

**Agenda**  
Shady Cove Regular City Council Meeting  
Thursday, January 21, 2021  
6 PM

This meeting will be held via Zoom with Council being present at City Hall.  
Attendees will click on the link or call in to the listed number.

<https://us02web.zoom.us/j/85681205374?pwd=OEVGdjFXc2E3TmVEMUNNYmkycXdCdz09>

Meeting ID: 856 8120 5374

Passcode: 370082

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**I. Call to Order**

**A. Roll Call**

**B. Announcements by Presiding Officer**

1. This meeting is being digitally recorded.
2. The next regularly scheduled meeting of the City Council will be held on February 4 at 6 PM, held via Zoom.
3. The next regularly scheduled meeting of the Planning Commission is January 28 at 6 PM, possibly held telephonically or via Zoom.
4. The next meeting of the Parks and Rec Commission is on February 2 at 6 PM, possibly held via Zoom.
5. The next meeting of the Emergency Management Commission is on February 2 at 10 AM to be held via Zoom.
6. Public may comment on agenda items - Public must state name, address and standing to discuss an issue. Issues must have a City-wide impact and not be personal issues. Depending on number of comments and time constraints, Council may limit the amount of time to 3 minutes per speaker.
7. These meeting dates are subject to change by the circumstances related to COVID-19.

**II. Public Comment on Agenda Items**

**III. Consent Agenda**

- A. Bills Paid Report 12/29/20-1/14/21, \$68,316.64
- B. Minutes of January 7, 2021
- C. Quarterly Budget Report

**IV. Items Removed from Consent Agenda**

**V. Staff Reports**

- A. City Administrator
- B. Jackson County Deputy (CSO)
- C. Fire Chief Winfrey, FD4

**VI. New Business**

- A. Avista Franchise Agreement
- B. Building Code process
- C. CDBG Grant

**VII. Old Business**

None

**VIII. Written Communication**

**IX. Public Comment on Non-Agenda Items**

**X. Council Comments on Non-Agenda Items**

- A. Mayor Tarvin
- B. Councilor McGregor
- C. Councilor Nuckles
- D. Councilor Evertt

**XI. Adjournment**

Check Issue Date	Check	Payee	Description	Amount
1/14/2021	45105	Banner Bank	Lowes-2 outlet timer	33.96
1/14/2021	45105	Banner Bank	Walmart-Lysol, Graphite, lock de-icer	60.95
1/14/2021	45105	Banner Bank	Free conf call Council	29.22
1/14/2021	45105	Banner Bank	Amazon-Keyboard,mouse	159.99
1/14/2021	45105	Banner Bank	Rosebud-Admin Asst Ad	764.00
1/14/2021	45105	Banner Bank	Amazon HDMI cables	15.98
1/14/2021	45106	Banner Bank	Apple virus prot app	2.99
1/14/2021	45106	Banner Bank	Shoutcheap 12.2020 radio program	10.90
1/14/2021	45106	Banner Bank	Staples-Paper cutter	75.46
1/14/2021	45106	Banner Bank	Staples-Medium pens	3.59
1/14/2021	45106	Banner Bank	Apple virus prot app	0.99
1/14/2021	45106	Banner Bank	Amazon-holiday decor	39.99
1/14/2021	45106	Banner Bank	Rackspace email Counsel	55.48
1/14/2021	45106	Banner Bank	Rackspace email admin	33.29
1/14/2021	45106	Banner Bank	Rackspace email parks	11.10
1/14/2021	45106	Banner Bank	Rackspace email Planning	11.10
1/14/2021	45106	Banner Bank	Amazon-holiday decor	38.99
1/14/2021	45106	Banner Bank	Amazon-holiday decor	43.99
1/14/2021	45106	Banner Bank	Staples-Supplies return	(33.60)
1/14/2021	45106	Banner Bank	Amazon-holiday decor	40.99
1/14/2021	45106	Banner Bank	Amazon Prime	12.99
1/14/2021	45106	Banner Bank	Adobe Acrobat 12.2020	14.99
1/14/2021	45106	Banner Bank	Staples-Check scanner cleaning kit	90.99
1/14/2021	45106	Banner Bank	Free conf call Parks	13.65
1/14/2021	45106	Banner Bank	Free conf call Admin	1.17
1/14/2021	45106	Banner Bank	Free conf call Planning	17.55
1/14/2021	45106	Banner Bank	Free conf call Council	27.46
1/14/2021	45106	Banner Bank	Free conf call test	0.76
1/14/2021	45107	Canon Solutions America, Inc.	Copier Maintenance 11.25.20-12.24.20	34.45
1/14/2021	45108	Celtic Circle, LLC	Shop Rental 01/21	865.00
1/14/2021	45109	City of Shady Cove - Utilities	#1538.01 22451 Hwy. 62 12.2020	46.00
1/14/2021	45109	City of Shady Cove - Utilities	#1539.01 2501 Indian Creek Rd 12.2020	44.00
1/14/2021	45109	City of Shady Cove - Utilities	#2300.01 1008 Celtic Circle/City Shop 12.2020	46.00
1/14/2021	45110	David Christian	Radio Program 12/28-01/01	90.00
1/14/2021	45110	David Christian	Radio Program 01/04-01/08	90.00
1/14/2021	45111	Davis, Lewis	Cust refund-bill pay svc overpaid 4 mths	191.00
1/14/2021	45112	Dusan LLC	Refund overpayment-Prop sold	25.32
1/14/2021	45113	Feinberg, Marjorie	Refund overpmt-Prop sold	108.00
1/14/2021	45114	Jackson County Sheriff	Law Enforcement Nov 2020	43,426.92
1/14/2021	45114	Jackson County Sheriff	CSO Services Nov/20	3,533.92
1/14/2021	45115	KDP Certified Public Accountants LLP	FYE2020 Financial Audit	4,350.00
1/14/2021	45116	OTET	Dec 2020 hours	7,637.70
1/14/2021	45116	OTET	Health Coverage 12/15-12/31	3,560.95
1/14/2021	45117	Pacific Power	Aunt Caroline's Park 11.20.20-12.23.20	129.23
1/14/2021	45117	Pacific Power	Street lights 12/2020	761.89
1/14/2021	45117	Pacific Power	City Hall 11.23.20-12.24.20	219.60
1/14/2021	45117	Pacific Power	Nork Lane 11.23.20-12.24.20	338.02
1/14/2021	45118	Perfection Cleaning	City Hall office cleaning Dec 2020	300.00
1/14/2021	45119	Project A, Inc.	Dev/Hosting 10.15.20	200.00
1/14/2021	45120	RVCOG	B Benton mileage	20.24
1/14/2021	45121	Shady Cove Hardware, LLC	Street - Redi Mix	10.50
1/14/2021	45121	Shady Cove Hardware, LLC	Shop-Rotry Cyl/Cones	15.18
1/14/2021	45121	Shady Cove Hardware, LLC	Holiday decor-Tape	24.58
1/14/2021	45121	Shady Cove Hardware, LLC	Holiday decor-staple gun, staples	23.98
1/14/2021	45121	Shady Cove Hardware, LLC	Holiday decor-metal hooks	19.98
1/14/2021	45121	Shady Cove Hardware, LLC	Holiday decor-cable ties	7.98
1/14/2021	45121	Shady Cove Hardware, LLC	Holiday decor - LED bulbs	26.96
1/14/2021	45121	Shady Cove Hardware, LLC	Backhoe tarp	4.99
1/14/2021	45121	Shady Cove Hardware, LLC	Backhoe start fluid	5.59
1/14/2021	45121	Shady Cove Hardware, LLC	Shop-WD40	5.59

Check Issue Date	Check	Payee	Description	Amount
1/14/2021	45122	Superior Stamp & Sign Co	Name Plates- T. Barnes, A Stirling	60.00
1/14/2021	45122	Superior Stamp & Sign Co	Name Plates - Mayor, Councilors	58.00
1/14/2021	45123	Teamster Local 223	Dues 12/15-12/31	177.00
1/14/2021	45124	TouchPoint Networks, LLC	Firewall 12.20	31.00
1/14/2021	45124	TouchPoint Networks, LLC	Firewall 01.2021	31.00
1/14/2021	45125	Upper Rogue Independent	Planning Comm Public Hearing 12.02 and 12.23	157.50
1/14/2021	45126	WECO - Carson	Gas/Diesel 12.16.20	59.65
Grand Totals:				<u>68,316.64</u>

City of Shady Cove  
**City Council Regular Meeting Minutes**  
Thursday, January 7, 2021  
Meeting was held via Zoom with Council being present at City Hall.

