

TITLE 15
FRANCHISES

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STATE OF
MISSISSIPPI

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CHAPTER 1
GAS FRANCHISE

SECTION:

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15-1-1: **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 Wallace, a political subdivision of the State of Idaho and a Municipal corporation, and its respective successors and assigns.

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

DAYS: Means regular business days, including regular business hours.

- EFFECTIVE DATE:** Means the date of the approval, passage and publication of this chapter, 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, duties, obligations, privileges and authority embodied in this chapter.
- 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;
- A. 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
- B. 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.

C. Any other specifically designated City-owned property.

GAS: Means natural, manufactured, renewable and/or mixed gases.

MAINTENANCE, MAINTAINING, OR MAINTAIN: Means, without limit, repairing, replacing, upgrading, examining, testing, inspecting, and removing Avista facilities, vegetation management, digging and excavating, and restoration of affected right-of-way surfaces.

PARTIES: Means City and Avista collectively.

PARTY: Means either City or Avista individually.

PERSON: Means a business entity or natural person.

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.

STATES: Means the State of Idaho.

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. (Ord. 2019-01, 3-13-2019)

15-1-2: GRANT OF FRANCHISE:

- A. Grant: City hereby grants to Avista the right, duty, obligation, power, privilege and authority to enter upon all public or private property opened to the public including roads, rights-of-way, streets, avenues, alleys, highways, public places or structures, bridges, tunnels, City owned easements 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.

The City hereby grants to Avista, its successors and assigns, the right, duty, obligation, power, privilege, authority and franchise, to lay, locate, construct, install, own, maintain, repair, replace, renew, remove, extend, equip, operate and use facilities or otherwise acquire, and own plants and works, and all necessary, or desirable appurtenances thereto, for the purpose of the transmission, distribution and sale of gas, including but not limited to the right to operate a gas distribution system, in, under, upon, over, across and along the present and future public properties within the present or any, future corporate limits of the City for the purpose of transporting, distributing and selling gas (with the right and privilege to make such connections with said pipes as will enable Avista to supply gas) for heating, lighting, power and any and all domestic, commercial and industrial purposes and other reasons and purposes in the City and to the City and its inhabitants, persons, firms, corporations, associates, municipal corporations, or political sub-divisions of the State of Idaho therein.

- B. **Effective Date:** This chapter shall be effective as of the date of approval, passage and publication as required by law.
- C. **Term:** The rights, privileges and franchise granted to Avista will extend for a term of twenty five (25) years from the effective date, and shall continue year-to-year thereafter, until it is otherwise renewed for another twenty five (25) year term, or terminated by either party, with not less than one hundred eighty (180) days' prior written notice to the other party of said intent to terminate said franchise.
- D. **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.

This franchise shall in no manner prohibit the City from granting other franchises of a like nature or franchises to other public or private utilities under, along, across, over and upon any of the City's roads, rights-of-way, or other property of the City subject to this

franchise and shall in no way prevent or prohibit the City from constructing, altering, maintaining or using any of said roads, rights-of-way, drainage structures or facilities, irrigation structure or facilities, or any other property of the City or affect its jurisdiction over such property to make all necessary changes, relocations, repairs, maintenance, insofar as the City may deem fit.

- E. **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 one hundred eighty (180) days', including weekends and holidays, notice of such action.
- F. **Assignment Of Franchise:** Avista shall have the right to assign its rights, duties, obligations, power, privileges, authority and benefits under this franchise. Avista, its successors and assigns, shall have the right to sell, transfer or assign this franchise upon prior written notice to the City sixty (60) days in advance of the date of any proposed transfer, with assignee agreeing to 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, duties, obligations, power, privileges, authority and benefits and privileges in and under this franchise as security for indebtedness.

All provisions, conditions, terms, regulations and requirements herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

- G. **Franchise Taxes, Fees And Costs:** Avista shall pay all permitting, license fees, costs and/or utility privilege taxes which it might be required to pay in connection with the issuance, maintenance, existence, continuation, or use of this franchise, to the extent permitted by Federal, State law or City ordinance now in effect or enacted during the term of this franchise. The City reserves the right to designate the time and manner of payment of such fees, costs or taxes owed by Avista in connection with this franchise. To the extent that any franchise fees, taxes or other costs are imposed on Avista, City shall impose equivalent charges, fees, taxes or costs upon any other franchisee in a comparable business or otherwise competing with Avista.

- H. **Franchise Fee:** As compensation for the franchise granted by this chapter, Avista shall pay to the City an amount equal to one percent (1%) of the annual gross revenue collected by Avista from its customers for natural gas consumed within the City to be paid quarterly. Gross revenue will be computed by deducting from the total natural gas billings of Avista the total net write-off of uncollectible accounts. The City has the right to increase its franchise fee up to three percent (3%), by obtaining Avista's approval or the approval of a majority of the City voting on the question at an election held in accordance with chapter 4, title 50, Idaho Code. Any such vote to increase the franchise fee hereunder shall provide that the increased franchise fee will apply to any natural gas service provider (other than the City), who utilizes the City's right-of-way to provide natural gas service within the City, during the term of this franchise. If grantee fails to pay the franchise fee to the City within thirty (30) days of the end of each calendar quarter, grantee shall pay a penalty in the amount of five percent (5%) of the amount due. (Ord. 2019-01, 3-13-2019)

15-1-3: AVISTA'S OPERATIONS AND MAINTENANCE:

- A. **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 (30) days. Service shall be supplied to the City and its inhabitants in accordance with Avista's rules and regulations and tariffs currently or subsequently filed with and approved by the commission.
- B. **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.

- C. **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 health, safety and welfare. Avista or its agents may accordingly reasonably remove or limit the growth of vegetation which encroaches upon its gas transmission and distribution corridors within the franchise area.
- D. **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 reasonably 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.

Whenever Avista, its successors or assigns shall excavate in or obstruct any of the streets, alleys or rights-of-way of the City for the purposes aforesaid, the street(s), alley(s), or right-of-way surface shall be reasonably restored, by Avista and to standards mutually agreed upon by the City and Avista, as soon as feasible after work is completed.

- E. **Emergency Work:** In the event of an emergency requiring immediate action by Avista to protect the public health, safety and welfare, 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.

- F. **Non-Interference With Existing Facilities:** 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, relocation or maintenance of the Avista facilities, lines and appurtenances performed by Avista in, upon, over, under, along, and across the franchise area subject to this franchise shall be done in such a manner as not to interfere with the construction and maintenance of other utilities, public or private, drains, drainage ditches and structures, irrigation ditches and structures located therein, nor with the grading or improvement of such roads, rights-of-way or other public property, or property open to the public subject to this franchise.
- G. **Notice Of Intent To Cut:** If it should become necessary for Avista to cut or trim trees, bushes, foliage or such other vegetation written notification of intent to cut or trim vegetation shall be given to the City prior to said cutting and/or trimming; however, in the event of an emergency situation in which there is neither time nor the opportunity for Avista to notify the City and in which the public's health, safety and welfare are affected, Avista may cut and trim vegetation without prior notice to the City. Avista agrees to provide the City with written notice of the cutting and trimming of vegetation as soon as possible following said emergency cutting and/or trimming.
- H. **Supervision:** Whenever deemed necessary by the proper City authorities, the City shall have the right to appoint its engineer or a competent and experienced person to be Superintendent and supervise the refilling or excavation made, and the expense of replacing or repairing of the portion of the public properties disturbed in the construction, installation, maintenance, repair or removal of Avista's gas system or facilities shall be at the expense of Avista.
- I. **Failure, Refusal To Restore:** Should Avista fail or refuse to restore, replace, repair or remove any of its gas system or facilities, or any City property, streets, roads, rights-of-way, other City property, or private property opened to the public to at least the same condition as existed immediately prior to excavation of such public and private properties within a reasonable period after completion of Avista's construction, laying, removing, installing, operating or maintenance the same may be restored by the City at the expense of Avista, upon presentation to Avista with reasonable documentation verifying the expenditures incurred. (Ord. 2019-01, 3-13-2019)

15-1-4: RESERVATION OF CITY'S RIGHTS AND POWERS:

- A. **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 the 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, other public property, or private property opened to the public covered by this franchise. Nothing in the terms of this franchise shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain granted to it under the laws of this State.
- B. **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, its contractors, or sub-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, 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.
- The prior notice requirement of this subsection shall not apply with regard to normal street maintenance, including but not limited to necessary plowing and incidental construction or maintenance not otherwise affecting Avista's facilities.
- C. **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.
- D. **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.

- E. **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, safety and welfare. Avista shall not be required to remove, or pay for the removal of facilities it has previously abandoned to another franchisee, or utility under a joint use agreement, or person granted permission to access Avista's facilities, provided that Avista shall provide the City with notice of those facilities it intends to abandon.
- F. **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. (Ord. 2019-01, 3-13-2019)

15-1-5: RELOCATION OF AVISTA'S FACILITIES:

- A. **Relocation Of Facilities Requested By City:** Upon written request by 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 written 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 the City's existing public rights-of-way then the City shall make a reasonable effort to accommodate said relocation on alternative rights-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 written 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 by the parties.

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 in accordance with subsection B of this section.

- B. Relocation Of Facilities Requested By Third Parties: City acknowledges that Avista is obligated to provide gas services 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.

- C. 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, including but not limited to attorney's fees and costs associated with obtaining such funds. (Ord. 2019-01, 3-13-2019)

15-1-6: INDEMNITY:

- A. Indemnification Of City: Avista agrees to defend, indemnify and hold harmless the City, its appointed and elected or appointed officials and employees, representatives or agents, from any and all liabilities, claims, causes of action, losses, injuries, damages and expenses, including costs and reasonable attorney's fees, that the City may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of Avista, its officers, employees or agents, contractors, and/or sub-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, injuries and/or losses were caused by or result from the negligence of the

City, elected or appointed officials and/or employees, representatives or agents.

- B. **Indemnification Of Avista:** To the extent permitted by law, City agrees to defend, indemnify and hold harmless Avista, its officers and employees, representatives or agents, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's 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 officials and employees or agents, contractors, and/or sub-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, injuries, and/or losses and so forth were caused by or result from the negligence of Avista, its officers, and/or employees, representatives, or agents. (Ord. 2019-01, 3-13-2019)

15-1-7: FRANCHISE DISPUTE RESOLUTION:

- A. **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 and terminating this franchise.
- B. **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. Costs of said dispute resolution process shall be divided equally among the participating parties, with each party paying their own attorney's fees and costs incurred.

