

**Agenda**  
Shady Cove Regular City Council Meeting  
Thursday, March 4, 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/87219591551?pwd=YnlHZlVWWE1TNUtkTFRCY0hoM2d0dz09>

Meeting ID: 872 1959 1551

Passcode: 049283

One tap mobile

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**I. Call to Order**

- A. Roll Call
- B. Pledge of Allegiance
- C. 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 March 18 at 6 PM, with Council members present in Council Chambers and the public to attend via Zoom.
- 3. The next regularly scheduled meeting of the Planning Commission is March 11 at 6 PM, with Commission members present in Council Chambers and the public to attend via Zoom.
- 4. The next meeting of the Parks and Rec Commission is on April 6 at 6 PM to be held via Zoom.
- 5. The next meeting of the Emergency Management Commission is on March 16 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
- B. Minutes of February 18, 2021
- C. Minutes of January 7, 2021

**IV. Items Removed from Consent Agenda**

**V. Staff Reports**

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

**VI. New Business**

- A. Review Applications for Open Council Position and Interviews of Applicants
- B. Appointment to City Council

**VII. Old Business**

- A. Avista Franchise Agreement
- B. Banking Decision

**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

**Adjournment**

City of Shady Cove  
**City Council Regular Meeting Minutes**  
Thursday, February 18, 2021

Meeting was held via Zoom with Council being present at City Hall.

**I. CALL TO ORDER**

Mayor Tarvin called the Regular City Council Meeting to order at 6:00 PM

Council Present: Mayor Tarvin, Councilor Evertt, and Councilor McGregor and Councilor Nuckles via Zoom.

Staff Present: Thomas J. Corrigan, City Administrator

Citizens attended Via Zoom.

The Council recited the Pledge of Allegiance.

**I.B. ANNOUNCEMENTS**

The Mayor made the announcements on the agenda.

**II. PUBLIC HEARING**

None

**III. PUBLIC COMMENT ON AGENDA ITEMS**

Art Stirling commented on the procedure of Public Comment and also on the Camping Ordinance.

Hank Hohenstein commented on the Chase Bank proposal.

**IV. CONSENT AGENDA**

Motion to Accept Item A, the Bills Paid Report 1/27/21-2/10/21 for \$16,031.85 and Item B, the minutes of February 4, 2021.

Motion: Councilor Nuckles

Second: Councilor McGregor

Motion Carried 4-0

**V. ITEMS REMOVED FROM CONSENT AGENDA**

Discussion ensued regarding the need for Budget to Actual quarterly vs monthly. City Administrator said Staff could do monthly if all questions were asked by Tuesday of the week of the meeting. Mayor Tarvin requested information on Parks work on budget.

Motion to Accept Item C, Budget to Actual Report

Motion: Councilor Evertt

Second: Councilor Nuckles

Councilor McGregor voted Nay

Motion Carried 3-1

## VI. STAFF REPORTS

- A. Chief Winfrey said they have sold everything they had for sale. 89 calls for the month of January which is normal. He had a discussion with Hiland Water and as long as there are no thefts, the locks on the hydrants will stay removed.
- B. Deputy Heise was not available tonight
- C. City Administrator reported completion gaining access for our radio station on the Internet. Demonstration.  
Forest Patrol Assessment letters went out. This is a fee from Oregon Department of Forestry for fire protection. It is collected by the County. There will be a public hearing on March 17 at 7 PM via Zoom. Go to Swofire.com for more info.  
Municipal Wildfire Assistance Program had a meeting via Zoom. City was seeking ways in which we could gain assistance after the Obenchain Fire. Most cities were applying for Planners for permit issuance. It cannot be used for fire protection, information, communication, going forward. Now looking at Defensible Living Space.  
FEMA Hazard Mitigation Grant will be looked at next.  
DLCD grant will come to Council in May.  
Emergency Management Commission meeting featured the Sheriff discussing evacuation procedures.  
Pond is being monitored with the rain. Everything is great right now.  
Reminder that the City adopted the Oregon Drainage Law basically saying you cannot block drainage between neighbors.

## VII. NEW BUSINESS

Banking Discussion ensued. City Administrator showed comparisons between banks. Council directed Staff to review proposals as we had just received them.

Motion to Appoint Spencer Davenport to the Budget Committee for a 3-year term ending 1/31/24.