**I. CALL TO ORDER**

City Administrator Thomas Corrigan called the Regular City Council Meeting to order at 6:00 PM

Staff Present: Thomas J. Corrigan, City Administrator

Mayor Tarvin was sworn in. Councilor Nuckles was sworn in. Councilor Evertt was sworn in.

**I.B. ANNOUNCEMENTS**

The Mayor made the announcements on the agenda.  
Appointment of Council President added to agenda.

**II. PUBLIC HEARING**

Tabled until sometime in March as this is Council's first meeting together.

**III. PUBLIC COMMENT ON AGENDA ITEMS**

Steve Mitchell commented on Public Hearing item related to the building permit time limits and extensions. He also commented on commercial properties allowing trailers during construction.

Mary Stirling commented on the proposed Rules of Government items such as Bills Paid, Public Comment and appointments by Presiding Officer.

Comments regarding being muted to not allow echoing.

**IV. CONSENT AGENDA**

Motion to accept item A and B, the Bills Paid Report 12/11/20-12/28/20 for \$5,617.92 and Council meeting minutes of December 17, 2020.

Motion: Councilor Evertt                      Second: Councilor Nuckles

Motion Carried 3-0, Councilor McGregor off temporarily

**V. ITEMS REMOVED FROM CONSENT AGENDA**

None

**VI. STAFF REPORTS**

- A. Chief Winfrey from Fire District 4 commented that they closed off the year a little busier than usual. No significant calls from holidays. General rescue calls, motor vehicle accidents. House fire outside of City limits.
- B. Deputy Heise from Jackson County Sheriff’s Office congratulated all the new members of Council. He also commented that all is quiet. Mayor Tarvin questioned about speeding on Rogue River Dr. Winter crime has not been high.
- C. City Administrator Tom Corrigan reported that we have received a van from RVTD with wheelchair lift capabilities. The rock on Highway 62 measured by ODOT and estimates weight at 336,000 lbs. It is not going anywhere as it is below the road. Cards going out for gift certificates in lieu of dinner going out. Talking points from State in regard to vaccinations out. Manzanita Hills water filter system going in soon. RVSS and Engineer to review along with DEQ. Avista Franchise Fee Agreement on upcoming agenda. County Hazardous Vegetation Ordinance draft coming out. New grant from CDBG, administered through Soredi, go on next agenda. \$7800 will need to be used for Covid related purchases. Small local businesses received many items of Personal Protection Equipment.

**VII. NEW BUSINESS**

Motion to approve Resolution 21-01, Certifying Election Results

Motion: Councilor Nuckles                      Second: Councilor Evertt  
 Motion Carried 3-0, Councilor McGregor off temporarily

Discussion ensued regarding Council Rules

Motion to Table Resolution 21-03, Adopting Council Rules until Council has a Study Session

Motion: Councilor Nuckles                      Second: Councilor McGregor  
 Motion Carried 4-0

Motion to Appoint Tim Evertt as Council President

Motion: Mayor Tarvin                              Second: Councilor Evertt  
 Councilors Nuckles and McGregor voted Nay, Motion Failed.

Motion to Appoint Dick McGregor as Council President

Motion: Mayor Nuckles                              Second: Councilor McGregor  
 Mayor Tarvin and Councilor Evertt voted Nay, Motion Failed.

Motion to Approve Resolution 21-02, Authorizing Bank Signatures

Motion: Councilor Nuckles                      Second: Councilor Evertt  
 Motion Carried 4-0

Meet the Council (Open discussion with Public)  
 Steve Mitchell commented on the Council President position and the open Council seat.

Chuck Huntington commented thanked Steve and Hank and Lena for their service and good luck to the new Councilors.

Councilor McGregor asked Councilor Evertt to tell us about himself. He requested Councilor Evertt join him as alternate on RVACT. Mayor Tarvin requested Councilor McGregor attend the next Soredi meeting.

### **VIII. OLD BUSINESS**

None

### **IX. WRITTEN COMMUNICATION**

City Administrator read a letter from a Mr. Hubbard.

### **X. PUBLIC COMMENT ON NON-AGENDA ITEMS**

Chuck Huntington commented on a summary of the Festival on the Rogue possibly being virtual on the Saturday after Labor Day.

Heather Johnson congratulated the new Councilors. She also commented on trash near her business on highway 62.

Mary Stirling questioned when Parks vacancies will be advertised.

### **XI. COUNCIL COMMENTS**

Councilor McGregor welcomed new Councilors. He commented that he is on RVSS Budget Committee. He would like to request being the liaison to RVACT with Councilor Evertt as alternate. He also requested Council purchase Building Code books and invite Steve Mitchell to discuss a program for the City to be more involved in building inspections.

Councilor Nuckles congratulated the new Council elected officials. She asked that we consider the process of appointing the fifth member of the Council soon. She thanked the Planning Commission for their work on the Camping Ordinance. She attended a tourism meeting given by Travel Southern Oregon and Soredi. Would like to continue attending their meetings. Parks Commission is looking for feedback from Council. She looks forward to working with everyone for the betterment of the Shady Cove.

Councilor Evertt congratulated Councilor Nuckles and Mayor Tarvin. He said he would like to attend the RVACT meeting with Councilor McGregor.

Mayor Tarvin opened Parks Commission and Budget Committee appointments until February 5. The Emergency Alert program from Jackson County was explained. It is on the Jackson County site as well as the City site. She congratulated Councilors Nuckles and Evertt on being elected. She also expressed to the Planning Commission her thoughts on why the Public

Hearing was tabled. She also told Steve Mitchell the Council President is indeed appointed every odd numbered year.

**XII. ADJOURNMENT**

There being no further business before the Council, the Mayor adjourned the regular Meeting at 6:38 PM.