- C. **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 subsection D of this section. Any litigation between the City and Avista arising under or regarding this franchise shall occur, if in the State Court in Shoshone County, in a court of competent jurisdiction, and if in the Federal Courts, in the United States District Court for the District of Idaho in Coeur d'Alene, Idaho.
- D. **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. (Ord. 2019-01, 3-13-2019)

15-1-8: GENERAL PROVISIONS:

- A. **Forfeiture, Breach, Default:** If Avista shall knowingly or intentionally violate or fail to comply, breach or default in the terms or any of the provisions of this franchise through willful failure to heed or comply with any of the terms, conditions or requirements set forth herein given to Avista under the provisions of this grant, then Avista shall forfeit all rights conferred hereunder and this franchise shall be revoked or annulled by the City; provided, however, the City shall give one hundred eighty (180) days', including weekends and holidays, prior written notice of its intention to revoke, annul or otherwise terminate this franchise during which period Avista shall have a reasonable opportunity to remedy any breach, failure to comply or default.
- B. **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.
- C. **Force Majeure:** In the event that Avista is delayed in or prevented from the performance of any of its obligations under this 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 which could not be avoided by the exercise of reasonable due care

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.

- D. **Remedies To Enforce Compliance:** In addition to other remedies provided herein, the City reserves the right to pursue any remedy to compel or enforce Avista, its successor or assigns, to comply with the terms hereof and to furnish the service herein called for, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture for any reason herein stated.
- E. **Reservations:** The City reserves the right to adopt and enforce all necessary ordinances to control the performance of the conditions of this franchise, including but not limited to, reasonable ordinances of a police nature in the exercise of its police powers in the interest of the public health, safety and welfare. The City shall have access at all reasonable times to any part of the plant, plants, facilities, operations and premises, of Avista to make inspections and tests that may be required in supervising the fulfillment by Avista of the terms of this franchise in accordance with all jurisdictional laws, standards, operating procedures, and safety requirements.
- F. **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 the City, and shall affirm, authorize and ratify all prior installations authorized by permits or other actions 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.
- G. **Severability:** The franchise is granted pursuant to the laws of the State of Idaho relating to the granting of such rights and privileges by the 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.

- H. **Changes Or Amendments:** Changes or amendments to this franchise shall be in writing signed by both parties and shall not be effective until lawfully adopted and published in the local newspaper of general circulation by the City and agreed to by Avista.
- I. **Supremacy And Governing Law:** This agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Idaho. In the event of any conflict between this franchise and any City ordinance, regulation or permit, the provisions of 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.
- J. **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.
- K. **Acceptance Of Franchise:** Avista shall, within thirty (30) days after passage of this chapter, file with the City Clerk, its acceptance of the terms and conditions of this franchise.
- L. **Abandonment Or Suspension Of Franchise Rights And Obligations:** Avista may at any time abandon the rights and authorities granted hereunder, provided that one hundred eighty (180) days', including weekends and holidays, prior written notice of intention to abandon is given to City. In addition, pursuant to subsection I of this section 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 one hundred eighty (180) days', including weekends and holidays, notice to the City.
- M. **Binding Upon Successors And Assigns:** All rights and privileges granted and duties, obligations imposed by this franchise upon Avista shall extend to and be binding upon its successors, receivers, liquidators and/or assigns.
- N. **Strict Performance:** The failure of the City to insist upon strict performance of any of the covenants and conditions of this franchise, or its exercise of any option herein conferred in any one or all instances shall not be construed to be a waiver or relinquishment of any such covenant or condition, but the same shall be and remain in full force and effect, unless such waiver is evidenced by the prior written consent of the City.

- O. Franchise Effective Date: This chapter shall take full force and effect upon its passage, approval, and publication in one issue of the Shoshone News-Press, a newspaper of general circulation within the County of Shoshone and is the official newspaper thereof, and provided that it has been duly accepted by Avista as specified above. (Ord. 2019-01, 3-13-2019)

CHAPTER 2
ELECTRIC FRANCHISE

SECTION:

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

DAYS: Means regular business days, including regular business hours.

- EFFECTIVE DATE:** Means the date of the approval, passage and publication of this chapter, 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 electric transmission, and distribution systems and appurtenances owned by Avista, now and in the future in the franchise area, including but not limited to poles, towers, overhead and underground wires and cables, conduits, services, vaults, transformers, meters, meter-reading devices, fences, vehicular protection devices, communication and control systems and other equipment, appliances, fixtures, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing for the purposes of transmission, distribution, and control of electricity, whether the same be located above or below ground.
- FRANCHISE:** Means the grant by the City of rights, duties, obligations, privileges and authority embodied in this chapter.
- 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;
- A. 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
- B. 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.

C. Any other specifically designated City-owned property.

**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 Idaho.

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. (Ord. 2019-02, 3-13-2019)

15-2-2: GRANT OF FRANCHISE:

- A. Grant: City hereby grants to Avista the right, duty, obligation, power, privilege and authority to enter upon all public or private property opened to the public including roads, rights-of-way, streets, avenues, alleys, highways, public places or structures, bridges, tunnels, City owned easements lying within the franchise area to locate, construct, operate and maintain its facilities for the purpose of controlling,

transmitting and distributing electricity, as may be necessary to provide electric service to customers within the franchise area.

The City hereby grants to Avista, its successors and assigns, the right, duty, obligation, power, privilege, authority and franchise, to lay, locate, construct, install, own, maintain, repair, replace, renew, remove, extend, equip, operate and use facilities or otherwise acquire, and own plants and works, and all necessary, or desirable appurtenances thereto, for the purpose of the transmission, distribution and sale of electricity, including but not limited to the right to operate an electric distribution system, in, under, upon, over, across and along the present and future public properties within the present or any, future corporate limits of the City for the purpose of transporting, distributing and selling electricity (with the right and privilege to make such connections with said wires as will enable Avista to supply electricity) for heating, lighting, power and any and all domestic, commercial and industrial purposes and other reasons and purposes in the City and to the City and its inhabitants, persons, firms, corporations, associates, municipal corporations, or political sub-divisions of the State of Idaho therein.

- B. **Effective Date:** This chapter shall be effective as of the date of approval, passage and publication as required by law.
- C. **Term:** The rights, privileges and franchise granted to Avista will extend for a term of twenty five (25) years from the effective date, and shall continue year-to-year thereafter, until it is otherwise renewed for another twenty five (25) year term, or terminated by either party, with not less than one hundred eighty (180) days' prior written notice to the other party of said intent to terminate said franchise.
- D. **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 an electric 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.

This franchise shall in no manner prohibit the City from granting other franchises of a like nature or franchises to other public or private utilities under, along, across, over and upon any of the City's roads, rights-of-way, or other property of the City subject to this franchise and shall in no way prevent or prohibit the City from

constructing, altering, maintaining or using any of said roads, rights-of-way, drainage structures or facilities, irrigation structure or facilities, or any other property of the City or affect its jurisdiction over such property to make all necessary changes, relocations, repairs, maintenance, insofar as the City may deem fit.

- E. **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 electric service during the life of this franchise or any extension of this franchise, in competition with Avista, the City will provide Avista with one hundred eighty (180) days', including weekends and holidays, notice of such action.
- F. **Assignment Of Franchise:** Avista shall have the right to assign its rights, duties, obligations, power, privileges, authority and benefits under this franchise. Avista, its successors and assigns, shall have the right to sell, transfer or assign this franchise upon prior written notice to the City sixty (60) days in advance of the date of any proposed transfer, with assignee agreeing to 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, duties, obligations, power, authority and benefits and privileges in and under this franchise as security for indebtedness.

All provisions, conditions, terms, regulations and requirements herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

- G. **Franchise Taxes, Fees And Costs:** Avista shall pay all permitting, license fees, costs and/or utility privilege taxes which it might be required to pay in connection with the issuance, maintenance, existence, continuation, or use of this franchise, to the extent permitted by Federal law or City ordinance now in effect or enacted during the term of this franchise. The City reserves the right to designate the time and manner of payment of such fees, costs or taxes owed by Avista in connection with this franchise. To the extent that any franchise fees, taxes or other costs are imposed on Avista, City shall impose equivalent charges, fees, taxes or costs upon any other franchisee in a comparable business or otherwise competing with Avista.
- H. **Franchise Fee:** The City shall have the right during the term of this franchise to unilaterally impose a one percent (1%) franchise fee for

this franchise. Said "franchise fee" shall be defined as: Avista shall pay to the City a sum equal to one percent (1%) of its gross operating revenue, which are hereby defined to mean all amounts of money which Avista receives or becomes lawfully entitled to less uncollectables for the sale of electricity within the City. The City also has the right to increase its franchise fee up to three percent (3%), by obtaining approval of a majority of votes of the City voting on the question at an election held in accordance with chapter 4, title 50, Idaho Code. Any such vote to increase the franchise fee hereunder shall provide that the increased franchise fee will apply to any electric service provider (other than the City) who utilizes the City's streets, alleys or other public places to improve electric service within the City, during the term of this franchise. (Ord. 2019-02, 3-13-2019)

15-2-3: AVISTA'S OPERATIONS AND MAINTENANCE:

- A. **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 (30) days. Service shall be supplied to the City and its inhabitants in accordance with Avista's rules and regulations and tariffs currently or subsequently filed with and approved by the commission.
- B. **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.

- C. **Vegetation Management - Trimming/Removal Of Trees:** State law requires electric utilities to comply with the National Electric Safety Code, including the guidance in the code for the trimming or removal of vegetation interfering or potentially interfering with energized power lines. The right of Avista to maintain its facilities and appurtenances under this franchise shall accordingly include the right, as exercised in Avista's professional discretion, to utilize an integrated vegetation management program to minimize the likelihood that vegetation encroaching (either above or below the ground) on Avista's facilities can lead to power outages and other threats to public safety and welfare. Avista or its agents may, without recourse or payment of compensation, inhibit the growth of, prune, or remove any trees and vegetation which overhangs or encroaches upon its facilities and/or electric transmission and distribution corridors within the franchise area, whether such trees or vegetation originate within or outside of the right-of-way. Nothing contained in this section shall prevent Avista, when necessary from pruning or removing any trees which overhang the franchise area and may interfere with Avista's facilities.
- D. **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 reasonably 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.