Motion: Councilor Evertt  
Unanimous

Second: Councilor Nuckles  
Motion Carried 4-0

Motion to Appoint Tom Anderson to the Budget Committee for a 3-year term ending 1/31/24.

Motion: Councilor Evertt  
Councilors Nuckles and McGregor noted Nay. Motion failed 2-2

Second: Mayor Tarvin

Motion to Appoint Heather Johnson to the Budget Committee for a 3-year term ending 1/31/24.

Motion: Councilor Evertt  
Councilors Nuckles and McGregor noted Nay. Motion failed 2-2

Second: Mayor Tarvin

Motion to Appoint Art Stirling to the Budget Committee for a 3-year term ending 1/31/24.

Motion: Councilor Nuckles  
Councilor Evertt and Mayor Tarvin noted Nay. Motion failed 2-2

Second: Councilor McGregor

Motion to Appoint Lena Richardson to the Budget Committee for a 3-year term ending 1/31/24.

Motion: Councilor Nuckles                      Second: Councilor McGregor  
Councilor Evertt and Mayor Tarvin noted Nay. Motion failed 2-2

There were no applications for the Parks and Recreation Commission

### **VIII. OLD BUSINESS**

Motion to Accept Transcribed Minutes of January 7, 2021 with changes to Section 2.

Motion: Councilor Nuckles

Item was tabled until RVCOG can be contacted again.

Camping Ordinance – City Administrator stated that a Public Hearing cannot be placed on the agenda without Council approval.

Motion to place the Camping Ordinance, Chapter 90 to the Council for a Public Hearing.

Motion: Councilor Nuckles                      Second: Councilor McGregor

Councilor Evertt and Mayor Tarvin noted Nay. Motion failed 2-2

The Feasibility Study with Business Oregon was discussed.

Avista Franchise Fee Agreement was tabled due to lack of information from Avista.

Building Code Process – NW Code Professionals told us that we would have to contact the Oregon Building Department and set up our own program. Fees are 75% of building fees, however, there is also an "Interim Building Official" fee of \$3500 per month. Consensus was that having an outside service is not financially feasible.

A Work Session on Rules of Government could not be set due to scheduling of Councilors. Mayor said that as most believe the current Rules are acceptable, we will continue with the current Rules until we have a full Council.

CDBG is the last full grant with no match available, mostly involved with water and sewer projects. Current booklet for application is over 150 pages long. Design and construction are their main grants. The Feasibility Study previously mentioned is the first step.

### **IX. WRITTEN COMMUNICATION**

Letter from Terry Weyers was read relative to his request for the removal of Councilor McGregor. Letters from Hank Hohenstein relative to opportunities large city dwellers in an urban environment leaving to work at home in small cities.

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

Mary Stirling commented on the deadline for the open Council position.

Hank Hohenstein followed up on the letters he sent.

**XI. COUNCIL COMMENTS**

Councilor McGregor said there hasn't been an RVACT meeting. He also commented on Terry Weyers communication, saying the County approved his Proof of Residency, that he wasn't living in the RV, and he would bring back more information within two meetings from the inspectors on the building.

Councilor Nuckles attended the February 9 Board meeting. Rogue Community College and SOU are working together. See RogueCareers.org. She thanked everyone for attending.

Councilor Evertt attended the Wildfire Recovery roundtable discussion. FEMA has denied 52% of claims due to losses of the fire.

Mayor Tarvin questioned if the appointments to the Budget Committee could be reconsidered. City Administrator suggest at another meeting. With 7 of 10 positions filled, there would be a quorum of the Budget Committee. 24 individuals attended the meeting tonight.

**XII. ADJOURNMENT**

There being no further business before the Council, the Mayor adjourned the meeting at 7:56 PM.

Approved:

Attest:

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

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

**Council Vote:**

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

12:17 (Mayor Tarvin) – I think what we need to do is remove the public hearing for at least a couple of months until we get our fee scales(?) and then bring it back so (inaudible) I'm going to remove the open public hearing until another time.

(Councilor Nuckles) - Can I make a motion that it be rescheduled for say the 1<sup>st</sup>

(Mayor Tarvin) - Or are we just going to remove it from the agenda, and then we'll just bring it back another time.

(Councilor Nuckles) - OK, I'm not clear on the procedure so I think it's just getting it removed and added but I'd just like to make sure of that and so I agree we need time to settle in and get to know each other and also this new ordinance but I would like to at least see Kelly(?) at least have a target date say that first meeting in March that we'd look at that on the agenda.

