

CITY OF DALTON GARDENS, COUNTY OF KOOTENAI

In the Matter of the Application of	)	
	)	
AVISTA CORPORATION	)	Ordinance No. 168
for a franchise to locate, construct	)	
operate and maintain poles, wires,	)	GRANTING A FRANCHISE TO
underground cables and	)	AVISTA CORPORATION, FOR
appurtenances over, under, along and	)	THE CONSTRUCTION, OPERATION,
across road rights of way and public	)	AND MAINTENANCE OF ELECTRIC
properties herein mentioned for the	)	FACILITIES WITHIN THE CITY OF
purpose of transmitting and	)	DALTON GARDENS.
distributing electricity.	)	
_____	)	

WHEREAS, 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 Dalton Gardens, State of Idaho (hereinafter referred to as "Grantor" or the "City") its written application for a Franchise to locate, construct, operate and maintain poles, wires, underground cables and appurtenances over, under, along and across all of Grantor's rights of way and public property in the City of Dalton Gardens, 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, IT IS ORDERED:

**SECTION 1.0 : GRANT OF FRANCHISE**

Avista Corporation, its successors and assigns, is hereby granted a Franchise for the purposes identified below and subject to the following terms and conditions.

**1.1 TERM**

The rights, privileges and franchise hereby granted to, and conferred upon the Grantee, as the Grantee has made a long-term investment in constructing, maintaining and operating the electric utility system in and upon the streets, alleys, and public places of the Grantor, to provide electric service to the citizens of the Grantor. This franchise shall, unless it is sooner terminated, as herein provided, extend for a term of 25 years.

**1.2 NON-EXCLUSIVE FRANCHISE**

This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the Grantor from granting other and further franchises over, upon, and along the Franchised Area that do not interfere with Grantee's rights under this Franchise. This Franchise shall not prohibit or prevent the Grantor from using the Franchised Area or affect the jurisdiction of the Grantor over the same or any part thereof.

**1.3 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. Both Grantor and Grantee shall have input and discussion prior to the final passage of this Franchise.

**1.4 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.

**SECTION 2.0 PURPOSE OF FRANCHISE**

Grantor hereby grants to Grantee, its successors and assigns, the right, power, privilege and authority to enter upon all roads, rights of way, streets, alleys, highways, public places or structures lying within the boundaries of Grantor and owned or maintained by Grantor now or in the future, ("Franchised Area") to locate, construct, operate and maintain poles, wires, underground cables and all necessary or desirable appurtenances ("Facilities") for the purpose of transmitting and distributing electricity. This Franchise shall allow for the placement of such Facilities as may be necessary to provide service within the City.

**2.1 TRIMMING/REMOVAL OF TREES**

The right of Grantee to maintain its lines, Facilities and appurtenances shall include the right, as exercised in Grantee's sole discretion, to utilize an integrated vegetation management program. Grantee or Grantee's contractor may prune all trees and vegetation which overhang a public right-of-way, property or place, whether such trees or vegetation originate within or outside said right-of-way, property or place, in such a manner and to such an extent as will prevent the branches or limbs or other parts of such trees or vegetation from growing. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture or equivalent professional organization. A growth

inhibitor treatment may be utilized for trees and vegetation species that are fast growing and problematic. Nothing contained in this Section shall prevent Grantee, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

**2 . 2                                      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 restore all streets, alleys, roads, rights of way and public grounds to a standard as agreed upon for conditions of safety and use after excavation.

**SECTION 3 . 0                                      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. This Franchise is subject to the provisions of any applicable tariff on file with this State's Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

In consideration of Grantee's undertaking hereunder as evidenced by its acceptance hereof, the City agrees not to engage in the business of providing electric service during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns; but nothing herein contained 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.

**3 . 1                                      NON-INTERFERENCE WITH EXISTING FACILITIES**

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

Grantee shall provide the Grantor, upon the Grantor's reasonable request, copies of available drawings in use by Grantee showing the location of its Facilities at specific locations within the Franchised Area. As to any such drawings so provided, Grantee does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location. With respect to any excavations within the Franchised

Area undertaken by or on behalf of Grantee or the Grantor, nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

**3 . 2                      NECESSARY CONSTRUCTION/MAINTENANCE BY GRANTOR**

The laying, construction, operation and maintenance of Grantee's Facilities 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 Facilities of Grantee, provided that Grantee shall be given not less than ten (10) 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.