Whenever Avista, its successors or assigns shall excavate in or obstruct any of the streets, alleys or rights-of-way of the City for the purposes aforesaid, the street(s), alley(s), or right-of-way surface shall be reasonably restored, by Avista and to standards mutually agreed upon by the City and Avista, as soon as feasible after work is completed.

- E. **Emergency Work:** In the event of an emergency requiring immediate action by Avista to protect the public health, safety and welfare, 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.
- F. **Non-Interference With Existing Facilities:** Avista shall have the discretion to determine the placement of its facilities as may be necessary to provide safe and reliable electric service within the franchise area, subject to the following non-interference requirements. All construction, installation, repair, relocation or maintenance of the Avista facilities, lines and appurtenances performed by Avista in, upon, over, under, along, and across the franchise area subject to this franchise shall be done in such a manner as not to interfere with the construction and maintenance of other utilities, public or private, drains, drainage ditches and structures, irrigation ditches and structures located therein, nor with the grading or improvement of such roads, rights-of-way or other public property, or property open to the public subject to this franchise.
- G. **Notice Of Intent To Cut:** If it should become necessary for Avista to cut or trim trees, bushes, foliage or such other vegetation written notification of intent to cut or trim vegetation shall be given to the City prior to said cutting and/or trimming; however, in the event of an emergency situation in which there is neither time nor the opportunity for Avista to notify the City and in which the public's health, safety and welfare are affected, Avista may cut and trim vegetation without prior notice to the City. Avista agrees to provide the City with written notice of the cutting and trimming of vegetation as soon as possible following said emergency cutting and/or trimming.
- H. **Supervision:** Whenever deemed necessary by the proper City authorities, the City shall have the right to appoint its engineer or a competent and experienced person to be Superintendent and supervise the refilling or excavation made, and the expense of replacing or repairing of the portion of the public properties disturbed in the construction, installation, maintenance, repair or removal of Avista's electric system or facilities shall be at the expense of Avista.
- I. **Failure, Refusal To Restore:** Should Avista fail or refuse to restore, replace, repair or remove any of its electric system or facilities, or any City property, streets, roads, rights-of-way, other City property, or private property opened to the public to at least the same condition as existed immediately prior to excavation of such public and

private properties within a reasonable period after completion of Avista's construction, laying, removing, installing, operating or maintenance the same may be restored by the City at the expense of Avista, upon presentation to Avista with reasonable documentation verifying the expenditures incurred. (Ord. 2019-02, 3-13-2019)

15-2-4: RESERVATION OF CITY'S RIGHTS AND POWERS:

- A. **Reservation Of Right:** The City, in granting this franchise, does not waive any rights which it may now have or may subsequently acquire with respect to road rights-of-way or other property of the 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, other public property, or private property opened to the public covered by this franchise. Nothing in the terms of this franchise shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain granted to it under the laws of this State.
- B. **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, its contractors, or sub-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, 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.
- The prior notice requirement of this subsection shall not apply with regard to normal street maintenance, including but not limited to necessary plowing and incidental construction or maintenance not otherwise affecting Avista's facilities.
- C. **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.
- D. **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.

- E. **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, safety and welfare. Avista shall not be required to remove, or pay for the removal of facilities it has previously abandoned to another franchisee, or utility under a joint use agreement, or person granted permission to access Avista's facilities, provided that Avista shall provide the City with notice of those facilities that it intends to abandon.
- F. **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.
- G. **Pole Attachments By City:** City shall be permitted, upon reasonable notice to Avista to attach its traffic control, fire and police communications signal cables to Avista's poles in the franchise area, provided that the City signs and meets all conditions of a Joint Use Master License Agreement ("Joint Use Agreement") with Avista. Per the Joint Use Agreement, Avista will not charge a pole rental fee for City's non-revenue producing pole attachments that are dedicated for the public's benefit. All pole attachments by the City are at the City's own risk and must be attached in strict accordance with standard safety practices, codes and Avista specifications.

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

operation or repair of Avista's facilities and appurtenances. City assumes all responsibility for the installation and maintenance of City's facilities installed on Avista's facilities. (Ord. 2019-02, 3-13-2019)

15-2-5: RELOCATION OF AVISTA'S FACILITIES:

- A. **Relocation Of Facilities Requested By City:** Upon written request by 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 written 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 the City's existing public rights-of-way then the City shall make a reasonable effort to accommodate said relocation on alternative rights-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 written 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 by the parties.

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 in accordance with subsection B of this section.

- B. **Relocation Of Facilities Requested By Third Parties:** City acknowledges that Avista is obligated to provide electric service and related line extension, relocation or conversion of facilities for the benefit of its customers and to require compensation for such services on a non-preferential basis in accordance with applicable tariffs.

If facilities are to be relocated at the request of or for the primary benefit of a third party, 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.

- C. **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, including but not limited to attorney's fees and costs associated with obtaining such funds.
- D. **Temporary Relocation Of Facilities Requested By Third Parties:** At the request of any person holding a valid permit or other written permission from the City, and upon reasonable advance notice and payment by the permit holder of Avista's expenses of such temporary change, Avista will temporarily raise, lower or remove its facilities as necessary to accommodate a permittee of the City desiring to move over-sized structures or equipment along or across the right-of-way in the franchise area.
- E. **Conversion Of Electric Distribution Facilities:** City, subject to applicable laws, rules, regulations and tariffs, may request that Avista convert from above ground to below ground wires, for the distribution of electricity underground after joint review with Avista and mutual agreement that such installation is feasible, practical and required for the public interest and safety. The incremental cost of such conversion of existing facilities shall be borne and paid by the City or other party requesting the same, subject to law and such rules, regulations, and tariffs of the commission. It is expressly agreed by both parties that this subsection E does not apply to any conversion of transmission (69 kilovolt or above) infrastructure. (Ord. 2019-02, 3-13-2019)

15-2-6: INDEMNITY:

- A. **Indemnification Of City:** Avista agrees to defend, indemnify and hold harmless the City, its appointed and elected or appointed officials and employees, representatives or agents, from any and all liabilities, claims, causes of action, losses, injuries, damages and expenses, including costs and reasonable attorney's fees, that the City may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of Avista, its officers, employees or agents, contractors, and/or sub-

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, injuries and/or losses were caused by or result from the negligence of the City, elected or appointed officials and/or employees, representatives or agents.

- B. **Indemnification Of Avista:** To the extent permitted by law, City agrees to defend, indemnify and hold harmless Avista, its officers and employees, representatives and agents from any and all liabilities, claims, causes of action, losses, injuries, damages and expenses, including costs and reasonable attorney's 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 officials and employees or agents, contractors, and/or sub-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, injuries, and/or losses and so forth were caused by or result from the negligence of Avista, its officers, and/or employees, representatives, or agents. (Ord. 2019-02, 3-13-2019)

15-2-7: FRANCHISE DISPUTE RESOLUTION:

- A. **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 and terminating this franchise.
- B. **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. Costs of said dispute resolution process shall be divided

equally among the participating parties, with each party paying their own attorney's fees and costs incurred.

- C. **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 subsection D of this section. Any litigation between the City and Avista arising under or regarding this franchise shall occur, if in the State Court in Shoshone County, in a court of competent jurisdiction, and if in the Federal Courts, in the United States District Court for the District of Idaho in Coeur d'Alene, Idaho.
- D. **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. (Ord. 2019-02, 3-13-2019)

15-2-8: GENERAL PROVISIONS:

- A. **Forfeiture, Breach, Default:** If Avista shall knowingly or intentionally violate or fail to comply, breach or default in the terms or any of the provisions of this franchise through willful failure to heed or comply with any of the terms, conditions or requirements set forth herein given to Avista under the provisions of this grant, then Avista shall forfeit all rights conferred hereunder and this franchise shall be revoked or annulled by the City; provided, however, the City shall give one hundred eighty (180) days', including weekends and holidays, prior written notice of its intention to revoke, annul or otherwise terminate this franchise during which period Avista shall have a reasonable opportunity to remedy any breach, failure to comply or default.
- B. **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.
- C. **Force Majeure:** In the event that Avista is delayed in or prevented from the performance of any of its obligations under this 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 which could not be avoided by the exercise of reasonable due care 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.

- D. Remedies To Enforce Compliance: In addition to other remedies provided herein, the City reserves the right to pursue any remedy to compel or enforce Avista, its successor or assigns, to comply with the terms hereof and to furnish the service herein called for, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture for any reason herein stated.
- E. Reservations: The City reserves the right to adopt and enforce all necessary ordinances to control the performance of the conditions of this franchise, including but not limited to, reasonable ordinances of a police nature in the exercise of its police powers in the interest of the public health, safety and welfare. The City shall have access at all reasonable times to any part of the plant, plants, facilities, operations and premises, of Avista to make inspections and tests that may be required in supervising the fulfillment by Avista of the terms of this franchise in accordance with all jurisdictional laws, standards, operating procedures, and safety requirements.
- F. Prior Franchises Superseded: As of the effective date this franchise shall supersede all prior electric franchises for the franchise area previously granted to Avista or its predecessors by the City, and shall affirm, authorize and ratify all prior installations authorized by permits or other actions 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.
- G. Severability: The franchise is granted pursuant to the laws of the State of Idaho relating to the granting of such rights and privileges by the 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.

- H. **Changes Or Amendments:** Changes or amendments to this franchise shall be in writing signed by both parties and shall not be effective until lawfully adopted and published in the local newspaper of general circulation by the City and agreed to by Avista.
- I. **Supremacy And Governing Law:** This agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Idaho. In the event of any conflict between this franchise and any City ordinance, regulation or permit, the provisions of 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.
- J. **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.
- K. **Acceptance Of Franchise:** Avista shall, within thirty (30) days after passage of this chapter, file with the City Clerk, its acceptance of the terms and conditions of this franchise.
- L. **Abandonment Or Suspension Of Franchise Rights And Obligations:** Avista may at any time abandon the rights and authorities granted hereunder, provided that one hundred eighty (180) days', including weekends and holidays, prior written notice of intention to abandon is given to City. In addition, pursuant to subsection I of this section 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 one hundred eighty (180) days', including weekends and holidays, notice to the City.
- M. **Binding Upon Successors And Assigns:** All rights and privileges granted and duties, obligations imposed by this franchise upon Avista shall extend to and be binding upon its successors, receivers, liquidators and/or assigns.
- N. **Strict Performance:** The failure of the City to insist upon strict performance of any of the covenants and conditions of this franchise, or its exercise of any option herein conferred in any one or all instances shall not be construed to be a waiver or relinquishment of any such covenant or condition, but the same shall be and remain in

full force and effect, unless such waiver is evidenced by the prior written consent of the City.