(Mayor Tarvin) - Thomas could you clarify?

(Administrator Corrigan) – Sorry, clarify what?

(Mayor Tarvin) – OK when we remove this off the agenda we don't need a date that we will put it back on

(Administrator Corrigan) – We won't have to, we don't really need to if we are going to continue after opening the public hearing but you can decide on a date if you want but you can decide on a date but that is up to you guys.

(Councilor Nuckles) – But can we just put it to a motion to put it on the first meeting in March and then if things change we can always do this again

(Administrator Corrigan)– Well if we put it on the first meeting in March we'll have to advertise it at that time...so if you want to change it

(Mayor Tarvin) – So we're going to just remove it off the agenda tonight and then we'll bring it back in a couple of months. Are you done (inaudible)

14:47 (Mayor Tarvin) - Public comment on agenda items

Mary Stirling (whisper...OK, they just removed this from the agenda)

(Steve Mitchell) - Madam Mayor, this is Steve Mitchell, I could comment

(Mayor Tarvin) – Go ahead Steve

Thank you Madam Mayor. This is Steve Mitchell 22062 HWY 62. On the public hearing you just tabled until March, I do have a couple of comments on that just for the matter of record. First I want to mention that I have spoken with Art Sterling, the county commissioner about this last year when it was being prepared and I concur pretty much with the process that they were establishing, so I do support this but I do have a couple of comments. What I...and this is information unless you have the agenda in front of you so when I look at page 3 of the planning file CPA 20-01 on item #7 where it says recreational vehicles may be parked on private property and used for sleeping and cooking purposes for up to 6 months during onsite construction on residentially zoned lots for approved building permits for application and administrative approval. My comment on that is that as most of you all know I'm a retired building official and when a building permit is issued for construction, either commercial or residential, the permit is good for 180 days. If during the course of construction they want to file for an extension it's a given they can have it for any reason for an additional 180 days. So I would like to see on #7 that you make provisions in there somehow allowing the extension for a second period of time because for unforeseen circumstances be it weather or finances that cause delays I'd hate to see people coming back to the council requesting another extension maybe you can just add that to #7. Also on #8 for...on commercial properties I'd really like to see the same thing where you do allow trailers on commercial properties during the course of construction. We know in our area we have a lot of

problems with vandalism and not to have an onsite person there to keep an eye on things so we don't have any issues with theft or stealing gas out of vehicles, things of that nature, that would be great if we could somehow incorporate something like that in #8. And also within the whole context of it I do like the fact that in the additional staff report they took out the word homeless which I do appreciate that greatly, so that's all I have to say thank you very much.





**CITY OF SHADY COVE**  
 22451 Highway 62 • P.O. Box 1210 • Shady Cove, OR 97539  
 Phone: 541.878.2225 • Fax: 541.878.2226

**APPLICATION FOR COMMISSION OR COMMITTEE**

PLEASE PRINT

DATE: \_\_\_\_\_ POSITION APPLIED FOR: City Council

**APPLICANT INFORMATION**

Name: Hank Hohenstein

Physical Address: 161 Osprey Vista

City: Shady Cove State: OR Zip: 97539

Mailing Address: same

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Cell Phone: 541-973-5442

Email Address: hank.hohenstein@gmail.com

Current Occupation:  
(If retired or unemployed, state your general or past profession.)

How long have you lived in Shady Cove? 6 years

How long have you lived in Jackson County? "

Are you available to attend both daytime and evening meetings when necessary? yes

Are you an employee of the City of Shady Cove, an occasional or potential contract employee, or do you have any other real or potential conflict of interest in working or serving in this capacity?  
 Yes  No

If yes, please describe:

**QUALIFICATIONS**

I believe that I am qualified for and should be considered for the above position(s) for the following reasons  
(continue on next sheet if necessary):

I have served on the City Council

Over 55 years I have served my communities  
in many ways:

|                                   |   |
|-----------------------------------|---|
| <u>1. elected City Council</u>    | <u>4. appointed Planning Comm.</u>      |
| <u>2. Appointed City Council</u>  | <u>5. Elected Planning Comm Chair</u>   |
| <u>3. Hired Planning Director</u> | <u>6. written General Plans</u>         |
|                                   | <u>7. Created City Branding Program</u> |

Qualifications continued (if necessary):

I have a master's degree in City & Regional Planning  
I have a B.S. in Agriculture  
I am a graduate of numerous USMC schools  
I have a desire to be of service to my community!

