

ORDINANCE NO. 1015

AN ORDINANCE OF THE CITY OF POST FALLS, KOOTENAI COUNTY, IDAHO, GRANTING TO AVISTA CORPORATION A FRANCHISE TO LOCATE, CONSTRUCT, AND MAINTAIN, FOR THE TRANSMISSION OF GAS, LINES AND APPURTENANCES IN THE PUBLIC RIGHT OF WAY IN THE CITY OF POST FALLS; PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE; PROVIDING FOR A FRANCHISE FEE; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, The Avista Corporation, a corporation organized under the laws of the State of Washington (hereinafter referred to as "Grantee"), has heretofore filed with the City of Post Falls, State of Idaho (hereinafter referred to as "Grantor" or the "City"), its written application for a Franchise to locate, construct, operate and maintain lines and all necessary or desirable appurtenances thereto for the, transmission and distribution of gas under, along and across all of Grantor's rights of way in the City of Post Falls, State of Idaho; and

WHEREAS, the Grantor duly fixed the time and place for hearing said application and due and timely notice of said hearing on such application was given pursuant to statute and ordinance, and hearing on said application having been held as prescribed by law, and the Grantor having been fully advised in the premises and having determined that it is in the public interest to grant such Franchise in the manner herein set forth; and

WHEREAS, Grantee is engaged in the business of providing utility services to customers consistent with applicable laws and regulations, and Grantor has determined it is in the interest of persons and businesses in this jurisdiction to have access to Grantee's services;

NOW, THEREFORE, BE IT ORDAINED that the Avista Corporation, its successors and assigns, is hereby granted a Franchise for the purposes identified below and subject to the following terms and conditions:

**I. GRANT**

Grantor hereby grants to Grantee, its successors and assigns, the right, power, privilege and authority to construct, lay, maintain, operate, extend, renew, remove, replace, repair, use and operate a gas distribution system, in, under, upon, over, across, and along the present and future public rights of way within the present or any future corporate limits of the Grantor, including streets, alleys, and bridges, for the purpose of purchasing, transporting, distributing and selling gas (with the right and privilege to make such connections with said pipes as will enable the Grantee to supply gas) for heating, lighting, power and any and all domestic, commercial, and industrial purposes, and other reasons and purposes within and through the City and to the City and its inhabitants, and to other persons, firms, entities or municipal corporations.

## **II. TERM**

The rights, privileges and franchise hereby granted to, and conferred upon the Grantee shall, unless this Franchise be sooner terminated as herein provided, extend for a term of 25 years from the date of written acceptance hereof by the Grantee.

## **III. TRIMMING/REMOVAL OF TREES**

The right of Grantee to maintain its lines and appurtenances shall include the right, as exercised in Grantee's sole discretion, to utilize an integrated vegetation management system, including the right to cut, trim or remove any and all trees, brush or shrubs growing in, on, or hanging over any City roads, rights of way, streets, alleys or City property that interfere with or may interfere with Grantee's facilities, including conduits or other apparatus of Grantee, its successors and assigns. All work performed by Grantee under this section relating to vegetation shall be done under the supervision of a certified arborist.

## **IV. RIGHT OF EXCAVATION**

For the purpose of carrying into effect the privileges granted hereunder, 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. Grantee shall install barricades and provide any necessary flaggers during excavation in order to protect the safety of the public. Grantee shall restore all streets, alleys, roads, and other rights of way to a standard as agreed upon for conditions of safety and use after excavation. 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, Grantor may remove such obstruction or safeguard such dangerous places at the expense of Grantee.

## **V. NON-INTERFERENCE WITH EXISTING FACILITIES**

All construction, installation, repair or relocation of lines and appurtenances performed by Grantee along or under the roads or rights of way 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 or other rights of way subject to this Franchise.