Approved:

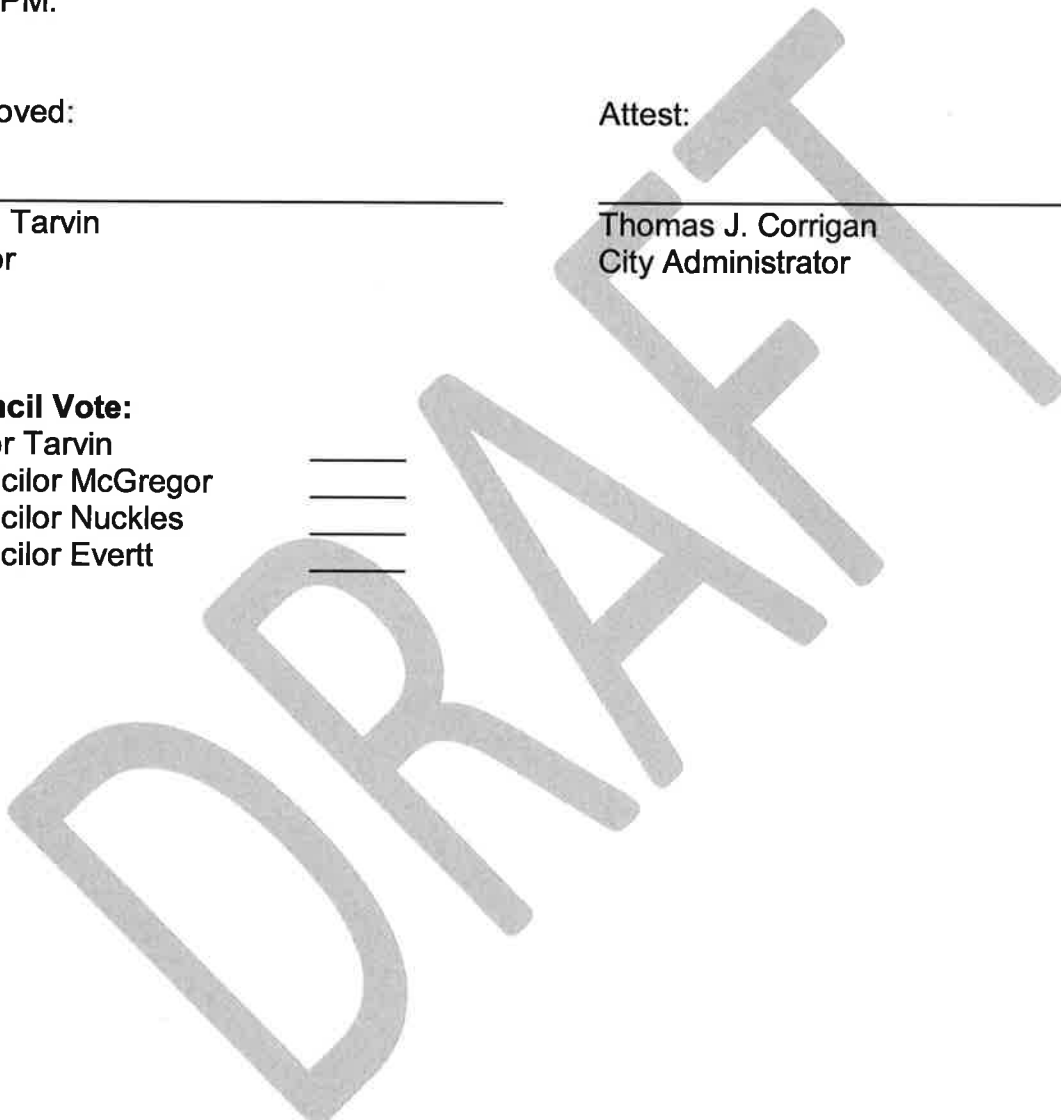
Attest:

\_\_\_\_\_  
Shari Tarvin  
Mayor

\_\_\_\_\_  
Thomas J. Corrigan  
City Administrator

**Council Vote:**

Mayor Tarvin \_\_\_\_\_  
Councilor McGregor \_\_\_\_\_  
Councilor Nuckles \_\_\_\_\_  
Councilor Evertt \_\_\_\_\_





2020-2021  
As at 12/31/2020  
Budget to Actual Report

**RESOURCES  
GENERAL FUND 10**

**City of Shady Cove**

RESOURCE DESCRIPTION	Annual Budget	Actual Year-To-Date	% of Annual Budget
Current Cash on Hand		580,489	
<b>Beginning Balance (Audit)</b>			
Beginning Balance (Budget)	221,112		
Interest	10,000	7,253	73%
<b>OTHER RESOURCES</b>			
State Subventions	85,000	67,528	79%
Franchise Fees	290,000	164,935	57%
City Fees (Business License & OLCC License)	25,000	4,541	18%
City Fees (TOT, Raft)	40,000	46,512	116%
City Fees (Planning & Building)	10,000	46,094	461%
Administrative Allocation	124,493	61,123	49%
Municipal Court	6,000	8,696	145%
Miscellaneous Income	500	3,204	641%
Public Safety Fee	336,000	95,406	28%
Floodplain Permit Fee	1,000		0%
Radio Underwriting	5,000		0%
DLCD Grant	14100	12,501	89%
CRF Grant	-	30,638	
Library District Expense Reimbursement	1,500		0%
Flag Program	1,500	500	33%
RVSS Reimbursement to City for Billing Services	50,000	50,000	100%
Total resources, except taxes to be levied	1,222,205	598,932	49%
Taxes estimated to be received	147,000	143,341	98%
Previously levied taxes estimated to be received	1,000	2,712	271%
<b>TOTAL RESOURCES</b>	<b>1,369,205</b>	<b>744,985</b>	<b>54%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

**DETAILED REQUIREMENTS**

**GENERAL FUND 10**

**City of Shady Cove**

REQUIREMENTS DESCRIPTION	# of FTE's	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>PERSONNEL SERVICES</b>				
<b>SALARIES &amp; BENEFITS</b>				
City Administrator	1	88,100	57,429	65%
Planning Technician	1	59,700	27,348	46%
Accounting Technician	1	55,400	22,149	40%
Administrative Assistant	1	45,000	5,956	13%
Maintenance II	1	44,100	20,644	47%
Seasonal Worker	0.5	5,000		0%
Overtime		2,500		0%
Benefits		140,000	41,894	30%
<b>TOTAL PERSONNEL SERVICES</b>	<b>5</b>	<b>439,800</b>	<b>175,420</b>	<b>40%</b>
<b>MATERIALS &amp; SERVICES</b>				
Professional Services (Auditor, Legal, etc.)		60,000	14,340	24%
Operations & Maintenance		110,000	46,660	42%
Discretionary		500		0%
Promotion/Tourism		5,000	3,015	60%
Recognition & Awards		3,000	1,125	38%
Floodplain Management		4,000	327	8%
Planning & Building		18,000	2,661	15%
Training/Conferences		4,000	195	5%
Disaster Preparedness		1,000	5,602	560%
Radio Station		6,000	1,931	32%
Library Maintenance-Parking Lot		2,000		0%
Flag Program		1,500	1,788	119%
Records Retention		5,000		0%
DLCD Grant Expenditures		14,100	19,035	135%
Liability Insurance		-	29,239	
<b>TOTAL MATERIALS AND SERVICES</b>		<b>234,100</b>	<b>125,918</b>	<b>54%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

**DETAILED REQUIREMENTS**

**GENERAL FUND 10**

**City of Shady Cove**

REQUIREMENTS DESCRIPTION	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>REQUIREMENTS</b>			
Law Enforcement Contract (JCSO)	480,000	199,121	41%
Law Enforcement - Community Resource Officer	42,500	17,670	42%
<b>PUBLIC SAFETY REQUIREMENTS</b>	522,500	216,790	41%
<b>TOTAL PUBLIC SAFETY REQUIREMENTS</b>	<b>522,500</b>	<b>216,790</b>	<b>41%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

**DETAILED REQUIREMENTS**

**GENERAL FUND 10**

**City of Shady Cove**

REQUIREMENTS DESCRIPTION	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>MATERIALS &amp; SERVICES</b>			
Parks- Utilities	2,000	497	25%
Park - Park Maintenance	2,200	908	41%
Parks - Materials & Supplies	1,500	76	5%
<b>PARKS MATERIALS &amp; SERVICES</b>			
	5,700	1,481	26%
<b>TOTAL PARKS MATERIALS &amp; SERVICES</b>			
	5,700	1,481	26%