Please use this space to summarize why you are applying for this position:

I have, based on prior experience; the ability to be effective immediately; the nature to be even-handed in all matters; the nature to be open to all opinions; not a member of any group; have established contacts at local, county, state & federal levels

Please use this space to add any additional information you would like to share:

I would like to continue to work on the following issues:  
Response to wildland catastrophic fires; City branding;  
Housing stock evaluation; reopening of Chase bank &  
making Chase the city's bank; support for local businesses; attracting new business to our city

By signing this application, electronically or otherwise, I affirm that all information included is true and accurate to the best of my knowledge. I authorize the City of Shady Cove to publically review and discuss the information provided herein and to assist in responding to any questions asked which are relevant to this position.

Signature of applicant

*Henry J. Hohenstein*

Date

**How to Submit:**

- By email: [SDent@shadycove.org](mailto:SDent@shadycove.org)
- In person: City of Shady Cove, City Hall, 22451 Highway 62. Monday through Friday, 8:00 AM to 5:00 PM
- By mail: P.O. Box 1210, Shady Cove, OR 97539
- By fax: 541.878.2226

**Questions?**

Call City Hall at 541.878.2225 or send an email to the email as listed above.

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## APPLICATION FOR COMMISSION OR COMMITTEE

PLEASE PRINT

DATE: \_\_\_\_\_01/30/2021 CITY COUNCIL \_\_\_\_\_ POSITION APPLIED FOR:  
\_\_\_\_\_

| APPLICANT INFORMATION   |                          |            |
|---|--------------------------|------------|
| Name: Dale Ainsworth  |                          |            |
| Physical Address: 567 Rogue Air DR  |                          |            |
| City: Shady Cove  | State: OR                | Zip: 97539 |
| Mailing Address: same   |                          |            |
| City:   | State:                   | Zip:       |
| Home Phone:   | Cell Phone: 541-973-5367 |            |
| Email Address: jetboat@centurylink.net  |                          |            |
| Current Occupation: Production Mgr. 27 yrs<br><i>(If retired or unemployed, state your general or past profession.)</i>   |                          |            |
| How long have you lived in Shady Cove? 9 yrs  |                          |            |
| How long have you lived in Jackson County? 54 yrs   |                          |            |
| Are you available to attend both daytime and evening meetings when necessary? yes   |                          |            |
| Are you an employee of the City of Shady Cove, an occasional or potential contract employee, or do you have any other real or potential conflict of interest in working or serving in this capacity?<br><input type="checkbox"/> Yes <input type="checkbox"/> No no |                          |            |
| If yes, please describe:  |                          |            |
| QUALIFICATIONS  |                          |            |



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**APPLICATION FOR COMMISSION OR COMMITTEE**

PLEASE PRINT

I believe that I am qualified for and should be considered for the above position(s) for the following reasons  
*(continue on next sheet if necessary):*

I have lived in Shady Cove for a few years and have seen a few changes but not for the citizens of the city. I am involved with over 300 employees at my job. I have been trained in several areas of education. Rogue Community College, Management and business law. I am a graduate of Leadership Development. Top in my class at Dale Carnegie. Graduate of Safety University. I also have been a volunteer for the Josephine County Sherriff's Office.

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Qualifications continued (if necessary):

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Please use this space to summarize why you are applying for this position:

\_\_\_\_ I am an experienced leader that is able to interact clearly and effectively with individuals at all career levels. A self-motivated individual with strong facilitation skills capable of building a high-performance team with positive morale.

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Please use this space to add any additional information you would like to share:

\_\_\_\_\_ I believe the City of Shady Cove can and will be a strong community with our help as there leaders and a open mind to their needs.

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By signing this application, electronically or otherwise, I affirm that all information included is true and accurate to the best of my knowledge. I authorize the City of Shady Cove to publically review and discuss the information provided herein and to assist in responding to any questions asked which are relevant to this position.

