability to any person, including claims by Avista's own employees, including those claims to which Avista might otherwise have immunity under Title 51 RCW, arising against the City solely by virtue of: the City's ownership or control of the Public Ways Franchise Area Public Streets, Public Ways or other public properties; Avista's exercise of the rights granted herein; the City's permitting Avista's use of the City Rights-of-Public Streets/Public Ways; the City's inspection or lack of inspection of work performed by Avista, its agents and servants, officers or employees in connection with work authorized on public property or property over which the City has control, pursuant to the Franchise or pursuant to any Authorization issued in connection with this Franchise. Inspection or acceptance by the City, its elected officials, officers, agents, or employees of any work performed by Avista, its partners, officers, agents or employees, at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification.

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 Dispute Resolution by the Parties

7.2.1 Mediation. If either party has a claim or dispute under this Agreement, written notice of the same shall be sent to the other party ("**Notice of Dispute**") to include a brief description of the dispute.

7.2.1.1 Meet and Confer. Within five (5) days of the delivery of the Notice of Dispute, the parties shall meet and confer to resolve the dispute. If the Parties are unable to resolve the dispute within a reasonable period of time, not exceeding thirty (30) days, either party may give notice of mediation.

7.2.1.2 Mediation. The mediator shall be chosen through mutual agreement of the Parties. If a mediator is not engaged within ten (10) days of the notice of mediation then the parties shall be entitled to seek relief as provided in Section 7.3 below. The mediator's fees and costs shall be equally shared by the parties.

The pendency of mediation shall not suspend or terminate any payment or performance obligation under this Agreement. This section shall survive termination of this Agreement. If the Parties are unable to resolve the dispute through informal means or mediation, then they shall be entitled to seek relief as provided in Section 7.3 below.

7.3 Right of Enforcement

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. Neither party to this Franchise shall be entitled to recover monetary damages from the other party. 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.

7.4 Attorneys' Fees and Costs

If any legal action or proceeding is brought by either party against the other in connection with this Franchise, the prevailing party will be entitled to recover from the other party, reasonable attorney fees fixed by the court, together with all costs incurred by the prevailing party in connection with such action or proceeding. Notwithstanding the foregoing, each party shall be responsible for its own attorney fees and costs in a mediation pursuant to Section 7.2 above.

SECTION 8.0 INSURANCE

8.1 Avista shall procure and maintain for the duration of the 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 Avista, its agents, representatives or employees. Avista shall provide a copy of such insurance certificate to the City for its inspection prior to the adoption of this Franchise, 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 Washington.

- (d) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$2,000,000.

8.2 The insurance obtained by Avista shall name the City, its officers, officials and employees as additional insured's with regard to activities performed by or on behalf of Avista. Avista's insurance shall be the primary insurance as respects the City, its officers, officials and employees, except to the extent City, its officers, officials or employees are negligent. Any insurance maintained by the City, its officers, officials or employees shall be in excess of Avista's insurance and shall not contribute to it. The insurance certificate required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after 60 days prior written notice, by U.S. mail, has been given to the City. Avista shall, upon the reasonable request of the City, increase the amount of its insurance to meet current industry standards during the initial term of this Franchise and any renewal term thereafter. Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials or employees. Beginning five years after the Effective Date and every five years thereafter, the City and Avista shall meet and confer in order to adjust the insurance limits set forth in this Section. It is intended that insurance limits reflect reasonable market for liability limits and coverages. In the event the Parties are unable to agree, within a reasonable time, to a modification of this section, demand for arbitration may be made by either Party as provided for in 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 Franchise does not and is not intended to confer any rights or remedies upon any persons, entities or beneficiaries other than the Parties.

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, epidemic, pandemic, terrorism, cyber attack, 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 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.

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 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.

9.6 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.

9.7 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.

9.8 Acceptance of Franchise.

Avista shall, within thirty (30) days after passage of this Ordinance, file with the City Clerk, its written acceptance of the terms and conditions of this Franchise. Failure of Avista to accept this Franchise within said period of time shall be deemed a rejection thereof by Avista, and the rights, privileges, and authority presently existing and herein granted shall, after the expiration of the thirty (30) day period, cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

9.9 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 9.6 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.

9.10 Franchise Effective Date

The Effective Date of this Franchise shall be five (5) days after passage, approval and legal publication of this ordinance as provided by law, and provided that it has been duly accepted by Avista as specified above.