## **VI. NECESSARY CONSTRUCTION/MAINTENANCE BY GRANTOR**

The laying, construction, operation and maintenance of Grantee's lines and appurtenances authorized by this Franchise shall not preclude the Grantor, its agents or its contractors, from blasting, grading, excavating, or doing other necessary road work contiguous to the said lines and facilities of Grantee, provided that Grantee shall be given not less than five (5) days' notice of said blasting or other work, and provided further that the Grantor, its agents and

contractors shall be liable for any damages, including any consequential damages to third parties, caused by said work to any installations belonging to Grantee.

#### **VII. CONDUCT OF GRANTEE'S BUSINESS**

The Grantor shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of the Grantee's business. Service shall be supplied to the Grantor and its inhabitants in accordance with the Grantee's rules and regulations and tariffs filed or hereafter filed with the appropriate regulatory body of this State having jurisdiction over the Grantee.

#### **VIII. VACATION OF PROPERTIES BY GRANTOR**

If, at any time, the Grantor shall vacate any road or other right of way which is subject to rights granted by this Franchise, to the extent permitted by law, such vacation shall be subject to the reservation of a perpetual easement in favor of Grantor for the purpose of operating and maintaining overhead and underground gas and electric transmission and distribution lines and installations and other public utilities. Such easement shall also expressly prohibit any use of the vacated properties which will interfere with Grantor's ability to provide Grantee's full enjoyment of its rights under this Franchise. Grantor shall also continue to permit Grantee to operate and maintain its facilities in or on the vacated property consistent with and subject to this Franchise. In the event that Grantor does not maintain the right of way or other public property for public use, but no vacation has occurred pursuant to statute, Grantor will preserve Grantee's rights under this Franchise.

#### **IX. RELOCATION OF FACILITIES**

Grantor shall endeavor to notify Grantee of any intended or expected requirement or request to relocate Grantee's facilities ninety (90) days prior to relocation when practicable. Grantor shall endeavor to cause any such relocation to be consistent with any applicable long term development plan or projection of Grantor or approved by Grantor. If, at any time, the Grantor shall cause or require the alteration or the improvement (the "Improvement") of any road, highway or right-of-way wherein Grantee maintains facilities subject to this franchise by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same or by constructing drainage or sanitary sewer facilities, the Grantee upon written notice from the Grantor shall, with all convenient speed, change the location or readjust the elevation of its system and other facilities so that the same shall not interfere with such work and so that such equipment and facilities shall conform to such new grades or routes as may be established. The relocation of Grantee's facilities shall be at no expense to the franchisor. Nothing in this Franchise is intended to prohibit the Grantee from negotiating with private persons, firms or corporations desiring or occasioning such change to participate in the cost of relocation. In the event the required move forces the Grantee off public right of way, Grantor will provide for proper easement or right of way to accommodate said relocation.

#### **XV. CHANGE OF BOUNDARIES OF GRANTOR**

Any subsequent additions or modifications of the boundaries of the Grantor, whether by annexation, consolidation or otherwise, shall be subject to the provisions of this Franchise as to all such areas. Grantor shall notify Grantee of the precise scope of any change of boundaries not less than sixty (60) days prior to such change becoming effective.

#### **XVI. PRIOR FRANCHISES SUPERSEDED**

This Franchise shall update and supersede all prior franchises heretofore granted to The Avista Corporation or its predecessors, by Grantor, or its predecessors, and shall affirm, authorize and ratify all prior installations authorized by permits or other action not previously covered by this Franchise.

#### **XVII. ASSIGNMENT OF FRANCHISE**

Grantee, its successors and assigns, shall have the right to sell, transfer or assign this Franchise. All provisions, conditions, regulations and requirements herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

#### **XVIII. EFFECT OF INVALIDITY**

The Franchise is granted pursuant to the laws of the state of Grantor relating to the granting of such rights and privileges by Grantor. 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 Grantee.

#### **XIX. FRANCHISE AS CONTRACT**

This Franchise shall have the effect of and shall be a contract between Grantor and Grantee and shall be the measure of the rights and liabilities of the Grantor as well as of Grantee.