Signature of applicant Dale Ainsworth

Date

**How to Submit:**

- By email: [TCorrigan@shadycove.org](mailto:TCorrigan@shadycove.org)  
In person: City of Shady Cove, City Hall, 22451 Highway 62. Monday through Friday, 8:00 AM to 5:00 PM  
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**APPLICATION FOR COMMISSION OR COMMITTEE**

PLEASE PRINT

DATE: FEBRUARY 8, 2021 POSITION APPLIED FOR: CITY COUNCIL

| APPLICANT INFORMATION   |                          |            |
|---|--------------------------|------------|
| Name: Tanda Murders   |                          |            |
| Physical Address: 138 Orchard Lane  |                          |            |
| City: Shady Cove  | State: Oregon            | Zip: 97539 |
| Mailing Address:  |                          |            |
| City:   | State:                   | Zip:       |
| Home Phone:   | Cell Phone: 503-396-0879 |            |
| Email Address: Tanda.Murders@outlook.com  |                          |            |
| Current Occupation: Operations and Payments Services Manager<br><i>(If retired or unemployed, state your general or past profession.)</i>   |                          |            |
| How long have you lived in Shady Cove? 4.5 years  |                          |            |
| How long have you lived in Jackson County? 11 years   |                          |            |
| Are you available to attend both daytime and evening meetings when necessary? Yes   |                          |            |
| Are you an employee of the City of Shady Cove, an occasional or potential contract employee, or do you have any other real or potential conflict of interest in working or serving in this capacity?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |                          |            |
| If yes, please describe:  |                          |            |
| QUALIFICATIONS  |                          |            |
| I believe that I am qualified for and should be considered for the above position(s) for the following reasons<br><i>(continue on next sheet if necessary):</i>   |                          |            |
| <u>I have been working in the credit union industry for 17 years. I have served as the President of the Southern Oregon Chapter of Credit Unions for four (4) years. The purpose of the Chapter is to promote unity among credit unions in the community through communication, training, networking and participation in local, state, and national projects that support the cooperative spirit of the credit union movement. In addition, I have served as Internal Team Chair of the Governmental Affairs Committee at Rogue Credit Union. The focus of this committee is on education, communication, and advocating for the credit union difference, policies and regulatory decisions that affect our credit union and the credit union movement. In 2017 I had the opportunity to attend the Governmental Affairs Conference in Washington, D.C. where we met with congressional delegates and have since remained active by attending the Credit Union Hike the Hill at our State's capitol.</u> |                          |            |

Qualifications continued (if necessary):

For the past three (3) years I have served as the Vice President on the Orchard Glade Water Improvement District board, a water district serving 13 lots here in Shady Cove. My career in a cooperative industry focused on community service as well as the many volunteer hours annually are qualifications to successfully serve as a voice for our citizens in Shady Cove.

Please use this space to summarize why you are applying for this position:


I am a concerned citizen with an interest of seeing our community thrive. I believe our council and committees should be focused on building a sustainable city with a commitment of community involvement. Our citizens voices need to be heard, need to be respected and need to be taken into consideration when developing and implementing city ordinances. I would like an opportunity to serve as a voice for the families and citizens of Shady Cove.

Please use this space to add any additional information you would like to share:

A key reason we purchased our home here was the idea of raising a family in a small-town environment focused on community involvement and community support. The only way to make a difference is to be the difference. I believe I will bring a fresh perspective to the issues facing our city and citizens. I am excited to be considered as councilor.

By signing this application, electronically or otherwise, I affirm that all information included is true and accurate to the best of my knowledge. I authorize the City of Shady Cove to publically review and discuss the information provided herein and to assist in responding to any questions asked which are relevant to this position.

Signature of applicant



Date

2-09-2021

**How to Submit:**

By email: [TCorrigan@shadycove.org](mailto:TCorrigan@shadycove.org)  
In person: City of Shady Cove, City Hall, 22451 Highway 62. Monday through Friday, 8:00 AM to 5:00 PM  
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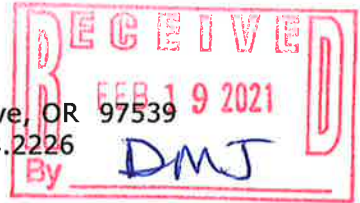
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*The City of Shady Cove is an Equal Opportunity Provider.*



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**APPLICATION FOR COMMISSION OR COMMITTEE**