SECTION 10.0 DEFAULT

10.1 If Avista shall fail to comply with the terms of this Franchise, the City may serve upon Avista a written notice specifying the default. Upon receipt of the notice Avista shall: (a) within 7 days, respond to the City's assertion(s) as to the alleged default and may request a meeting in accordance with Section 10.2; (b) proceed to cure the default within thirty (30) days; or (c) notify the City that Avista cannot cure the default within thirty (30) days, due to the nature of the alleged default but will commence the cure. If Avista intends to cure the default, Avista shall notify the City in writing of the actions that will be taken and the projected completion date. If the default results in Avista's failure to provide gas services pursuant to Section 2.1, creates a danger to the public health, safety and welfare as alleged under any applicable ordinance, statute, rule, or regulation promulgated by the City of Cheney, State of Washington, or other governmental entity, Avista shall commence the cure notwithstanding the request for a meeting in accordance with Section 10.2.

10.2 Upon written request in accordance with Section 10.1, the City shall promptly schedule a meeting between the City and Avista to discuss the alleged default. The City shall notify Avista of the meeting in writing and such meeting shall take place not less than three (3) days after Avista's receipt of notice of default. Each party shall appoint a representative who shall attend the meeting and be responsible for representing the party's interests. The representatives shall exercise good faith to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Such "corrective action" may include establishing a reasonable cure period under Section 10.1. Any dispute (including any dispute concerning the existence of or any corrective action taken to cure any alleged default) that is not resolved by agreement within five (5) days following the conclusion of the meeting shall be resolved pursuant to Section 7.2.

10.4 At the conclusion of the process provided for in Section 10.2 through 10.2 above, the City or Avista may:

- (a) Take any enforcement or corrective action provided by local, state or federal law; provided such action is not otherwise in conflict with the provisions of this Franchise;
- (b) Demand mediation and arbitration, pursuant to Section 7.2 of this Franchise; or
- (c) Take other such action at law or in equity as provided in Section 7.3.

10.5 Unless otherwise agreed by the City and Avista in writing, the City and Avista shall, as may reasonably be practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute or legal proceeding.

Section 11.0 Notices

11.1 Any regular notice or information required or permitted to be given to the Parties under this Franchise may be sent to the following addresses unless otherwise specified:

The City: City of Cheney
Attn: City Clerk

609 2nd Street
Cheney, WA 99004

To Avista:

Avista Corporation
Attn: Melanie Rose
Regional Business Manager
1411 East Mission Ave., MSC 68
Spokane, WA 99202
Phone: (509) 495-2229

With copy to:

Jillian Caires
Counsel II
1411 East Mission Ave., MSC 33
Spokane, WA 99202
Phone: (509) 495-8635

11.2 Avista shall provide the name, phone number and email of designated responsible officials to respond to emergencies. After being notified of an emergency, Avista shall cooperate with the City and make best efforts to immediately respond to minimize damage, protect the health safety of the public and repair Facilities to restore them to proper working order.

12. Effective Date. This ordinance shall become effective thirty (30) days after its passage, approval, and publication.

Introduced this _____ day of _____, 2022.

Passed by the City Council this _____ day of _____, 2022.

Approved by the Mayor this _____ day of _____, 2022.

Chris Grover, Mayor

ATTEST:

Cynthia L. Niemeier, City Clerk

APPROVED AS TO FORM:

Stanley M. Schwartz, City Attorney

Letter of Acceptance by Avista

HONORABLE MAYOR AND CITY COUNCIL
CITY OF CHENEY, COUNTY OF SPOKANE, WASHINGTON

IN RE: City of Cheney Ordinance No. Y-25

“Granting a Franchise to Avista Corporation for the Construction, Operation and Maintenance of Facilities for the Transmission, Control and Distribution of Gas Within The City.”

Avista Corporation dba Avista Utilities, for itself, its successors and assigns, hereby accepts the terms and conditions of the Franchise contained in the subject Ordinance and files this written acceptance with the City of _____. This acceptance is executed on _____, 20_____

Avista Corporation dba Avista Utilities

By: _____
Dennis Vermillion
President, Avista Utilities

Copy Received for the City of Cheney

On: _____

By: _____

Gas Franchise Ordinance Summary for Publication

**NOTICE: CITY OF CHENEY, WASHINGTON
PROPOSED FRANCHISE ORDINANCE NO. Y-25 SUMMARY**

Ordinance No. Y-25 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 Streets/Public Ways [the Franchise Area] for the purposes of the transmission, control and distribution of natural gas within the City 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 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 operate a vegetation management program in connection with franchised activities. Provisions are made for informal dispute resolution.

(Final Reading of Ordinance _____ is anticipated to be held before the Cheney City Council on _____ 20____ at ____:___ am/pm in the City Council Chambers).