2020-2021  
As at 12/31/2020  
Budget to Actual Report

**DETAILED REQUIREMENTS**

**GENERAL FUND 10**

**City of Shady Cove**

REQUIREMENTS DESCRIPTION	Annual Budget	Actual Year-To-Date	% of Annual Budget
CAPITAL OUTLAY			
TRANSFERS & CONTINGENCIES			
Contingency	50,000	-	
<b>TOTAL TRANSFERS &amp; CONTINGENCIES</b>	<b>50,000</b>	<b>-</b>	
<b>TOTAL INTERFUND LOAN PAYMENTS</b>	<b>-</b>	<b>-</b>	
<b>UNAPPROPRIATED ENDING FUND BALANCE</b>	<b>111,112</b>		
Ending Balance (Prior Years)			
<b>TOTAL REQUIREMENTS</b>	<b>1,363,212</b>	<b>519,609</b>	<b>38%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

SPECIAL REVENUE FUND  
RESOURCES AND REQUIREMENTS  
**STREETS 01**

City of Shady Cove

DESCRIPTION RESOURCES AND REQUIREMENTS	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>RESOURCES</b>			
Current Cash on Hand		275,066	
<b>Beginning Balance (Audit)</b>			
Beginning Balance (Budget)	64,292		
State Highway Revenue	200,000	122,042	61%
<b>TOTAL RESOURCES</b>	<b>264,292</b>	<b>397,108</b>	<b>150%</b>
<b>REQUIREMENTS</b>			
<b>MATERIALS &amp; SERVICES</b>			
Operations & Maintenance	29,000	2,284	8%
Utilities	4,000	307	8%
Vehicle Maintenance	3,000	689	23%
Professional Services	70,000	43,398	62%
Administrative Allocations	124,493	61,123	49%
Travel and Training	2,000	-	0%
<b>TOTAL MATERIALS &amp; SERVICES</b>	<b>232,493</b>	<b>107,802</b>	<b>46%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

**SPECIAL FUND  
RESOURCES AND REQUIREMENTS  
STREETS 01**

**City of Shady Cove**

DESCRIPTION RESOURCES AND REQUIREMENTS	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>REQUIREMENTS</b>			
<b>CAPITAL OUTLAY</b>			
Sidewalks	2,000	-	
<b>TOTAL CAPITAL OUTLAY</b>	<b>2,000</b>		<b>0%</b>
<b>OPERATING CONTINGENCY</b>	<b>5,000</b>		<b>0%</b>
<b>UNAPPROPRIATED ENDING FUND BALANCE</b>	<b>24,799</b>		
<b>TOTAL REQUIREMENTS</b>	<b>264,292</b>	<b>107,802</b>	<b>41%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

**RESOURCES  
SEWER 02**

**City of Shady Cove**

RESOURCE DESCRIPTION	Annual Budget	Actual Year-To-Date	% of Annual Budget
Cash on Hand		220,934	
<b>Beginning Balance (Audit)</b>			
Beginning Balance (Budget)	125,200		
Sewer Usage Fees	930,000	216,852	23%
RVSS Payment for Bond Payment per Contract	124,200	80,659	65%
Total resources, except taxes to be levied	1,179,400	297,511	25%
<b>TOTAL RESOURCES</b>	<b>1,179,400</b>	<b>518,445</b>	<b>44%</b>



2020-2021  
As at 12/31/2020  
Budget to Actual Report

**DETAILED REQUIREMENTS**

**SEWER 02**

**City of Shady Cove**

REQUIREMENTS DESCRIPTION	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>MATERIALS &amp; SERVICES</b>			
RVSS Sewer Fees	928,056	337,750	36%
<b>TOTAL MATERIALS &amp; SERVICES</b>	<b>928,056</b>	<b>337,750</b>	<b>36%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

**DETAILED REQUIREMENTS**

**SEWER 02**

**City of Shady Cove**

REQUIREMENTS DESCRIPTION	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>DEBT SERVICE</b>			
US Bank - Principal (January)	60,000	60,000	100%
US Bank - Interest (July/January)	64,044	32,022	50%
US Bank - Loan/Agent Fees	1,700	-	0%
<b>TOTAL DEBT SERVICE</b>	<b>124,044</b>	<b>92,022</b>	<b>74%</b>
<b>UNAPPROPRIATED ENDING FUND BALANCE</b>	<b>127,300</b>		
<b>TOTAL EXPENDITURES - SEWER</b>	<b>1,179,400</b>	<b>92,022</b>	<b>8%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

**SEWER DEBT 03**

**City of Shady Cove**

DESCRIPTION OF RESOURCES AND REQUIREMENTS	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>RESOURCES</b>			
<b>TOTAL RESOURCES</b>	0	0	
<b>REQUIREMENTS</b>			
Bond Principal Payments			
Issue Date	Budgeted Payment Date		
<b>TOTAL PRINCIPAL</b>	0	0	
Bond Interest Payments			
Issue Date	Budgeted Payment Date		
<b>TOTAL INTEREST</b>	0	0	
<b>TOTAL REQUIREMENTS</b>	0	0	

2020-2021  
As at 12/31/2020  
Budget to Actual Report

**RESERVE FUND  
RESOURCES AND REQUIREMENTS**

**CAPITAL PURCHASE RESERVE FUND 06**

**City of Shady Cove**

DESCRIPTION RESOURCES AND REQUIREMENTS	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>RESOURCES</b>			
Current Cash on Hand		150,000	
<b>Beginning Balance (Audit)</b>			
Beginning Balance (Budget)	150,000		
<b>TOTAL RESOURCES</b>	<b>150,000</b>	<b>150,000</b>	<b>100%</b>
<b>TOTAL RESOURCES</b>			
<b>REQUIREMENTS</b>			
<b>TRANSFERS</b>			
<b>CAPITAL OUTLAY</b>			
Future Development	25,000	-	0%
<b>UNAPPROPRIATED ENDING FUND BALANCE</b>	<b>125,000</b>		
<b>TOTAL REQUIREMENTS</b>	<b>150,000</b>		<b>0%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

**RESERVE FUND  
RESOURCES AND REQUIREMENTS**

**CAPITAL IMPROVEMENT FUND 07**

**City of Shady Cove**

DESCRIPTION RESOURCES AND REQUIREMENTS	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>RESOURCES</b>			
Current Cash on Hand			
Beginning Balance (Audit)			
Beginning Balance (Budget)			
Oregon Health Authority Grant	20,000		0%
CDBG Grant	1,000,000		0%
<b>TOTAL RESOURCES</b>	<b>1,020,000</b>	<b>-</b>	<b>0%</b>
<b>TOTAL RESOURCES</b>			
<b>REQUIREMENTS</b>			
<b>TRANSFERS</b>			
<b>CAPITAL OUTLAY</b>			
OR Health Authority Feasibility Study	20,000	870	4%
CDBG Grant Expenditures	1,000,000	-	0%
<b>TOTAL REQUIREMENTS</b>	<b>1,020,000</b>	<b>870</b>	<b>0%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

RESERVE FUND  
RESOURCES AND REQUIREMENTS  
**SYSTEM DEVELOPMENT CHARGE - 08**  
TRANSPORTATION ACCOUNT

City of Shady Cove

DESCRIPTION RESOURCES AND REQUIREMENTS	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>RESOURCES</b>			
Beginning Balance (Audit)			
Beginning Balance (Budget)	75,525		
Interest	2,000		0%
New Development	37,500		0%
Schoolhouse Lane Grant	100,000	100,000	
SCA Grant	78,700		
<b>TOTAL RESOURCES</b>	<b>293,725</b>	<b>100,000</b>	<b>34%</b>
<b>REQUIREMENTS</b>			
<b>CAPITAL OUTLAY</b>			
Street Improvements	40,000	40,000	100%
Schoolhouse Lane	126,000	145,015	115%
<b>TOTAL CAPITAL OUTLAY</b>	<b>166,000</b>	<b>185,015</b>	<b>111%</b>
Contingency	15,000		
Unappropriated Ending Fund Balance	112,725		
<b>TOTAL REQUIREMENTS</b>	<b>293,725</b>	<b>185,015</b>	<b>63%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