PLEASE PRINT

DATE: 2-19-2021 POSITION APPLIED FOR: City Council Member

| APPLICANT INFORMATION  |                                 |                   |  |
|--|---------------------------------|-------------------|--|
| Name: <u>Greg Winfrey</u>  |                                 |                   |  |
| Physical Address: <u>504 Yewwood dr</u>  |                                 |                   |  |
| City: <u>Shady Cove</u>  | State: <u>OR</u>                | Zip: <u>97539</u> |  |
| Mailing Address: <u>Same</u>   |                                 |                   |  |
| City:  | State:                          | Zip:              |  |
| Home Phone: <u>N/A</u>   | Cell Phone: <u>541-326-6883</u> |                   |  |
| Email Address: <u>Gregwin53@gmail.com</u>  |                                 |                   |  |
| Current Occupation: <u>FO4 Fire chief</u><br><small>(If retired or unemployed, state your general or past profession.)</small>   |                                 |                   |  |
| How long have you lived in Shady Cove? <u>2 yrs 8 mos</u>  |                                 |                   |  |
| How long have you lived in Jackson County? <u>50 yrs</u>   |                                 |                   |  |
| Are you available to attend both daytime and evening meetings when necessary? <u>yes</u>   |                                 |                   |  |
| Are you an employee of the City of Shady Cove, an occasional or potential contract employee, or do you have any other real or potential conflict of interest in working or serving in this capacity?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                |                                 |                   |  |
| If yes, please describe:   |                                 |                   |  |
| QUALIFICATIONS   |                                 |                   |  |
| I believe that I am qualified for and should be considered for the above position(s) for the following reasons<br><small>(continue on next sheet if necessary):</small>  |                                 |                   |  |
| <u>I have worked closely with city and County governments in different capacities over the last 40+ years. Such as, on budget committees for the city of Rogue River, school dist 35, and fire dist 1. My chosen profession focuses on service to the community. In this career I have</u> |                                 |                   |  |



Qualifications continued (if necessary):

Served in Rogue River Fire district 1 for 24 yrs, 19 yrs as Fire Chief. In fire district 3, I served 10 yrs as Battalion chief, operations chief, and acting Fire chief.

I am currently serving my fourth year as Fire Chief of district 4.

Please use this space to summarize why you are applying for this position:

I believe I can provide an unbiased approach to the daily business of the city as well as the needs of the citizens of Shady Cove.

Please use this space to add any additional information you would like to share:

By signing this application, electronically or otherwise, I affirm that all information included is true and accurate to the best of my knowledge. I authorize the City of Shady Cove to publically review and discuss the information provided herein and to assist in responding to any questions asked which are relevant to this position.

Signature of applicant

Date

2-19-2021

**How to Submit:**

By email:

[TCorrigan@shadycove.org](mailto:TCorrigan@shadycove.org)

In person:

City of Shady Cove, City Hall, 22451 Highway 62. Monday through Friday, 8:00 AM to 5:00 PM

By mail:

P.O. Box 1210, Shady Cove, OR 97539

By fax:

541.878.2226

**Questions?**

Call City Hall at 541.878.2225 or send an email to the email as listed above.

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2/19/21

INITIALS

DMJ

The City of Shady Cove is an Equal Opportunity Provider.

**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, provided that it has been duly accepted by Avista, 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.~~

~~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.~~

**Commented [S Vincent1]:**  
Alternative language being proposed to alleviate the duplication in Section 2.2 and Section 8.10.

**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 as on the 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 or until either Party gives notice of termination for convenience, in which case this Franchise will terminate 180 days from such written notice (a) or 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.~~

### 2.52.4 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.

**Commented [S Vincent2]:**

Alternative language being proposed to alleviate the duplication in Definitions and Section 8.10.

**Formatted:** No bullets or numbering

**Commented [S Vincent3]:**

The Eagle Point franchise agreement includes the following section below immediately after the Non-Exclusive Franchise section. This language isn't necessary.

**Notice of City's Intent to Compete with Avista**

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

## 2.62.5 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.

### Commented [S Vincent4]:

The Eagle Point franchise requires Avista to notify the city prior to assignment, not the assignee. Avista will accept the requirement either way.

## 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-seven~~ percent (57%) 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. In consideration of Avista's agreement to the Franchise Fee, City recognizes and agrees that it shall not impose any other privilege tax, license fee, or other fee upon Avista for Avista's use of the Right-of-Way as contemplated by this Franchise.

### Commented [S Vincent5]:

This reflects what was agreed to with the City of Eagle Point. Further discussion.