**SECTION 4 . 0                      VACATION OF PROPERTIES BY GRANTOR**

If, at any time, the Grantor 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 the Grantee for the purpose of operating and maintaining the Facilities of the Grantee and other public utilities. The Grantor shall, in its vacation procedure, reserve and grant said easement to the Grantee for Grantee's Facilities and shall also expressly prohibit any use of the vacated properties, which will interfere with Grantee's full enjoyment and use of said easement.

**SECTION 5 . 0                      RELOCATION OF FACILITIES**

Upon request of the Grantor, the Grantee shall relocate its Facilities as necessary within the present and future streets, alleys, highways and other public places owned by the Grantor. The Grantor shall have no responsibility for the costs of such relocations. The Grantee shall bear the cost of relocating its Facilities at the Grantor's request, unless the Facilities are to be relocated for the benefit of a third party, in which case the third party shall pay the costs of relocation. In the event federal, state or other funds are available in whole or in part for utility relocating purposes, the Grantor shall apply for such funds and the Grantee will be reimbursed to the extent any such funds are actually obtained.

**5 . 1                      PUBLIC RIGHT OF WAY IMPROVEMENT**

Whenever the Grantor causes a public right of way improvement to be undertaken within the Franchised Area, and such public right of way improvement requires the relocation of Grantee's then existing Facilities within the Franchised Area (for purposes other than those described in paragraph 5.2 below), the Grantor shall:

**5.1.1** provide Grantee, within a reasonable time prior to the commencement of such public right of way improvement, written notice requesting such relocation; and

**5.1.2** provide Grantee with reasonable plans and specifications for such public right of way improvement.

After receipt of such notice and such plans and specifications, Grantee shall relocate such Facilities within the Franchised Area at no charge to the Grantor. If the Grantor requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 5.1, the Grantor shall bear the entire cost of such subsequent relocation. As used in this Section 5, the term "public right of way improvement" is a Grantor funded capital improvement to the public right of way identified in the Grantor's transportation improvement program.

**5.2 PUBLIC OR PRIVATE DEVELOPMENT**

Whenever any public or private development within the Franchised Area, other than a public right of way improvement, requires the relocation of Grantee's Facilities within the Franchised Area to accommodate such development; or (ii) the Grantor requires the relocation of Grantee's Facilities within the Franchised Area for the benefit of any person or entity other than the Grantor, then in such event, Grantee shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to Grantee, at a time and upon terms acceptable to Grantee, for any and all costs and expenses incurred by Grantee in the relocation of Grantee's Facilities.

It is understood that the person or persons benefiting from a relocation of Facilities should bear the expense of such relocation.

**5.3 REQUIRED RELOCATION**

Any condition or requirement imposed by the Grantor upon any person or entity, other than Grantee, that requires the relocation of Grantee's Facilities shall be a required relocation for purposes of paragraph 5.2 above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

**5.4 COSTS**

Nothing in this Section 5 "Relocation of Facilities" shall require Grantee to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

**6.0 PRESERVATION OF GRANTOR'S RIGHTS TO CONTROL**

The Grantor, 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 Grantor under this Franchise, and this Franchise shall not be construed to deprive the Grantor of any such powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the Grantor's roads, rights of way and other public property covered by this Franchise.

**6.1 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.

**6 . 2 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.

**6 . 3 POLE CONTACT AGREEMENT**

Grantor shall be permitted, upon reasonable notice to Grantee and without charge therefore, to attach its traffic control, fire alarm and police signal wires to the poles of Grantee in said Grantor's City, but at the Grantor's own risk and only in accordance with standard safety practices and codes. If there is not sufficient space available thereon for said purposes, Grantee's structures may be so changed, altered, or rearranged at the expense of the Grantor so as to provide proper clearance and capacity for such wires. Such facilities shall be subject to interference by Grantee only when to the extent necessary for the proper construction, maintenance, operation or repair of Grantee's electric utility property and facilities.

**SECTION 7 . 0 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 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.

**SECTION 8 . 0                    FORFEITURE**

If Grantee shall willfully violate or fail to comply with any of the provisions of this Franchise through willful and unreasonable neglect or willful and unreasonable failure to heed or comply with any notice given Grantee under the provisions of this grant, then Grantee shall forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Grantor; provided, however, the Grantor shall give ninety (90) days' written notice of its intention to revoke or annul the Franchise during which period Grantee shall have the opportunity to remedy any breach.

**SECTION 9 . 0                    FRANCHISE DISPUTE RESOLUTION**

Disputes regarding the interpretation or execution of the terms within this franchise will be submitted to the Public Works Director for attempted mediation. If a mutually satisfactory resolution cannot then be reached, then the Grantee can appeal to the City Council, reserving its rights to judicial relief.