RESERVE FUND  
RESOURCES AND REQUIREMENTS  
**SYSTEM DEVELOPMENT CHARGE - 08**  
Combined Account

City of Shady Cove

DESCRIPTION RESOURCES AND REQUIREMENTS	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>RESOURCES</b>			
Current Cash on Hand		316,590	
<b>Beginning Balance (Audit)</b>			
Beginning Balance (Budget)	211,745		
Interest	4,300	747	17%
New Development	52,500	-	0%
Schoolhouse Lane Grant	100,000	100,000	
SCA Grant	78,700		
<b>TOTAL RESOURCES</b>	<b>447,245</b>	<b>417,336</b>	<b>93%</b>
<b>REQUIREMENTS</b>			
<b>CAPITAL OUTLAY</b>			
<b>WASTEWATER</b>			
<b>TRANSPORTATION</b>			
Street Improvements	40,000	40,000	100%
Feasibility Study	-	-	
Schoolhouse Lane	126,000	145,015	115%
<b>STORMWATER</b>			
Stormwater Drains	20,000		0%
<b>PARKS</b>			
Dogwalk	20,000	4,296	21%
<b>CONTINGENCY</b>			
Contingency	21,000		
<b>UNAPPROPRIATED ENDING FUND BALANCE</b>			
Unappropriated Ending Fund Balance	220,245		
<b>TOTAL REQUIREMENTS</b>	<b>447,245</b>	<b>189,312</b>	<b>42%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

RESERVE FUND  
RESOURCES AND REQUIREMENTS  
**SYSTEM DEVELOPMENT CHARGE - 08**  
STORM WATER ACCOUNT

City of Shady Cove

DESCRIPTION RESOURCES AND REQUIREMENTS	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>RESOURCES</b>			
Beginning Balance Audit			
Beginning Balance Budget	21,420		
Interest	2,000		0%
New Development	7,500		0%
<b>TOTAL RESOURCES</b>	<b>30,920</b>	-	<b>0%</b>
<b>REQUIREMENTS</b>			
<b>CAPITAL OUTLAY</b>			
Stormwater Drains	20,000		0%
<b>TOTAL CAPITAL OUTLAY</b>	<b>20,000</b>	-	<b>0%</b>
Contingency	3,000		
Unappropriated Ending Fund Balance	7,920		
<b>TOTAL REQUIREMENTS</b>	<b>30,920</b>	-	<b>0%</b>



2020-2021  
As at 12/31/2020  
Budget to Actual Report

RESERVE FUND  
RESOURCES AND REQUIREMENTS  
**SYSTEM DEVELOPMENT CHARGE - 08**  
WASTEWATER ACCOUNT

City of Shady Cove

DESCRIPTION RESOURCES AND REQUIREMENTS	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>RESOURCES</b>			
Beginning Balance Audit			
Beginning Balance Budget	-		
<b>TOTAL RESOURCES</b>	-	-	
<b>REQUIREMENTS</b>			
RVSS per Contract	-		
<b>TOTAL REQUIREMENTS</b>	-	-	

2020-2021  
As at 12/31/2020  
Budget to Actual Report

RESERVE FUND  
RESOURCES AND REQUIREMENTS  
**SYSTEM DEVELOPMENT CHARGE - 08**  
PARKS ACCOUNT

City of Shady Cove

DESCRIPTION RESOURCES AND REQUIREMENTS	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>RESOURCES</b>			
Beginning Balance (Audit)			
Beginning Balance (Budget)	114,800		
Interest	300		0%
New Development	7,500		0%
<b>TOTAL RESOURCES</b>	<b>122,600</b>	-	<b>0%</b>
<b>REQUIREMENTS</b>			
Dogwalk	20,000	4,296	21%
Contingency	3,000		
Unappropriated Ending Fund Balance	99,600		
<b>TOTAL REQUIREMENTS</b>	<b>122,600</b>	<b>90,885</b>	<b>74%</b>

2020-2021  
As at 12/31/2020  
Budget to Actual Report

**UPPER ROGUE REGIONAL PARK  
RESOURCES AND REQUIREMENTS**

URRP (09)

City of Shady Cove

DESCRIPTION RESOURCES AND REQUIREMENTS	Annual Budget	Actual Year-To-Date	% of Annual Budget
<b>RESOURCES</b>			
Current Cash on Hand			
<b>Beginning Balance (Audit)</b>			
Beginning Balance (Budget)			
Interest			
<b>TOTAL RESOURCES, EXCEPT TAXES TO BE LEVIED</b>	-	-	
<b>TOTAL RESOURCES</b>			
<b>REQUIREMENTS</b>			
CAPITAL OUTLAY			
CONTINGENCY			
UNAPPROPRIATED FUND BALANCE			
<b>TOTAL REQUIREMENTS</b>	-	-	

**CITY OF SHADY COVE, OREGON**

**ORDINANCE NO. \_\_\_\_\_**

Avista Corporation dba Avista Utilities, a Washington Corporation, ("Avista"), which is authorized to do business within the state of Oregon has filed with the City of Shady Cove, State of Oregon (the "City") a written application for 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 City's rights of way and public property in the City for the purposes of the transmission, distribution and sale of Gas; and the City has determined it is in the interest of persons and businesses in this jurisdiction to have access to Avista's services;

**NOW, THEREFORE, THE CITY OF SHADY COVE DOES HEREBY ORDAIN:**

**SECTION 1.0 DEFINITIONS**

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

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

**City:** means the City of Shady Cove, a municipal corporation of the State of Oregon, and its respective successors, assigns, agents and contractors.

**Commission:** means the Oregon Public Utility Commission or such successor regulatory agency having jurisdiction over investor-owned public utilities in the State of Oregon.

**Days:** means business days.

**Effective Date:** means thirty (30) days from final passage of this Ordinance, upon which the rights, duties and obligations of this Franchise shall come into effect, and the date from which the time requirement for any notice, extension and/or renewal shall be measured.

**Facilities:** means, collectively, any and all gas transmission systems, 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, laterals, conduits, services, regulators, valves, meters, meter-reading devices, fences, vehicular protection devices, communication systems, and control systems and other equipment, appliances, fixtures, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing for the purposes of transmission, distribution, storage and sale of Gas.

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

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

- public roads, streets, avenues, alleys, bridges, tunnels, City-owned easements, and highways as currently exist and/or as may hereafter be constructed, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be extended by annexation or otherwise during the term of this Franchise; 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 red by the easement.

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

**Gross Revenues:** Except as otherwise provided in OAR 860-022-0040, "gross revenue(s)" means revenues received from utility operations within City, less related net uncollectables. Gross revenues of an energy utility shall include revenues from the use, rental, or lease of the utility's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another utility purchasing the service is not the ultimate customer.

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

**Parties:** means City and Avista collectively.

**Party:** means either City or Avista individually.

**Person:** means a business entity or natural person.

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

**State:** means the State of Oregon.

**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, distributing, storing, and transmitting Gas, as may be necessary to provide Gas service.

## **2.2 Effective Date**

This Ordinance will be effective thirty (30) days after the date of approval and passage as required by law.