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.

### Commented [S Vincent6]:

The Eagle Point franchise agreement included this more extensive section on inspections of books and records. Avista will add the simpler language back in – open for discussion.

## 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.

On an annual basis, no more frequently than every twelve (12) months, upon thirty (30) days prior written notice, the Grantor shall have the right to audit the books and records of Grantee to determine whether the Grantee has paid the franchise fees owed in accordance with generally accepted accounting principles. Grantee and Grantor agree to reasonably cooperate to complete the audit as soon as practicable. Any undisputed additional amounts due to the Grantor as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the Grantor, which notice shall include a copy of the audit findings. Reimbursements for underpayments as a result of audit findings are subject to late payment interest as set forth herein. In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, the Grantee, upon request from the Grantor, shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate, plus one percent (1%) during the period such unpaid amount is owed. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due. Notwithstanding the foregoing, in addition to the interest charges established herein, Grantee shall reimburse Grantor for the reasonable costs of audit (including third party auditors and Grantor's staff time), if such audit disclosed that Grantee has paid 95% or less of the franchise fees owing over the audited period.

## 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

#### Commented [S Vincent7]:

The Eagle Point franchise agreement included two additional subsections relating to franchise fees.

#### Late Payments to Grantor

Except as provided for payments due under Section 2.7.3 herein, City may assess any late franchise fees due under this Franchise at an annual interest rate of prime plus one percent (1%).

#### Tax Liability

Payment of Franchise Fees to City shall not be a credit against any license, occupation, business, privilege, or excise taxes of general applicability which City may now or hereafter legally impose upon Avista. Nothing contained in this Franchise shall give Avista any credit against utility fees or systems development charges imposed by City or any ad valorem property tax now or hereafter levied against real or personal property within City limits, or against any local improvement assessment, unless it can be considered Franchise Fees as defined by applicable law.

#### Commented [S Vincent8]:

The City of Eagle Point did not accept Avista's proposed language that the utility be given the opportunity to comment prior to the adoption of any new rule, procedure, etc. - therefore adding comment period back into Shady Cove franchise.

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

#### Commented [S Vincent9]:

The Eagle Point franchisee uses the word "necessary" in this instance.

#### Commented [S Vincent10]:

The Eagle Point franchises includes the word "actual".

#### Commented [S Vincent11]:

The City of Eagle Point did not accept Avista's language "including any consequential damages to third parties". However, it's unlikely any party, including a municipality, would not be found liable for third party damages stemming from an incident which was caused by said party.

#### Commented [S Vincent12]:

The Eagle Point franchise includes unnecessary language since [ORS 222.005](#) already outlines how a city must notify utilities of boundary changes. This other language is a legacy hold over when drafters may have been unaware of the statute.

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

#### Commented [S Vincent13]:

The Eagle Point franchise included unnecessary language in the second sentence of this section.

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.



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.

**Commented [S Vincent14]:**  
The Eagle Point franchise did not include this word "existing". This helps more clearly define what facilities would be subject to a vacated right of way.

## 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.

**Commented [S Vincent15]:**  
The Eagle Point franchise has a 120-day minimum notification requirement, Avista recommends a 90-day notification for Shady Cove.

**Commented [S Vincent16]:**  
The Eagle Point franchise does not require a consultation with the city prior to Avista determining it may need greater than 120 days to relocate facilities. Avista recommends this language in all future franchise agreements.

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.

**Commented [S Vincent17]:**  
The Eagle Point did not accept Avista's proposed language, however, Avista is addition this language into the Shady Cove franchise.

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.

**Commented [S Vincent18]:**  
The Eagle Point franchise included an additional paragraph no longer considered necessary.

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

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

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.

**Commented [S Vincent19]:**  
The Eagle Point franchise unintentionally included this language as a second paragraph of the Section 5.2; it needs to be a stand-alone section.

## **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, pandemic, epidemic, cyberattack, 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.

**Commented [S Vincent20]:**

New language commonly being added to Force Majeure clauses in contracts.

### 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.

**Commented [S Vincent21]:**

This severability section in Eagle Point franchise was only subject to Avista, however such a clause needs to be subject to both parties of a contract.

### 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.~~

**Commented [S Vincent22]:**  
Alternative language being proposed to alleviate the duplication in Definitions and Section 2.2

**8.128.10 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).