- O. Franchise Effective Date: This chapter shall take full force and effect upon its passage, approval, and in one issue of the Shoshone News-Press, a newspaper of general circulation within the County of Shoshone and is the official newspaper thereof, and provided that it has been duly accepted by Avista as specified above. (Ord. 2019-02, 3-13-2019)

CHAPTER 3
WATER FRANCHISE

SECTION:

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- 15-3-14: Remedies To Enforce Compliance
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- 15-3-18: Assignment
- 15-3-19: Acceptance
- 15-3-20: Validity
- 15-3-21: Effective Date

15-3-1: **DEFINITIONS:** The following definitions are provided for the sole purpose of proper interpretation and administration of this Chapter:

CONSUMER: Any person, persons, firm, association, Municipal corporation, and/or corporation, that uses water or electric power supplied by Grantee for residential, commercial, industrial, Municipal or other purposes.

DISTRIBUTION SYSTEMS:

The water distribution system and the electric power distribution system, or either of said systems, as the context of this Chapter shall require or as shall be appropriate thereto.

ELECTRIC POWER DISTRIBUTION SYSTEM:

A system poles, wires, conduits, cables and other appliance necessary for an electric light system in the City, including all parts thereof and all attachments and appurtenances, or facilities necessary or incidental thereto or in any way appertaining to the distribution of electric power therein for domestic, commercial, Municipal lighting or other appropriate purposes.

MAINTENANCE, MAINTAINING OR MAINTAIN:

Relaying, repairing, replacing, examining, testing, inspection, removing, digging and excavating, and restoring operations incidental to said distribution systems.

PUBLIC PROPERTIES:

Streets, alleys, sidewalks, curbs, roads, highways, avenues, thoroughfares, parkways, bridges, viaducts, public grounds, public improvements, and other public places within the corporate limits of the City.

WATER DISTRIBUTION SYSTEM:

A system of waterworks in the City including all parts thereof and all attachments and appurtenances or facilities necessary or incidental thereto or in any way appertaining to the distribution of water therein for domestic, commercial, fire prevention, Municipal or other appropriate purposes. (Ord. 474, 10-13-1981)

15-3-2: GRANT: The City of Wallace, in Shoshone County, Idaho (hereinafter called the "City" or "Grantor"), grants to the Citizens Utilities Company, a corporation, qualified to do business in Idaho (hereinafter called Grantee), and its successors and assigns, the right, privilege, authority and franchise to construct, or otherwise acquire, and to own, maintain, equip, and operate said distribution systems, and all necessary or desirable appurtenances, including the right to construct, lay, maintain, operate, extend, renew, remove, replace, repair, use and operate said distribution systems, in, under, upon, over, across and along the present and future public properties within the present or any future

corporate limits of the City for the purpose of operating said distribution systems, and for other appropriate reasons and purposes in the City for the benefit of the City and its inhabitants, and persons, firms, associations, Municipal corporations, and corporations therein. (Ord. 474, 10-13-1981)

15-3-3: TERM: The rights, privileges, and franchises hereby granted to, and conferred upon, the Grantee, shall, unless said franchises be sooner terminated as herein provided, extend for a term of twenty five (25) years from the date of enactment hereof. (Ord. 474, 10-13-1981)

15-3-4: CONSTRUCTION:

- A. **Compliance:** Grantee shall comply with all valid ordinances of the City relating to construction, excavation, and the breaking, opening and closing of ground in public streets and properties or to placing facilities over the same.
- B. **Prior Right Of City:** The City shall have prior right to the use of its streets and alleys for the installation and maintenance of City-owned facilities.
- C. **Precautions:** Whenever the Grantee shall make or cause to be made excavations or shall place obstructions in public property of the City, Grantee shall exercise reasonable precaution to protect the public therefrom; provided, however, that Grantee shall be amenable to the general and special laws of the State as are in such cases made and provided.
- D. **Repairs; Restoration:** The Grantee shall repair and restore to as good or better condition all public and private properties disturbed during the construction, maintenance, repairing or removal of its distribution systems and shall so maintain for a period of five (5) years following completion of construction of said systems.
- E. **Supervision:** Whenever deemed necessary by the proper City authorities, the City shall have the right to appoint its engineer or a competent and experienced person to superintend and supervise the refilling of excavations made, and the expense of such supervision, replacing and repairing of the portion of the public properties disturbed in the construction, installing, operation and maintenance of Grantee's distribution systems shall be at the expense of the Grantee.

F. **Failure, Refusal To Restore:** Should Grantee fail or refuse to restore and replace the same to as good or better condition of such public and private properties within a reasonable period after completion of Grantee's construction, installing, removal, operating and maintaining work, the same may be restored by the City at the expense of the Grantee. (Ord. 474, 10-13-1981; amd. 2000 Code)

15-3-5: PUBLIC PROPERTIES AND STATE HIGHWAYS: If public properties other than highways within the corporate limits of the City form a part of the route of a State highway, the Grantee shall determine the requirements of the State and take them into account with respect to the use thereof by the Grantee. (Ord. 474, 10-13-1981)

15-3-6: RIGHT OF INGRESS AND EGRESS BY GRANTEE TO CONSUMER: The Grantee, its agents, servants, and employees shall have the right and power to require of every consumer a contractual right to ingress and egress upon, and from, any and all consumer's properties for the purpose of installing, servicing, moving, changing and testing, examining, or inspecting the connecting pipes, pipe lines, laterals, wires, conduits, poles or other facilities, if, as and when the Grantee chooses. (Ord. 474, 10-13-1981)

15-3-7: RULES AND REGULATIONS OF GRANTEE: The Grantee shall have the right and authority to make and establish from time to time as the Grantee shall elect, reasonable rules and regulations for the conduct of the Grantee's business, and with reference the operation of its distribution systems within the City and to prescribe the forms of application and contracts to be executed by applicants and/or consumers before they shall be entitled to receive service from the Grantee. Provided, that the Grantee shall file with the Clerk of the City, if requested by the City, a copy of such rules and regulations and any amendments thereto as filed with the Idaho Public Utilities Commission. (Ord. 474, 10-13-1981)

15-3-8: RECORDS OF LOCATION OF FACILITIES: The Grantee shall at all times keep full and complete records showing the location of all parts of its distribution systems constructed in the City. Such records shall be available to the City at all reasonable times upon request therefor. (Ord. 474, 10-13-1981)

15-3-9: MOVING OF FACILITIES BY GRANTEE: If the City should pave or otherwise improve public properties, including drainage facilities relocate the same, or change the grade thereof, and such work should require the relocation or moving of any portion of the distribution systems of the Grantee, the same, including relocating or readjusting the elevations or location of its lines and facilities to conform to such new grades as may be established or changed locations, shall be done expeditiously by the Grantee and its successors and assigns at its own expense. All work to be performed by the Grantee under this Section shall be performed as may be required by the terms of this franchise with reference to construction. (Ord. 474, 10-13-1981)

15-3-10: SERVICE TO BE FURNISHED: At all times during the term of this franchise, the Grantee, subject to its rules and regulations as filed with the Idaho Public utilities Commission, and subject to available supplies, shall promptly and without discrimination furnish an adequate service to the Grantor and its successors and to its inhabitants and persons and corporations thereof who request the same, and shall require, construct, maintain, equip, and operate all necessary facilities for the proper functioning of said distribution systems for the benefit and convenience of the City and its inhabitants. (Ord. 474, 10-13-1981)

15-3-11: GRANTEE TO SAVE CITY HARMLESS: The Grantee by its acceptance hereof for itself, its successors and assigns agrees with the City to protect and save harmless the City from all claims, actions, suits, liability losses, expenses, or damages of every kind and description which may occur or accrue to, or be suffered by any person or persons, corporations, or property by reason of the ownership, construction operation and maintenance of the Grantee's distribution systems, lines and facilities, except such as may result from the fault or negligence of the City or its employees. In case suit or action is brought against the City for damages arising out of, or by reason of, the above mentioned causes, the Grantee will, upon notice to it of the commencement of said action, defend the same at its sole cost and expense, and in case judgment shall be rendered against the City in suit or action, the Grantee will fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined if determined adversely to the City. Upon the Grantee's failure to satisfy said judgment within the ninety (90) day period, said franchise shall at once cease and terminate. (Ord. 474, 10-13-1981)

15-3-12: **RESERVATIONS:** The City reserves the right to adopt and enforce all necessary ordinances to control the performance of the conditions of this franchise, including reasonable ordinances of a public nature in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have access at all reasonable times to any part of the plant, or plants, facilities, operations and premises of the Grantee to make inspections and tests that may be required in supervising the fulfillment by the Grantee of the terms of this franchise. (Ord. 474, 10-13-1981)

15-3-13: **FORFEITURE:** In case of failure by reason of negligence or wilful act on the part of the Grantee, its successors and assigns to comply with any of the provisions of this Chapter, or if the Grantee, its successors and assigns, negligently or wilfully do or cause to be done any act or thing prohibited by, or in violation of the terms of this franchise, the Grantee, its successors and assigns shall forfeit all rights and privileges granted by this Chapter for the distribution system involved and all rights thereunder shall cease unless such noncompliance or prohibited act or thing is corrected within thirty (30) days after receipt of written notice of forfeiture directed to the Grantee, at its Wallace, Idaho, office by United States mail. In the event the rights and privileges hereby granted are not diligently exercised in the public interest or in the event the Grantee shall fail for a period of one month to operate its distribution systems, except in case of the destruction of the same by fire or the elements or for any other reasons beyond the control of the Grantee, this franchise shall terminate as to the distribution systems involved and all of the rights and privileges granted hereunder shall cease and determine. Provided, that the Grantee shall have the right temporarily to discontinue operation of said distribution systems or any part thereof for the purpose of making repairs or extension and shall not be liable to a forfeiture therefor if such repairs or extensions are made with reasonable diligence. When the Grantee may reasonably do so, it shall give notice of the discontinuance of service either in writing, properly addressed to the consumer or by notice in the official newspaper of the City, or by telephone or other communications. (Ord. 474, 10-13-1981)