## **2.3 Term**

2.3.1 The rights, privileges and Franchise granted to Avista will extend for an initial term of ten (10) years from the Effective Date, and shall automatically extend for successive one (1) year terms unless (a) a new agreement is entered into; (b) this Franchise is renewed for a 10-year term subject to 2.3.2 below; (c) the Franchise is terminated by agreement between the Parties; or (d) either party provides the other party not less than one hundred eighty (180) days prior written notice of its intent not to renew a successive term.

2.3.2 In the event a Party desires to renew the Franchise as provided in 2.3.1(b) above, such party shall notify the other Party in writing a request to renew for a ten (10) year period prior to the end of the initial term. If both Parties mutually agree to such a renewal, the renewal date shall commence the day immediately following the expiration date of the initial term, and all terms and conditions of the Franchise shall remain the same, except the effective date of such term.

## **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 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 law, 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.

## **2.6 Payment of Franchise Fees**

2.6.1 In consideration of the rights, privileges, and franchise granted by City to Avista under this Franchise, Avista will pay City five percent (5%) of Avista's Gross Revenues derived from service to customers located within City (the "Franchise Fee").

Avista will pay the Franchise Fee in quarterly installments, which quarterly installments will be due not later than thirty (30) days following the end of the quarter to which the payment relates.

2.6.2 Contemporaneously with each quarterly payment, Avista will file with City a sworn statement describing the total gross revenues Avista received during the applicable quarter (the "Accounting Statement"). City's acceptance of any payments under this Section 2.6 will not constitute a waiver by City of any Avista breach of this Franchise.

2.6.3 Inspection of Books and Records

On ten (10) days' advance written notice to Avista, City may review such Avista books, records, documentation, and/or information that City reasonably determines necessary or appropriate to audit an Accounting Statement and/or ascertain Avista's compliance with this Franchise. Avista will cooperate with City in conducting any inspection and/or audit and will correct any discrepancies affecting City's interest in a prompt and efficient manner. Avista will keep all its books, records, documentation, and/or information at its Spokane, Washington headquarters.

2.6.4 Equality of Franchise Fees and Costs

In the event that the City increases charges as prescribed by law upon Avista for any fees, taxes or other costs in connection with the issuance, maintenance, existence, continuation, and/or use of the Franchise or public right-of-way granted herein, City shall impose equivalent charges for any fees, taxes or other costs upon any and all other franchisee(s) doing the same business as or competing with Avista. In the event that City does not impose equivalent charges upon other franchisee(s) doing the same business as or competing with Avista, the City will charge Avista the fees, taxes or other costs imposed upon Avista prior to the increase until all franchisee(s) doing the same business as or competing with Avista are charged the same.

## **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 as 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 that are not discriminatory in nature pertaining to the

conduct of Avista's operations within the Franchise Area. Prior to the adoption of any new rule, procedure or policy of general applicability such as right-of-way construction standards, public works standards, right-of-way permit fees, street cutting fees, and/or development permit fees, Avista shall be provided a written draft document for comment with a response period of not less than thirty (30) days. Notwithstanding the foregoing, failure to provide such notice shall not invalidate such new rules, procedures, or policies of general applicability, nor exempt Avista from compliance with such new rules, procedures or policies. 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 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.

### **3.3 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 excavations prior to commencing work.

### **3.4 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 at its sole expense, the growth of vegetation which encroaches upon its Facilities and/or Gas transmission and distribution corridors within the Franchise Area.

### **3.5 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 applicable City and Avista specifications. Prior to performing such work, Avista shall obtain all legally required permits, including the opening or disturbance of any Right-of-way within the Franchise Area. City shall cooperate with Avista in granting any permits required, providing such grant and subsequent construction by Avista shall not unduly interfere with the use of such Rights-of-way. Avista shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Gas Franchise in the Franchise Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by City as to other public utility companies and other entities operating in the City. The payment of any generally applicable and non-discriminatory right-of-way permit fees, street cutting fees, or development permit fees may be required in addition to payment of the Franchise Fee herein.

### **3.6 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.

## **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 and any power of eminent domain granted to it under the laws of the State.

### **4.2 Necessary Construction/Maintenance by City**

The construction, operation and maintenance of Avista's Facilities authorized by this Franchise shall not preclude the City, its agents or its contractors, from grading, excavating, or doing other necessary road work contiguous to Avista's Facilities; provided that Avista shall be given not less than ten (10) business days' notice of said work, except in events of emergency when there exists an unforeseen and substantial risk or threat to public health, safety, welfare, or waste of resources in which case the City will make reasonable efforts to contact Avista prior to doing said work; and provided further that, if Avista provided an accurate location of its facilities upon request, 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, up to the amount of liability under the Oregon Tort Claims Act.

#### **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.

#### **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.

#### **4.6 Vacation of Properties by City**

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

### **SECTION 5.0 RELOCATION OF AVISTA'S FACILITIES**

#### **5.1 Relocation of Facilities Requested by City**

Upon request of the City, Avista shall relocate its Facilities as necessary within the Franchise Area as specifically designated 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, may be greater than one hundred twenty (120) calendar days if necessary to allow Avista sufficient time to arrange for relocation upon consultation with the City. In cases of emergency, or where not otherwise reasonably foreseeable by the

City, the notice requirements of this Section may be shortened by discussion and agreement between the Parties. The City shall use reasonable efforts to cause any such relocation to be consistent with any applicable long-term development plan(s) of the City.

In the event a relocation forces Avista off City's existing Right(s)-of-way then the 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 Avista's Facilities on the affected Property.

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 that is the result of the same Right of way project, regardless of the cause for either the initial or subsequent relocation, the City shall bear the entire cost of such subsequent relocation.

Avista agrees to relocate all Facilities promptly within a reasonable time. Upon notice from the City, the parties agree to meet and determine a reasonable relocation time, which shall not exceed the time normally needed for construction projects of the nature of the City's relocation request unless otherwise mutually agreed.

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 the City applies for federal, state or other non-City funding for right-of-way improvements, the City shall make a reasonable effort to include funding for utility relocation purposes, 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 from granting federal or state agency, including internal costs, associated with obtaining such funds.

## **SECTION 6.0 INDEMNITY**

### **6.1 Indemnification of City**

Avista agrees to defend and indemnify the City, its appointed and elected officers and employees or agents, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney fees, that the City may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of Avista, its officers, employees, agents, contractors 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. Liability of City is limited to the extent of the City's liability under the Oregon Tort Claims Act.

### **6.2 Indemnification of Avista**

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

## **SECTION 7.0 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**

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.

### **7.3 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. Exclusive venue for any litigation between the City and Avista arising under or regarding this Franchise shall occur, if in the state courts, in Jackson County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

### **7.4 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.

## **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 the Parties are delayed in or prevented from the performance of any of its obligations under the Franchise by circumstances beyond said Party'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 said Party's performance shall be excused during the period of the Force Majeure occurrence. Each affected Party will use all commercially reasonable efforts to minimize the period of the disability due to the occurrence. Upon removal or termination of the occurrence, said Party 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 prior 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 Oregon 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 the Parties.

#### **8.5 Changes or Amendments**

Changes or amendments to this Franchise shall be in writing and 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 Oregon. 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.

#### **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 Recorder, its acceptance of the terms and conditions of this Franchise.

#### **8.9 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 8.6 and in the event a conflict exists between the terms of this Franchise and Avista's Tariff with the Commission that cannot be resolved, Avista may suspend or abandon the rights and obligations of this Franchise upon reasonable notice to the City.

#### **8.10 Franchise Effective Date**

The Effective Date of this Franchise shall be \_\_\_\_\_, after approval and final passage of this Ordinance as provided by law, and provided that it has been duly accepted by Avista as specified above.