#### **XX. EQUALITY OF FRANCHISE FEES AND COSTS**

In the event that Grantor charges or imposes upon Grantee any fees, taxes or other costs in connection with the issuance, maintenance, existence, continuation, or use of the franchise, or the public rights-of-way governed hereby, granted pursuant to this document, then Grantor shall impose equivalent charges, fees, taxes or costs upon any other franchisee in the same business or competing with Grantee.

### **XXI. INDEMNITY**

Grantee agrees to defend, indemnify and hold harmless the Grantor, its appointed and elected officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorneys fees, that the Grantor may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the construction, installation, maintenance, condition or operation of the Grantee's equipment or facilities, or appurtenances thereto, connected with this franchise, that now or may hereafter be upon, under, over, in, across or along, the highways, roads, alleys, bridges or other public ways or places of the Grantor; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of the Grantor.

Grantor agrees to the extent allowed by law to defend, indemnify and hold harmless the Grantee, its officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorneys fees, that the Grantee 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 Grantor, its officers, employees or agents; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of the Grantee.

### **XXII. FRANCHISE FEES**

For and in consideration of the rights and privileges set forth herein, Grantee, as consideration therefore, in lieu of other City fees and as compensation for the use herein granted streets, alleys and other public ways, shall pay to the City a sum equal to 1% of its gross operating revenues which are hereby defined to mean all amounts of money which the Grantee billed for the sale, transmission and/or distribution, less uncollectables, of gas service within the City. Grantor shall pay the Grantee, quarterly, a sum equal to 1% of its previous quarter's gross operating revenues. The City shall have the option to adjust fees annually according to applicable laws and consistent with the procedures applicable thereto. 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.

### **XXIII. ACCEPTANCE OF FRANCHISE**

Grantee shall notify Grantor in writing of its acceptance of this Franchise within thirty (30) days of the approval of this Franchise by Grantor.

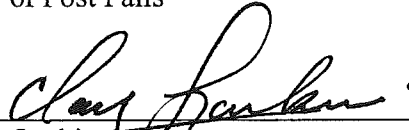
### **XXIV. EFFECTIVE DATE**

This Ordinance shall become effective the date of the written acceptance of this Franchise by the Grantee, upon publication in one (1) issue of the Post Falls Press, a newspaper of general publication within the city of Post Falls and the official newspaper thereof.

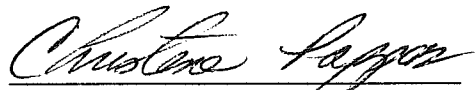
ENACTED by the city council as an ordinance of the city of Post Falls on the 17 day of December, 2002.

APPROVED by the Mayor on this 17 day of December, 2002.

City of Post Falls

  
\_\_\_\_\_  
Clay Larkin, Mayor

ATTEST:

  
\_\_\_\_\_  
Christene Pappas, City Clerk



Avista Utilities  
1411 East Mission PO Box 3727  
Spokane, Washington 99220-3727  
Telephone 509-489-0500  
Toll Free 800-727-9170  
Facsimile 509-495-8734



January 15, 2003

Comes now Avista Corporation and on this date accepts that certain Gas Franchise granted to it by the City of Post Falls, Kootenai County, State of Idaho, under Ordinance No. 1015, approved December 17, 2002.

Avista Corporation

By Scott L. Morris  
Scott L. Morris  
Senior Vice President

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We hereby acknowledge receipt of the Formal Acceptance by Avista Corporation of the Gas Franchise granted to said Company by the City of Post Falls, Kootenai County, State of Idaho, under Ordinance No. 1015, said Acceptance being duly signed by Scott L. Morris, Senior Vice President of the Company on January 15, 2003.

City of Post Falls, Idaho

By: Clay Rankin  
Title: MAYOR

1-23-, 2003