15-3-14: **REMEDIES TO ENFORCE COMPLIANCE:** In addition to other remedies provided herein, the Grantor reserves and has the right to pursue any remedy to compel or enforce the Grantee, its successors and assigns to comply with the terms hereof and to furnish the service herein called for, and the pursuit of any right or remedy by the City

shall not prevent the City from thereafter declaring a forfeiture for any reason herein stated. (Ord. 474, 10-13-1981)

15-3-15: REMOVAL OF FACILITIES: In the event the City declares this franchise, in whole or in part, to be forfeited, or upon its termination, and if it is not renewed, the City may require the Grantee or its successors and assigns to remove such of its facilities from the public properties at its own expense as may interfere with use of the City streets, alleys or other public properties, and if it becomes necessary for the City to do so, the City shall be paid for the reasonable cost of such removal by the Grantee. (Ord. 474, 10-13-1981)

15-3-16: BINDING UPON SUCCESSORS AND ASSIGNS: All rights and privileges granted and duties imposed by this Chapter upon the Grantee shall extend to, and be binding upon, its successors, receivers, liquidators, and/or assigns. (Ord. 474, 10-13-1981)

15-3-17: NOT EXCLUSIVE: This Chapter shall not be construed to be an exclusive franchise. (Ord. 474, 10-13-1981)

15-3-18: ASSIGNMENT: The Grantee and its successors and assigns may not assign or sublet this franchise for either distribution system without the written consent of the City, and then only the entire distribution system involved in said assignment, and such assignment and subletting shall be binding upon the Grantee's successors and assigns and independent contractors of the Grantee, and a copy of said assignment or subletting shall be filed with the City. (Ord. 474, 10-13-1981)

15-3-19: ACCEPTANCE: After the passage and legal publication hereof, and if accepted within thirty (30) days after such publication, the Grantee shall indicate such acceptance by its filing with the City an unconditional written acceptance thereof, to be executed according to law, and a failure of the Grantee so to accept this Chapter within the said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted or otherwise enjoyed by Grantee, by reason of prior franchises, or otherwise, shall, after the expiration of said period of thirty (30) days, if not so accepted, absolutely cease and determine unless said period of time shall be extended by the City by ordinance duly passed for that purpose. (Ord. 474, 10-13-1981)

15-3-20

15-3-21

15-3-20: VALIDITY: If any section, subsection, paragraph, sentence, clause, or phrase of this Chapter is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Chapter. (Ord. 474, 10-13-1981)

15-3-21: EFFECTIVE DATE: This Chapter shall be in full force and effect five (5) days from, and after, passage, approval, and legal publication hereof (all at the cost of the Grantee herein) as provided by law, provided it is duly accepted as hereinbefore provided. (Ord. 474, 10-13-1981)

CHAPTER 4

CEQUEL III COMMUNICATIONS I**SECTION:**

- 15-4- 1: Grant
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- 15-4- 3: Right Of Excavation
- 15-4- 4: Necessary Construction/Maintenance By Franchising Authority
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15-4-1: **GRANT:** The franchising authority of the city (hereinafter referred to as "franchising authority") hereby grants to grantee, a nonexclusive franchise which authorizes grantee to construct and operate a cable television system and offer cable service under the conditions and limitations prescribed herein which includes the right, privilege and authority by franchise to install, lay down, maintain and operate in, over, upon and under the streets, alleys, lanes and public highways (hereinafter referred to as "streets") of the franchising authority underground including pipes and conduits with the necessary manholes, vaults, pedestals, amplifiers, and other appliances, attachments and other related property or equipment as may be necessary or appurtenant to the cable system and to erect poles, with or without cross arms, and stretch wires and cables on all streets; and antennas or other appurtenances thereon, and to maintain and use the same for the purposes of constructing, reconstructing, erecting, operating and maintaining a coaxial cable subscription system for television and radio signal distribution reception, sale and allied or associated uses to subscribers' homes, and to such businesses and public establishments as may also desire this service; whenever it is practicable to make use of the poles, in conformity with such arrangements as may be made with the local pole line service utilities; provided, however, that all work and construction hereby authorized shall be performed in a workmanlike manner and shall conform with the require-

ments of the national electrical safety code, all federal laws, the laws of the state of Idaho and ordinances of the franchising authority or of Shoshone County; provided, further, that before any new poles, wires, cables, antennas or other appliances can be constructed or installed under the franchise, the grantee shall file with the city clerk/treasurer or other designated official of the city of Wallace plans showing the location of such construction, and that said plans must receive the approval of the franchising authority or its designated official, prior to any location or construction work, such construction or repair shall be done, if possible, so as not to obstruct or prevent the free use of said streets. (Ord. 2009-01, 5-13-2009)

15-4-2: CONSTRUCTION: The grantee shall have the right and privilege to make all needful excavations in any of such streets in the franchising authority for the purpose of erecting, laying and maintaining poles or other supports or conduits for said wires, or repairing, renewing or replacing the same. Said work shall be done in compliance with all federal, state and local laws, rules, regulations, ordinances or orders, which may, during the continuance of this franchise, be adopted from time to time by the franchising authority. (Ord. 2009-01, 5-13-2009)

15-4-3: RIGHT OF EXCAVATION:

- A. **Excavations Authorized:** For the purpose of carrying into effect the privileges granted herein, grantee is authorized at any time to make all necessary excavations in the streets, alleys, roads, rights of way and public grounds within the franchised area, but such excavation shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the rights of the public as may be feasible.
- B. **Restoration:** Grantee, at its own expense, shall restore all streets, alleys, roads, rights of way and public grounds to their original condition of safety and utility after excavation.
- C. **Obstruction:** In case any obstruction caused by grantee shall remain longer than seven (7) days after notice to remove it, or in case of neglect by grantee to safeguard any dangerous places, the franchising authority may remove such obstruction or safeguard such dangerous places at the expense of grantee.
- D. **Indemnification:** Grantee agrees to indemnify and hold the franchising authority harmless thereof, for any liability, damages or injuries

of whatsoever kind or nature incurred because of the negligence of the grantee, its agents, representatives or assigns, with regard to any liability, damages, injury or death caused by said negligence. (Ord. 2009-01, 5-13-2009)

15-4-4: NECESSARY CONSTRUCTION/MAINTENANCE BY FRANCHISING AUTHORITY:

- A. **Work Or Improvement:** Nothing in this chapter shall be construed in any way to prevent the proper authorities of the franchising authority from sewerage, grading, planking, rocking, paving, repairing, altering or improving any of the streets within the franchising authority in or upon which the poles, wires or other conductors of said grantee shall be placed, but all such work or improvements shall be done, if possible, so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes, or other apparatus. (Ord. 2009-01, 5-13-2009)

15-4-5: TERM: The rights, privileges and authority by the franchise herein granted shall begin at twelve o'clock (12:00) midnight December 31, 2006, and continue for a ten (10) year period or until December 31, 2016, at twelve o'clock (12:00) midnight; providing, however, that if, within one year, considering the availability of labor and materials, after television reception for the purpose of such a subscriber system becomes feasible and practicable within the franchising authority, grantee does not commence construction or reconstruction or discontinues operation of said system, then and in that event, this franchise shall sooner terminate. (Ord. 2009-01, 5-13-2009)

15-4-6: INSURANCE: Grantee shall indemnify and save the franchising authority free and harmless from any and all liability, loss, injury, cost, damage or expense from accident or damage, including, but not limited to, copyright infringement, either to itself or to persons or property of others which may occur by reason of the exercise of the rights and privileges herein granted; and shall, for the purpose of carrying out the provisions of this section, and prior to commencing construction of any kind, have in full force and effect, and at its own cost and expense, a comprehensive general liability insurance policy and file with the franchising authority evidence thereof with the city clerk/treasurer a good and sufficient policy (or policies) covering one million dollars (\$1,000,000.00) personal injury each person, one million dollars (\$1,000,000.00) personal injury each

accident, and one million dollars (\$1,000,000.00) property damage with said policy or policies to be executed by an insurance company or companies authorized and qualified to do business in the state of Idaho and conditioned to indemnify and save harmless and defend the franchising authority, its officers, boards, agents, representatives and employees from and against any and all claims, actions, suits, liability, loss, injury (including accidental death), cost, expense or damage of any kind whatsoever, or destruction which may accrue to or be suffered by the franchising authority or by anyone by reason of the erection, construction, reconstruction, relocation, replacement, readjustment, repair, maintenance or operation of the coaxial cable service and appurtenances thereto, or by reason of anything that has been done or may be done by the grantee hereunder which may in any way cause liability by reason thereof, including, but not limited to, reasonable attorney fees and costs, including interest at the statutory rate. Said insurance policy shall include an endorsement insuring all of the parties to the contract as their interest may appear under the terms of this franchise. Grantee shall immediately notify the franchising authority in the event the policy is canceled or modified in any way. Such insurance policy shall designate franchising authority as an additional insured. Grantee shall give franchising authority prompt notice, in writing, of any claims, demands, actions, suits and proceedings without limitation within five (5) business days of receipt of the same. (Ord. 2009-01, 5-13-2009)

15-4-7: BOND: Only upon request from the city, in writing, to the grantee shall grantee execute, deliver, and file evidence thereof with the city clerk/treasurer, a good and sufficient bond in the penal sum of two thousand dollars (\$2,000.00) executed by a surety company authorized and qualified to do business in the state which shall strictly conform with the conditions, provisions and covenants of this chapter, and to ensure that should franchising authority's property be damaged by any construction, reconstruction, operation, maintenance, installation, removal or failure to remove that the franchising authority be reimbursed and its damages completely recovered. Said bond shall include an endorsement insuring all of the parties to the franchise as their interest may appear under the terms of this franchise, grantee shall immediately notify the franchising authority in the event the bond is canceled or modified in any way. (Ord. 2009-01, 5-13-2009)

15-4-8: RATES AND CHARGES:

- A. **Right To Charge:** Said grantee shall have the right to charge and collect reasonable compensation from all persons and corporations

to whom cable services are provided (including installation and connection work) which shall be furnished subject to the rules and regulations of legally constituted regulatory bodies of the franchising authority, county, state and federal governments.