#### **8.11 Venue**

This Franchise Agreement has been made entirely within the state of Oregon. If any suit or action is filed by any party to enforce this Franchise Agreement or otherwise with respect to the subject matter of this Agreement, exclusive venue shall be in the federal or state courts in Jackson County, Oregon.

**PASSED** by the Council and signed by me in authentication of its passage this \_\_\_\_\_  
day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
Name

ATTEST:

\_\_\_\_\_  
City Recorder

**Letter of Acceptance by Avista**

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF SHADY COVE, COUNTY OF JACKSON, OREGON

**IN RE: City of Shady Cove Ordinance No. \_\_\_\_\_**

**“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 City of Shady Cove. This acceptance is executed on \_\_\_\_\_, 2021.

Avista Corporation dba Avista Utilities

By: \_\_\_\_\_  
Dennis Vermillion  
President and CEO, Avista Corp

**Copy Received for the City of Shady Cove**

On: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
City Representative - Name



**Gas Franchise Ordinance Summary**

**NOTICE: CITY OF SHADY COVE  
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 City's public right of way [the Franchise Area] for the purposes of the transmission, control and distribution of natural gas within the City for a term of ten (10) years. The City will increase the franchise fee from three to five percent. Avista agrees to meet accepted industry standards and conform with applicable federal and state laws, as well as the regulations of the appropriate state regulatory body with jurisdiction, in the conduct of its operations under the Franchise. The City reserves the right to make reasonable rules and regulations pertaining to the conduct of Avista's operations within the Franchise Area. Avista must not interfere with any existing facilities of other utilities. Avista is authorized to make necessary excavations within the Franchise Area; excavations must be carried out with reasonable dispatch, and the area restored, with as little interference to the public as may be reasonable. Avista must relocate its facilities in the franchise area at the City's request. Avista may remedy encroachment of vegetation in connection with franchised activities. Provisions are made for informal dispute of Ordinance.

(Final Reading of Ordinance \_\_\_\_\_ is anticipated to be held before the Shady Cove City Council on \_\_\_\_\_ at \_\_\_\_\_ p.m. in the City Council Chambers).

**ORDINANCE NO. 2019-##**

**AN ORDINANCE AUTHORIZING A FRANCHISE AGREEMENT BETWEEN THE CITY OF SHADY COVE AND AVISTA CORPORATION DBA AVISTA UTILITIES, A WASHINGTON CORPORATION.**

**WHEREAS**, on May 23, 2019 the City of Shady Cove adopted new Chapter \_\_\_\_ of the municipal code to permit and manage reasonable access to the public rights-of-way of the City for utility purposes; and

**WHEREAS**, utility franchisees currently governed by franchise agreements granted by the City will continue to be subject to the terms of said franchise agreement and not subject to Chapter \_\_\_\_ until expiration of the franchise agreement; and

**WHEREAS**, the City and Avista are currently operating under a ten-year franchise agreement signed in September 2008, with a unilateral automatic ten-year renewal provision that converts the agreement into a twenty-year term expiring in 2028, and

**WHEREAS**, Avista will agree to a new franchise fee in exchange for executing a new twenty-year franchise agreement, and

**WHEREAS**, the City and Avista have drafted a proposed franchise agreement modeled after a recent agreement signed between the City of Eagle Point, and

**WHEREAS**, the City has reviewed the agreement and provided the opportunity for public review and comment through an advertised public meeting.

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHADY COVE, OREGON, THAT:**

The Mayor is authorized to sign the franchise agreement with Avista to this Ordinance.

Passed in open session on the \_\_\_\_\_, 2019.

\_\_\_\_\_  
Lena Richardson, Mayor

Attest:

\_\_\_\_\_

**ORDINANCE NO. 14-383-O**

**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 TRANSMISSION, DISTRIBUTION AND SALE OF GAS IN THE CITY OF ROGUE RIVER, OREGON.**

Avista Corporation dba Avista Utilities ("Avista"), a Washington Corporation, which is authorized to do business within the state of Oregon has filed with the City of Rogue River, State of Oregon (the "City") 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 City's rights of way and public property in the City for the purposes of the transmission, distribution and sale of Gas; and the City has determined it is in the interest of persons and businesses in this jurisdiction to have access to Avista's services;

**THE COMMON COUNCIL OF THE CITY OF ROGUE RIVER, OREGON, ORDAINS AS FOLLOWS:**

**SECTION 1.0 DEFINITIONS**

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

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

**City**: means the City of Rogue River, a municipal corporation of the State of Oregon, and its respective successors and assigns.

**Commission**: means the Oregon Public Utility Commission or such successor regulatory agency having jurisdiction over investor-owned public utilities in the State of Oregon.

**Days**: means business days.

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

**Facilities:** means, collectively, any and all gas transmission, and distribution systems and appurtenances owned by Avista, now and in the future in the Franchise Area, including but not limited to, Gas plants, Gas pipes, pipelines, mains, laterals, conduits, regulators, valves, meters, meter-reading 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 rights-of-way for: public roads, streets, avenues, alleys, bridges, tunnels, City-owned easements, and highways of the City, as laid out, platted, dedicated, acquired or improved within the present corporate limits of the City;

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

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

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

**Parties:** means City and Avista collectively.

**Party:** means either City or Avista individually.

**Person:** means a business entity or natural person.

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

**State:** means the State of Oregon.

**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 to customers within the Franchise Area.

## **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 ten (10) years from the Effective Date, and shall continue year-to-year thereafter, until it is otherwise renewed for another ten (10) year term, or terminated by either Party, with not less than one-hundred-eighty (180) days prior written notice to the other Party.

Both parties may agree to the option of one successive 10 year renewal of this Franchise. No fewer than thirty (30) days prior to expiration of this Franchise, either Party shall notify the other Party in writing a request to continue to operate under this existing Franchise. If both Parties are in agreement, the renewal date shall commence the day immediately following the expiration date of the current term, and all terms and conditions of the Franchise shall remain the same.

Five (5) years from the effective date of this ordinance, and every five (5) years thereafter during the term of the franchise, the City Council may request Section 2.3 be reopened for negotiation, and after negotiation and approval by Avista, adjust the franchise fee. Notice of the intent to reopen shall be provided to Avista not less than (90) days prior to the five (5) year anniversary. Any adjustment shall be effective on the anniversary date of this ordinance.

## **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 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 a six (6) month notice of such action.

## **2.6 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.

## **2.7 Payment of Franchise Fees**

**2.7.1** In consideration of the rights, privileges, and franchise granted by City to Avista under this Franchise, Avista will pay City six-percent (6%) of Avista's gross revenues derived from service to customers located within City (the "Franchise Fee"). Avista will pay the Franchise Fee in quarterly installments, which quarterly installments will be due not later than thirty (30) days following the end of the quarter to which the payment relates. Except as otherwise provided in OAR 860-022-0040, "gross revenue(s)" means revenues received from utility operations within City, less related net uncollectables. Gross revenues of an energy utility shall include revenues from the use, rental, or lease of the utility's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another utility purchasing the service is not the ultimate customer, or revenue from joint pole use.

**2.7.2** Contemporaneously with each quarterly payment, Avista will file with City a sworn statement describing the total gross revenues Avista received during the applicable quarter (the "Accounting Statement"). City's acceptance of any payments under this Section 2.7 will not constitute a waiver by City of any Avista breach of this Franchise.

### **2.7.3 Inspection of Books and Records**

On ten (10) days' advance written notice to Avista, City may review such Avista books, records, documentation, and/or information that City reasonably determines necessary or appropriate to audit an Accounting Statement and/or ascertain Avista's compliance with this Franchise. Avista will cooperate with City in conducting any inspection and/or audit and will correct any discrepancies affecting City's interest in a prompt and efficient manner. Avista will keep all its books, records, documentation, and/or information at its Spokane, Washington headquarters.