- B. **Right To Regulate:** The franchising authority does not waive any authority of rate regulation granted under Idaho Code section 50-330 pertaining to franchise holders.
- C. **Uniform Rates:** Except for promotional rates, grantee shall at all times charge uniform rates or fees to all its subscribers within the franchising authority and shall not charge rates or fees which differ between different sections of the franchising authority or portions thereof or between different locations in such sections of the franchising authority or portions thereof. Subscribers similarly situated shall be charged uniform rates. (Ord. 2009-01, 5-13-2009)

15-4-9: **RULES AND REGULATIONS:** The grantee shall have the right and authority to make and establish from time to time as the grantee shall elect, reasonable rules and regulations for the conduct of the grantee's business, and with reference to furnishing, supplying and the sale of cable services to any and all consumers within the franchising authority and to prescribe the forms of application and contracts to be executed by applicants and/or consumers before they shall be entitled to receive cable service from the grantee. Provided, that the grantee shall file with the city clerk/treasurer a copy of such rules and regulations and any amendments thereto. (Ord. 2009-01, 5-13-2009)

15-4-10: **CONDITIONS OF TRANSFER:** Except to the extent expressly required by federal or state law, if a renewal or extension of the franchise is denied or the franchise is otherwise terminated, and franchising authority either lawfully acquires ownership of the cable system or by its actions lawfully effects a transfer of ownership of the cable system to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the cable system valued as a going concern. Grantee and franchising authority agree that in the case of a lawful revocation of the franchise, grantee shall be given a reasonable opportunity to effectuate a transfer of its cable system to a qualified third party. Franchising authority further agrees that during such a period of time, it shall authorize grantee to continue to operate pursuant to the terms of the franchise agreement; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, grantee is unsuccessful in procuring a

qualified transferee, assignee or purchaser of its cable system which is reasonably acceptable to franchising authority, grantee and franchising authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that grantee's continued operation of its cable system during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment, of any rights of either franchising authority or grantee. Neither franchising authority nor grantee shall be required to violate federal or state law. (Ord. 2009-01, 5-13-2009)

15-4-11: DEFINITIONS: For the purpose of this chapter the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the past and future tense, words in the plural include the singular, and words in the singular include the plural.

ADJUSTED INVESTOR'S EQUITY: The aggregate of: a) the initial equity investment in the cable system, plus b) additional cash or cash equivalent equity infusions, less c) all cash or cash equivalent equity withdrawals.

AFFILIATE: An entity which owns or controls, is owned or controlled by, or is under common ownership or control with grantee.

ANCILLARY INCOME: The operator's aggregate total income received or accrued from sources unrelated to the ongoing deliverance of either: a) regulated services, or b) unregulated services.

BASIC CABLE: The tier of cable service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.

CABLE SERVICE: A. The one-way transmission to subscribers of video programming or other programming service, and

B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

CABLE SYSTEM: A facility, consisting of a set of closed transmission paths and associated signal generation,

	reception, and control equipment or other equipment that is designed to provide cable service or other service to subscribers.
CAPITALIZED LEASE:	A lease entered into by the operator which would be classified as a capitalized lease in accordance with GAAP consistently applied.
COMPOSITE DEBT RATE:	The sum of: a) the senior indebtedness rate, b) the subordinated indebtedness rate, and c) the other indebtedness rate.
COMPOSITE EQUITY RATE:	The product of: a) the equity percentage, multiplied by b) the operator's rate of return on equity.
EQUITY PERCENTAGE:	A fraction, the numerator of which is equal to the adjusted investor's equity amount and the denominator of which is equal to the operator's total capital structure amount.
FCC:	Federal communications commission, or successor governmental entity thereto.
FRANCHISE:	The initial authorization, or renewal thereof, issued by the franchising authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction, reconstruction, operation and maintenance of the cable system for the purpose of offering cable service or other services to subscribers.
FRANCHISING AUTHORITY:	The city of Wallace, Idaho, or its lawful successor, transferee, or assignee thereof.
GAAP:	Generally accepted accounting principles which are consistent with the principles promulgated or adopted by the financial accounting standards board.
GRANTEE:	Cequel III Communications I, LLC, DBA Suddenlink Communications, or the lawful successor, transferee, or assignee thereof.

GROSS REVENUES:

Any and all consideration of any kind or nature, including, without limitation, cash or credits received or derived directly or indirectly by the grantee from the operation of the cable television and/or radio system to provide cable services in the city. Gross revenues shall include, but not be limited to, subscriber fees, expanded basic service, premium and tiered services, pay per view services, leased channel fees, converter and other equipment rentals and sales, home shopping commissions, access fees of any kind or nature, any advertising revenues less agency fees booked or allocated locally, installation, reconnection and change of service fees; fees and payments, or other consideration received by the grantee from programmers for carriage of programming on the cable television and/or radio system, exchange of in-kind services and program guides. Gross revenues shall include fees received by the company from subscribers for internet access provided by the company on the cable system if internet access is deemed to be a cable service under applicable federal law. Gross revenues shall also include any revenue derived directly or indirectly by any affiliate of the company where such revenue in the ordinary course of business has been paid or should have been paid to the company from the operation of its cable system to provide cable services within the franchise area. By way of illustration and not limitation, this definition would include revenue derived from the sale of cable system advertising time by an affiliate of the company. It is the intent of the parties that this definition include all consideration to the fullest extent permitted by law. Gross revenues shall not include uncollectable accounts (provided, however, that all or any part of any such actual bad debt that is written off by the company but subsequently collected shall be included in the gross revenues of the period collected) or any taxes on services furnished by the company which are imposed directly on any subscriber or user by the state of Idaho, the

city, or other governmental unit and which are collected by the company on behalf of said governmental unit (i.e., a sales tax or excise tax). A franchise fee is not such a tax. "Gross revenues" means the annual revenues received by grantee from all sources of operations of the system within the city including, but not limited to, basic service and cable programming monthly fees, pay television fees, advertising carried on the system, payments received for cable television related services under agreements, and installation and reconnection fees, less refunds. This term shall include noncash items received in exchange for services; such services shall be valued at fair market value. This term does not include revenues derived solely from cable television service to areas outside the city, from other operations conducted solely outside of the city or from the operation of video products such as commercials, training films and video programming that will not be shown on cable television, nor any sales tax, excise tax or other taxes collected from the subscriber by grantee on behalf of the state, city, or other governmental unit. Any revenues from city received by the system as a whole or any parent system for the benefit of the system (such as, but not limited to, revenues from advertising carried on the system) shall be prorated to grantee's revenues for the city in proportion to the city's subscriber base. This term shall not include sales of real property or rental of real or personal property for purposes other than those related to cable television.

NET ANCILLARY INCOME:

The operator's ancillary income, less all applicable and identifiable costs and expenses (including, without limitation, taxes paid) associated with the production of such income.

NET INCOME:

An amount equal to the result obtained after subtracting: a) the operator's total operating expenses (including, without limitation, taxes

	paid), except management fees, from b) the sum of: 1) regulated income, 2) unregulated income, and 3) ancillary income.
NET INVESTMENT IN PLANT:	The amount, reflected in the operator's financial statements for the most recently completed fiscal year, which represents the historical cost, less accumulated depreciation to date, of the operator's investment in the cable system plant and equipment.
NET INVESTMENT IN REGULATED PLANT:	The product of: a) the net investment in plant, multiplied by b) the plant allocation percentage.
NET REGULATED INCOME:	The operator's regulated income, less all operating expenses and costs (including, without limitation, taxes paid) not identified with the production of: a) unregulated income, and b) ancillary income.
NET UNREGULATED INCOME:	The operator's unregulated income, less all applicable and identifiable costs and expenses (including, without limitation, taxes paid) associated with the production of such income.
OTHER DEBT INTEREST RATE:	The effective rate of interest paid, at the end of the most recently completed fiscal year, on the operator's outstanding other indebtedness.
OTHER DEBT PERCENTAGE:	A fraction, the numerator of which is equal to the other indebtedness of the operator and the denominator of which is equal to the operator's total debt.
OTHER INDEBTEDNESS:	The sum, as of the end of the most recently completed fiscal year, of: a) any capitalized leases, and b) any indebtedness (other than senior or subordinated indebtedness) which is both: 1) term in nature, and 2) interest bearing.
OTHER INDEBTEDNESS RATE:	The product of: a) the other debt percentage, and b) the other debt interest rate.

PERSON:	An individual, firm, partnership, association, corporation, company, joint stock company, trust, corporation, organization of any kind, or a governmental entity.
PLANT ALLOCATION PERCENTAGE:	The stipulated percentage, which when applied to the net investment in plant, would approximate that portion of the investment in plant subject to regulation.
PUBLIC WAY:	The surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle, or other public right of way, including, but not limited to, public utility easements, dedicated utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by franchising authority in the service area which shall entitle franchising authority and grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the cable system. "Public way" also means any easement now or hereafter held by franchising authority within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights of way as shall within their proper use and meaning entitle franchising authority and grantee to the use thereof for the purposes of installing or transmitting grantee's cable service or other services over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system.
RATE OF RETURN ON EQUITY:	The most recent state public utility rate of return available plus four percent (4%).

REGULATED INCOME:	The operator's aggregate total income received or accrued from the ongoing deliverance of regulated services.
REGULATED SERVICE:	Those services, provided by the operator, which are subject to rate regulation by the federal communications commission.
RETURN ON INVESTMENT RATE:	The sum of: a) the composite equity rate, and b) the composite debt rate.
SENIOR DEBT INTEREST RATE:	The effective rate of interest paid, at the end of the most recently completed fiscal year, on the operator's outstanding senior indebtedness.
SENIOR DEBT PERCENTAGE:	A fraction, the numerator of which is equal to the senior indebtedness of the operator and the denominator of which is equal to the operator's total debt.
SENIOR INDEBTEDNESS:	Indebtedness of the operator which, by its terms, is secured by a first priority security interest of the assets of the operator.
SENIOR INDEBTEDNESS RATE:	The product of: a) the senior debt percentage, and b) the senior debt interest rate.
SERVICE AREA:	The present municipal boundaries of the franchising authority and shall include any additions thereto by annexation or other legal means.
SUBORDINATED DEBT INTEREST RATE:	The effective rate of interest paid, at the end of the most recently completed fiscal year, on the operator's outstanding subordinated indebtedness.
SUBORDINATED DEBT PERCENTAGE:	A fraction, the numerator of which is equal to the subordinated indebtedness of the operator and the denominator of which is equal to the operator's total debt.

SUBORDINATED INDEBTEDNESS:	Indebtedness of the operator which, by its terms, is expressly subordinated to the senior indebtedness of the operator.
SUBORDINATED INDEBTEDNESS RATE:	The product of: a) the subordinated debt percentage, and b) the subordinated debt interest rate.
SUBSCRIBER:	A user of the cable system who lawfully receives cable service or other services therefrom with grantee's express permission.
TOTAL CAPITAL STRUCTURE:	The sum of: a) the adjusted investor's equity, and b) the total debt of the operator.
TOTAL DEBT:	The sum, as of the end of the most recently completed fiscal year, of the outstanding and unpaid principal balance of: a) the senior indebtedness, b) the subordinated indebtedness, and c) all other indebtedness. Total debt shall not include accounts payable or accrued expenses incurred in the ordinary course of business.
UNREGULATED INCOME:	The operator's aggregate total income derived from the continued deliverance of unregulated services.
UNREGULATED SERVICES:	Those services, provided by the operator, notably premium and pay per view services, which are not subject to rate regulation by the federal communications commission.
VIDEO PROGRAMMING:	Programming provided by, or generally considered comparable to programming provided by, a television broadcast station. (Ord. 2009-01, 5-13-2009)

15-4-12: NONEXCLUSIVE FRANCHISE: The rights and privileges herein granted shall not be deemed exclusive, nor shall the grantee herein assign, transfer, mortgage or encumber said rights or privileges without the prior written consent of the mayor and city council given by resolution. In the event the franchising authority enters into a

franchise, permit, license, authorization, or other agreement or contract of any kind with any person other than the grantee herein to enter into the franchising authority's streets and public ways for the purpose of constructing or operating a cable system or providing cable services to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another. (Ord. 2009-01, 5-13-2009)

15-4-13: SERVICE TO BE FURNISHED: The grantee shall furnish, except as hindered or prevented by strikes of employees, or by damage caused by fire or other casualty, acts of God, act of any governmental agency, acts of the public, or weather conditions, an adequate and efficient coaxial cable subscription service for television distribution to all its patrons for the full period during each day that said television signals are reasonably available to the grantee for such purposes at the site of the antenna. Adequate and efficient distribution and service used herein shall include reasonable, complete and uniform service throughout the franchising authority; provided, however, that the grantee shall not be required to service any area which, due to location or number of inhabitants, makes the servicing hereof economically impracticable. Good and efficient service hereunder shall include good and efficient picture and sound in showing and presenting television pictures and signals hereunder, and the providing by the grantee of television pictures and signals and sound from all reasonable outlets therefor from all television station channels reasonably available at the central television transmitter stations as permitted or required by the FCC or other regulatory bodies. Should said service be interrupted or necessarily discontinued or terminated, the grantee shall immediately notify the franchising authority in writing giving details on the interruption, discontinuance or termination. (Ord. 2009-01, 5-13-2009)

15-4-14: RIGHT TO SOLICIT: Permission is hereby granted for the reasonable solicitation, for the purpose of seeking subscriptions to such cable TV system mentioned herein, of persons, residences, firms or businesses within the franchising authority, subject to such reasonable rules and regulations, including hours of solicitation or contact, as prescribed by the franchising authority; reserving to the franchising authority, in the event of its determination, after hearing, that this privilege has been in any way abused or the rules or regulations violated, the right to deny or limit such right of solicitation. (Ord. 2009-01, 5-13-2009)

15-4-15: VIOLATION: Should the grantee violate any of the privileges of this chapter, or fail to comply with any of the requirements hereof, the franchising authority may revoke the rights, privileges and franchise hereby granted after hearing before the city council; provided, prior to the holding of any city council meeting for such purpose, the city council shall serve upon grantee a written notice which specifically identifies each claimed violation or failure on the part of grantee, and which gives grantee sixty (60) days to cure such violation. In the event that grantee cures the default within sixty (60) days from the service of said written notice, then no further action shall be taken by the franchising authority, unless such default cannot be cured within sixty (60) days, then grantee agrees to notify the franchising authority of its reasonable efforts it has or plan to take to remedy such default and to notify the franchising authority of the projected date that it shall be completed. This sixty (60) day period to cure may be extended by written agreement of the parties. (Ord. 2009-01, 5-13-2009)

15-4-16: PUBLIC HEARING: In the event that grantee fails to respond to the notice of default or in the event that the alleged default is not remedied within the sixty (60) day period, or as otherwise agreed upon by the parties, in writing, after grantee is notified of the alleged default, franchising authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled city council meeting of the franchising authority, which hearing should be scheduled at a time which is no fewer than five (5) business days following the expiration of the sixty (60) day period, or period otherwise agreed upon by the parties. Franchising authority shall notify grantee of the time and place of such hearing and provide grantee with an opportunity to appear and be heard. (Ord. 2009-01, 5-13-2009)

15-4-17: ENFORCEMENT: Subject to applicable federal and state law, in the event franchising authority determines, after such hearing, that grantee is in default of any provision of this franchise franchising authority may:

- A. Foreclose on all or any part of any security provided under the franchise, if any, including, without limitation, any bonds or other surety; provided, however, that the foreclosure shall only be in such a manner and in such amount as franchising authority reasonably determines is necessary to remedy the default;

- B. Commence an action at law for monetary damages or seek other legal or equitable relief;
- C. In the case of a substantial default of a material provision of this franchise declare the franchise to be revoked and/or terminated; or
- D. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages as provided for in section 15-4-44 of this chapter.
- E. Grantee shall not be relieved of any of its obligations to comply promptly with any provision of this franchise by reason of any failure of franchising authority to enforce prompt compliance. (Ord. 2009-01, 5-13-2009)

15-4-18: FORCE MAJEURE: Grantee shall not be held in default of the provisions of the franchise agreement, nor suffer any enforcement or penalty relating thereto, where such alleged default is caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control. (Ord. 2009-01, 5-13-2009)

15-4-19: EFFECT OF INVALIDITY: Should any section or part of any section of this chapter be held unconstitutional, impaired, void or invalid, by final judgment of any court, or by decision of any commission or other lawful body of the state or by the United States having jurisdiction, or by final judgment of the court upon appeal from a decision of any such commission or other body, it shall not impair, void or render invalid or unconstitutional any other section or partial section not so held or decided to be impaired, void, invalid or unconstitutional. (Ord. 2009-01, 5-13-2009)

15-4-20: ACCEPTANCE: This chapter, before going into effect or being required to be published, shall be accepted by the grantee, and the grantee shall have forty five (45) days from the date of its approval in which to accept the same, and this chapter shall take effect and be in force immediately after passage, approval, acceptance and publication hereof as provided by law. Costs of publication shall be paid for by the grantee. (Ord. 2009-01, 5-13-2009)

15-4-21: FRANCHISE FEE: The grantee shall pay to the franchising authority semiannually an amount equal to three percent (3%)

of "gross revenues" as defined in this chapter from monthly income from subscribers residing within the franchised area. Franchise fees shall be paid by the grantee on or before January 31 and July 31 of each year. The payments due shall represent all "gross revenues" as defined in this chapter received immediately preceding said payment due date. The grantee shall file annually with the grantor's city clerk, no later than one hundred twenty (120) days after the end of the grantee's fiscal year, a verified statement of "gross revenues" as it is defined in this chapter for that year attributable to the operations of the grantee's business conducted within the franchising authority's city limits. This statement shall present in a form substantially similar to the present form, a detailed breakdown of "gross revenues" as defined in this chapter from all sources for the year. A fiscal representation of the grantee shall verify this statement.

A. **Limitation On Franchise Fee Actions:** The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by grantee is due. Unless within three (3) years from and after such payment due date franchising authority initiates a lawsuit for recovery of franchise fees in a court of competent jurisdiction, recovery shall be barred and franchising authority shall be stopped from asserting any claims whatsoever against grantee relating to alleged franchise fee deficiencies. (Ord. 2009-01, 5-13-2009)

15-4-22: **RENEWAL OF FRANCHISE:** By mutual consent, the grantee shall have the option to renew this franchise for an additional period not to exceed ten (10) years. Should grantee desire to exercise this option, it shall so notify the franchising authority in writing, not less than twelve (12) months prior to expiration of this franchise. (Ord. 2009-01, 5-13-2009)

15-4-23: **CONDITIONS OF STREET OCCUPANCY:** All transmission and distribution structures, poles, other lines, and equipment installed or erected by grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways. (Ord. 2009-01, 5-13-2009)

15-4-24: **RESTORATION OF PUBLIC WAYS:** If during the course of grantee's construction, operation, or maintenance of the cable

system there occurs a disturbance of any public way by grantee, it shall, at its expense, replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance. (Ord. 2009-01, 5-13-2009)

15-4-25: RELOCATION AT REQUEST OF FRANCHISING AUTHORITY: Upon its receipt of reasonable advance notice, not to be less than thirty (30) days, grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way, any property of grantee when lawfully required by franchising authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by franchising authority; but grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to grantee. (Ord. 2009-01, 5-13-2009)

15-4-26: RELOCATION AT REQUEST OF THIRD PARTY: Grantee shall, on the request of any person holding a building moving permit issued by franchising authority, temporarily raise or lower its wires to permit the moving of such building, provided: a) the expense of such temporary raising or lowering of wires is paid by such person, including, if required by grantee, making such payment in advance; and b) grantee is given not fewer than ten (10) business days' advance written notice to arrange for such temporary wire changes. (Ord. 2009-01, 5-13-2009)

15-4-27: TRIMMING OF TREES AND SHRUBBERY: Grantee shall have the authority to trim trees or other natural growth overhanging any of its cable system in the service area so as to prevent branches from coming in contact with grantee's wires, cables, or other equipment. Grantee shall reasonably compensate franchising authority or property owner for any damages caused by such trimming, or shall, at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the system undertaken by grantee. (Ord. 2009-01, 5-13-2009)

15-4-28: SAFETY REQUIREMENTS: Construction, installation, and maintenance of the cable system shall be performed in an

orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the service area. (Ord. 2009-01, 5-13-2009)

15-4-29: AERIAL AND UNDERGROUND CONSTRUCTION: In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving grantee's cable and other equipment without technical degradation of the cable system's signal quality. In those areas of the service area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this section shall require grantee to construct, operate, and maintain underground any ground mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date hereof, grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities facilities at the time that such are placed underground. (Ord. 2009-01, 5-13-2009)