### **2.7.4 Equality of Franchise Fees and Costs**

In the event that the City increases charges as prescribed by law upon Avista for any fees, taxes or other costs in connection with the issuance, maintenance, existence, continuation, and/or use of the Franchise or public right-of-way granted herein, City shall impose equivalent charges for any fees, taxes or other costs upon any and all other franchisee(s) doing the same business as or competing with Avista, when those franchise agreements can be renegotiated. In the event that City does not impose equivalent charges upon other franchisee(s) doing the same business as or competing with Avista, the City will charge Avista the fee imposed upon Avista prior to the increase until all franchisee(s) doing the same business as or competing with Avista are charged the same.

## **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 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 within the Franchise Area, 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.

### **3.3 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 excavations prior to commencing work.

### **3.4 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 the growth of vegetation which encroaches upon its Gas transmission and distribution corridors within the Franchise Area.

### **3.5 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 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 applicable City and Avista specifications.

### **3.6 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.

## **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 and any power of eminent domain granted to it under the 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 road work contiguous to Avista's Facilities, provided that Avista shall be given not less than ten business days' notice of said work, and provided further that the City, its agents and contractors, shall be liable for any damages, including any consequential damages to third parties, caused by said work to any Facilities belonging to Avista.

### **4.3 Expansion of Avista's Facilities**

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

### **4.4 Change of Boundaries of the City**



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

#### **4.5 Removal of Abandoned Facilities**

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

#### **4.6 Vacation of Properties by City**

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

### **SECTION 5.0 RELOCATION OF AVISTA'S FACILITIES**

#### **5.1 Relocation of Facilities Requested by City**

Upon request of the City, Avista shall relocate its Facilities as necessary within the Franchise Area as specifically designated by the City for such purpose. The City shall provide Avista reasonable notice of any intended or expected requirement or request to relocate Avista's Facilities, but not less than ninety (90) calendar days prior to any such relocation except in cases of emergency or not otherwise reasonably foreseeable by the City. The City shall use reasonable efforts to cause any such relocation to be consistent with any applicable long-term development plan(s) of the City.

In the event a relocation forces Avista off City's existing Public Right(s) of Way then the City shall make a reasonable effort to accommodate said relocation on alternative Right(s) of Way. If the City requires the subsequent relocation of any of Avista's Facilities within three (3) years from the date of relocation of such Facilities or installation of new Facilities, the City shall bear the entire cost of such subsequent relocation. Avista agrees to relocate all Facilities promptly within a reasonable time. Upon notice from the City, the parties agree to meet and determine a reasonable relocation time, which shall not exceed the time normally needed for construction projects of the nature of the City's relocation request unless otherwise mutually agreed.

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.

### **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 the third party has entered into an agreement to reimburse Avista for its reasonable costs of relocation.

**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.

## **SECTION 6.0 INDEMNITY**

### **6.1 Indemnification of City**

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

### **6.2 Indemnification of Avista**

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

## **SECTION 7.0 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**

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.

### **7.3 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 District of Oregon.

### **7.4 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.

## **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 Oregon 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 Oregon. 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. 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.

### **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 Recorder, its acceptance of the terms and conditions of this Franchise.

### **8.9 Franchise Effective Date**

The Effective Date of this Franchise shall be at the end of the thirty (30) day appeal period following the second reading by the City Council. The legal publication of this ordinance as provided by law, and provided that it has been duly accepted by Avista as specified above shall be done in that thirty (30) day period.



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## Infrastructure Programs

[Brownfields Program](#)  
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[Port Programs](#)  
[Safe Drinking Water](#)  
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[Special Public Works](#)  
[Telecommunications](#)  
[Tide Gates](#)  
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## Community Development Block Grant Cares Act Funded

Business Oregon has made available \$5,210,809 for Small Business and Microenterprise Projects and \$2,233,203 for Emergency Rental Assistance of Community Development Block Grant (CDBG-CV1) funding for non-housing related activities within non-entitlement communities impacted by COVID-19.

### Who Can Apply

The state CDBG program is only available to non-entitlement cities or counties (cities or counties that don't have a direct allocation of CDBG funds from HUD).

The non-entitlement city or county grant recipient must sub-grant the funds to either one of the following non-profit organizations:

- For Small Business Assistance: a statewide or local Economic Development, Non-profit organization certified in providing small business lending (such as the following but not limited to: EDA, SBA, USDA, CDFI).
- For microenterprises businesses: secure services of a microenterprise support organization.
- For rental assistance: local organizations with rental assistance experience, e.g., public housing authorities, CAP agencies, non-profit housing organizations.

### Availability of Funds

#### Small Business/Microenterprise Projects

\$5,210,809 of available funds will be divided into two project types:

- \$2,977,605 for Small Business/Microenterprise Assistance
- \$2,233,204 for emergency COVID-19 response assistance such projects that prevent, prepare for, and respond to the COVID-19.

#### Emergency Rental Assistance

\$2,233,203 of available funds. Maximum grants per application are:

- City: \$400,000 and must serve a minimum of two non-entitlement communities (Can apply for an additional \$50,000 for collaboration with additional non-entitlement cities—Maximum of \$500,000.)

### Resources

#### Small Business Microenterprise and COVID-19 Impact Assistance Projects

- [Notice of Available Funds](#)
- [Application Guidelines](#)
- [Duplication of Benefit Affidavit-Sample](#)

#### Emergency Rental Assistance

- [Notice of Available Funds](#)
- [Application Guidelines](#)
- [Duplication of Benefit Affidavit-Sample](#)

#### Guidelines

- [Method of Distribution](#)
- [Grant Project Management Handbook](#)

#### Contact Us

- [Regional Development Officer](#)

- County: \$600,000  
(Can apply for an additional \$100,000 for collaboration with additional non-entitlement county—  
Maximum of \$800,000.)

This funding is reflecting the first of three waves of allocation (known as CDBG-CV1). Business Oregon will release a series of Notice of Funding Availabilities for the remaining funding allocations.


### Application Deadline

Funds will be awarded to the first eligible projects and until all funds are exhausted or the application deadline (whichever comes first).

- The Small Business/Microenterprise Application deadline is May 20, 2021
- Emergency Rental Assistance Application deadline is June 30, 2021

### Application Process

COVID 19 Emergency Assistance applications for these three criteria are accepted year-round until all set-aside funds are exhausted. Contact a Regional Development Officer (RDO) for assistance and more information. Complete applications for emergency projects must be received by the department within 18 months of either the Governor's declaration or a Presidential disaster declaration of emergency for the event creating the emergency.

- Pre-applications are available online.
  - Small Business/Microenterprise and the Job Creation Retention Certification form  PDF
  - Emergency COVID-19 Impact Assistance
  - Emergency Rental Assistance
- Pre-application will be reviewed by the Regional Development Officer and CDBG Team for preliminary eligibility review.
- Application will be invited and a link to the application will be provided by the Regional Development Officer (RDO)

### Application Guidelines

For detailed information about each project type, who may apply, funding details, and the application process please review the application guidelines listed below. If you have additional questions about the application or need assistance with the online application system, please contact Fumi Schaadt, 503-986-0027 or Rena Schoen, 503-949-6294. For questions regarding the program, or community eligibility please contact your local Regional Development Officer.

Application Guidelines:

- Small Business Microenterprise and COVID-19 Impact Assistance Projects  PDF
- Emergency Rental Assistance  PDF

Business Oregon  
 Sites & Land  
 Export Assistance  
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