15-4-30: REQUIRED EXTENSIONS OF SERVICE: If the cable system, as constructed as of the date of the passage and final adoption of this chapter, substantially complies with the material provisions hereof, grantee is hereby authorized to extend the cable system as necessary, as desirable, or as required pursuant to the terms hereof within the service area. Whenever grantee shall receive a request for service from at least fifteen (15) subscribers within one thousand three hundred twenty (1,320) cable bearing strand feet ($\frac{1}{4}$ cable mile) of its trunk or distribution cable, it shall extend its cable system to such subscribers at no cost to such subscribers for system extension, other than the usual connection fees for all subscribers; provided that such extension is technically feasible, and

if it will not adversely affect the operation, financial condition, or market development of the cable system, or as provided for under section 15-4-31 of this chapter. (Ord. 2009-01, 5-13-2009)

15-4-31: SUBSCRIBER CHARGES FOR EXTENSIONS OF SERVICE:

No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a subscriber's request to locate his cable drop underground, existence of more than one hundred fifty feet (150') of distance from distribution cable to connection of service to subscribers, or a density of fewer than fifteen (15) subscribers per one thousand three hundred twenty (1,320) cable bearing strand feet of trunk or distribution cable, cable service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. Potential subscribers shall bear the costs of the construction and other costs on a prorated basis. Grantee may require payment in advance of the capital contribution in aid of construction borne by such potential subscribers. (Ord. 2009-01, 5-13-2009)

15-4-32: SERVICE TO PUBLIC BUILDINGS:

Grantee shall provide without charge one outlet of basic cable to franchising authority's office building(s) and public school building(s) that are passed by its cable system. The outlets of basic cable shall not be used to distribute or sell cable service in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold grantee harmless from any and all liability or claims arising out of their use of such outlets, including, but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this section, grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to such buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and it will not adversely affect the operation, financial condition, or market development of the cable system to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of one hundred fifty (150) cable feet. In the event that additional outlets of basic cable are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of grantee, the building owner may also be required to pay the service fees associated with the provision of basic cable and the additional outlets relating thereto. (Ord. 2009-01, 5-13-2009)

15-4-33: PUBLIC PROPERTIES AND STATE HIGHWAYS: If public properties other than highways within the corporate limits of the franchising authority form a part of the route of a state highway, the grantee shall determine the requirements of the state and take them into account with respect to the use thereof by the grantee. (Ord. 2009-01, 5-13-2009)

15-4-34: RECORDS OF LOCATION OF FACILITIES: The grantee shall at all times keep full and complete records showing the location of all cable service connections within the franchising authority. Such records shall be available to the franchising authority at all reasonable times upon request thereof. (Ord. 2009-01, 5-13-2009)

15-4-35: BINDING UPON SUCCESSORS AND ASSIGNS: All rights and privileges granted and duties imposed by this chapter upon the grantee shall extend to, and be binding upon, its successors, receivers, liquidator and/or assigns. (Ord. 2009-01, 5-13-2009)

15-4-36: PRESERVATION OF FRANCHISING AUTHORITY'S RIGHT TO CONTROL: The franchising authority, in granting this franchise, does not waive any rights which it may now have or may hereafter acquire with respect to road rights of way or other property of the franchising authority under this franchise, and this franchise shall not be construed to deprive the franchising authority of any such powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the franchising authority's roads, rights of way and other public property covered by this franchise. (Ord. 2009-01, 5-13-2009)

15-4-37: RESERVATIONS: The franchising authority reserves the right to adopt and enforce all necessary ordinances to control the performance of the conditions of this franchise, including reasonable ordinances of a police nature in the exercise of its police powers in the public interest and welfare. The franchising authority shall have access at all reasonable times to any part of the plant or plants, facilities, operations and premises, of the grantee to make inspections and tests that may be required in supervising the fulfillment by the grantee of the terms of this franchise. (Ord. 2009-01, 5-13-2009)

15-4-38: EXPANSION OF GRANTEE'S FACILITIES: Any facilities and appurtenances in streets, alleys, rights of way and public places, incidental to the franchise system, that have been, or are at any future time acquired, leased, or utilized in any manner by grantee are thereupon to be deemed authorized by and shall be subject to all provisions of this franchise. Grantee shall agree to notify franchising authority of any such acquisitions. (Ord. 2009-01, 5-13-2009)

15-4-39: CHANGE OF BOUNDARIES OF FRANCHISING AUTHORITY: Any subsequent additions or modifications of the boundaries of the franchising authority, whether by annexation, consolidation or otherwise, shall be subject to the provisions of this franchise as to all such areas. Franchising authority shall notify grantee of the scope of any change of boundaries not less than sixty (60) days prior to such change becoming effective. (Ord. 2009-01, 5-13-2009)

15-4-40: ASSIGNMENT OF FRANCHISE: Grantee, its successors and assigns, shall have the right to sell, transfer or assign this franchise upon giving written notice to the franchising authority sixty (60) days in advance of the date of any proposed sale, transfer or assignment. All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the franchising authority and the successors and assigns of grantee; and the same shall not be assigned or transferred without the prior written approval of the city council, which approval shall not be unreasonably withheld; provided, however, that this section shall not prevent the assignment or hypothecation of the franchise by grantee as security for debt without such approval; and provided further that transfers or assignments of this franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities which are controlled or managed by the same person, persons, or entities, shall be permitted without the prior approval of the franchising authority ("intracompany transfers"). Grantee shall notify franchising authority in writing within thirty (30) days of the closing of such intracompany transfer. (Ord. 2009-01, 5-13-2009)

15-4-41: BOOKS AND RECORDS: Grantee agrees that franchising authority may review such of grantee's books and records, during normal business hours and on a nondisruptive basis, as are reasonably necessary to monitor compliance with the terms hereof. Such

records include, but are not limited to, any public records required to be kept by grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, grantee shall not be required to disclose information which it reasonably deems to be proprietary, or confidential in nature. Franchising authority agrees to treat any information disclosed to it by grantee as confidential, and to disclose it only to employees, representatives, and agents of franchising authority that have a need to know, or in order to enforce the provisions hereof. (Ord. 2009-01, 5-13-2009)

15-4-42: FRANCHISE ORDINANCE AS CONTRACT:

- A. **Contract:** This chapter shall have the effect of and shall be a contract between the franchising authority and grantee and shall be the measure of the rights and liabilities of the franchising authority as well as of the grantee.
- B. **Complete Agreement:** The franchise contract contains the complete agreement of the parties. Any modifications and/or additions thereto must be in writing, signed by both parties and attached as an addendum. (Ord. 2009-01, 5-13-2009)

15-4-43: ABANDONMENT OF FRANCHISE: Grantee 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 the franchising authority. (Ord. 2009-01, 5-13-2009)

15-4-44: GOVERNING LAW: This agreement shall be construed in accordance with the laws of the state. The parties hereto agree that any proceedings commenced to enforce the provisions of this agreement shall be litigated in the county of Shoshone, state of Idaho. (Ord. 2009-01, 5-13-2009)

15-4-45: STRICT PERFORMANCE: The failure of the franchising authority to insist upon strict performance of any of the covenants and conditions of the contract or to exercise any option hearing conferred in any one or all instances shall not be construed to be a waiver or relinquishment of any such covenant or condition but the same shall be and remain in full force and effect, unless such waiver is evidenced by the

prior written consent of the grantee or the franchising authority. (Ord. 2009-01, 5-13-2009)

15-4-46: **PREEMPTION:** If the FCC or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by franchising authority, the jurisdiction of franchising authority shall cease and no longer exist. (Ord. 2009-01, 5-13-2009)

15-4-47: **EMPLOYMENT REQUIREMENTS:** Grantee shall afford equal opportunity in employment to all qualified persons. No person shall be discriminated against in employment because of race, color, religion, national origin or sex. Grantee shall maintain and carry out a continuing program of specific practices designed to assure equal opportunity in every aspect of its employment policies and practices. (Ord. 2009-01, 5-13-2009)

15-4-48: **ACTIONS OF FRANCHISING AUTHORITY:** In any action by franchising authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld. (Ord. 2009-01, 5-13-2009)

15-4-49: **NOTICE:** Unless expressly otherwise agreed between the parties, every notice or response to be served upon franchising authority or grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the U.S. postal service.

The notices or responses to franchising authority shall be addressed as follows:

City of Wallace
703 Cedar Street
Wallace, ID 83873

The notices or responses to grantee shall be addressed as follows:

Suddenlink Communications
Attention: Michael Zarrilli
12444 Powerscourt Drive
Suite 450
St. Louis, MO 63131

Franchising authority and grantee may designate such other address or addresses from time to time by giving written notice to the other party. (Ord. 2009-01, 5-13-2009)

15-4-50: **CATCHLINES:** The catchlines to sections contained herein are intended solely to facilitate the reading thereof. Such catchlines shall not affect the meaning or interpretation of the text herein. (Ord. 2009-01, 5-13-2009)

15-4-51: **SEVERABILITY:** If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of the franchise, or any renewal or renewals thereof. (Ord. 2009-01, 5-13-2009)

15-4-52: **MISDEMEANOR:** In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the cable system without the express consent of grantee. Further, without the express consent of grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the cable system or any means of receiving cable service or other services provided by grantee, subject to applicable federal and state law. (Ord. 2009-01, 5-13-2009)

15-4-53: **COSTS OF PUBLICATION:** Grantee hereby agrees that it shall pay all costs and/or fees for publication of the ordinance referring to this franchise agreement. (Ord. 2009-01, 5-13-2009)

CHAPTER 5
GARBAGE AND REFUSE

SECTION:

15-5-1: Franchise Agreement Adopted

15-5-1: **FRANCHISE AGREEMENT ADOPTED:** The solid waste franchise agreement dated April 14, 2004, between the city of Wallace, franchisor, and Clifford Arthur, dba Arthur's Refuse Service, franchisee, which is available at Wallace City Hall, 703 Cedar Street, Wallace, Idaho, is incorporated herewith as if fully set forth herein, and is hereby accepted and approved for a term of ten (10) years beginning April 14, 2004, as provided in said franchise agreement. (Ord. 2004-01, 5-17-2004)

CHAPTER 10 GASOLINE AND DIESEL

SECTION 10-1

10-1.1 Fuel System Components

The fuel system is responsible for delivering the correct amount of fuel to the engine cylinders. The fuel system consists of the fuel tank, fuel filter, fuel pump, fuel lines, and fuel injectors. The fuel pump draws fuel from the tank and sends it to the fuel filter. The fuel filter removes any dirt or debris that may be in the fuel. The fuel pump then sends the fuel to the fuel injectors, which spray the fuel into the engine cylinders. The fuel injectors are controlled by the engine control unit (ECU).