**SECTION 10 . 0                    FRANCHISE FEES**

As compensation for the right, privilege and franchise hereby granted, Grantee agrees to pay to the City on or before the 30th day of January, April, July and October, an amount equivalent to one percent (1%) of Grantee's "gross revenues" for the preceding calendar quarter. For purposes of this Section, "gross revenues" shall mean the amount of money billed by the Grantee for the electricity it sells within the corporate limits of the City to customers, less uncollectibles. The City shall provide appropriate information to the Grantee to allow the Grantee to identify which of its customers are located within the corporate limits of the City for purposes of paying franchise fees. Grantee shall not be responsible for any failure to pay franchise fees, which results from deficiencies in such information provided by the City. In the event the City annexes a new area into its corporate limits, the terms of this Section regarding franchise fees shall not apply to the annexed area until sixty (60) days after the City has supplied the Grantee with appropriate information for the identification of the Grantee's customers within the annexed area.

The Grantee's franchise fee payment obligations hereunder shall commence with the start of the Grantee's first full billing cycle following the effective date of this ordinance; provided, that the Grantee must first receive approval from the Idaho Public Utilities Commission for the collection of the franchise fee in the rates charged by Grantee.

The City shall have the right during the term of this Franchise to increase the franchise fee hereunder up to three percent (3%), by obtaining approval of a majority of voters 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 provide electrical service within the City, during the term of this Franchise.

**10 . 1                    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.

**SECTION 11 . 0            PRIOR FRANCHISES SUPERSEDED**

This Franchise shall update and supersede all prior electric franchises for the above stated purpose heretofore granted to Grantee 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.

**SECTION 12 . 0            ASSIGNMENT OF FRANCHISE**

Grantee shall have the right to assign its rights, benefits and privileges in and under this Franchise. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the Grantor together with its written acceptance of all terms and conditions of this Franchise. Notwithstanding the foregoing, Grantee shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

**SECTION 13 . 0            ACCEPTANCE OF FRANCHISE**

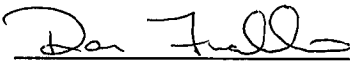
Grantee shall notify Grantor in writing of its acceptance of this Franchise within thirty (30) days of the passage and approval of this Franchise by Grantor.

**SECTION 14 . 0            EFFECTIVE DATE**

This Ordinance shall be in full force and effect from the date of approval, passage and publication as required by law.

PASSED AND APPROVED on this 7<sup>th</sup> day of October, 2004.

City of Dalton Gardens

By: 

Dan Franklin

Title: Mayor

ATTEST:

By: 

Marcia Wingfield

Title: City Clerk



# AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,  
County of Kootenai, } ss.

*Kattie Hay*

..... being first duly sworn  
upon oath deposes and says:

1. I am now and at all times hereinafter mentioned was a citizen of the United States, resident of the State of Idaho, over the age of twenty-one years and not a party of the above entitled action.

2. I am now and at all times hereinafter mentioned was the printer (principal clerk) of the "Coeur d'Alene Press," a newspaper printed and published daily except Sunday in Coeur d'Alene, Kootenai County, Idaho, and having a general circulation in said county.

3. The

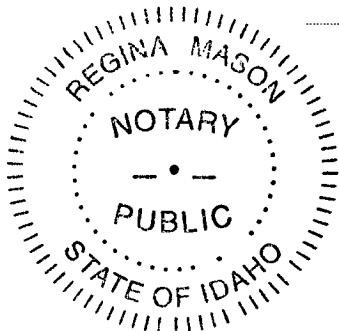
*Legal Notice*

of which the annexed is a printed copy, was published in the regular *Monday* issue of said newspaper for *one* consecutive *day* commencing on the *18* day of *October*, 20 *04*, and ending on the *18* day of *October*, 20 *04*, and such publication was made as often during said period as said *Daily* newspaper was regularly issued.

4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice *Kattie Hay*. On this *18* day of *October*, in the year of *2004*, before me, a Notary Public, personally appeared *Kattie Hay*, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

*Regina Mason*

Notary Public for the State of Idaho,  
residing at Coeur d'Alene, Idaho.



MY COMMISSION EXPIRES 6/18/09

# AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }  
County of Kootenai, } ss.

Kattie Hoy being first duly sworn upon oath deposes and says:

1. I am now and at all times hereinafter mentioned was a citizen of the United States, resident of the State of Idaho, over the age of twenty-one years and not a party of the above entitled action.

2. I am now and at all times hereinafter mentioned was the printer (principal clerk) of the "Coeur d'Alene Press," a newspaper printed and published daily except Sunday in Coeur d'Alene, Kootenai County, Idaho, and having a general circulation in said county.

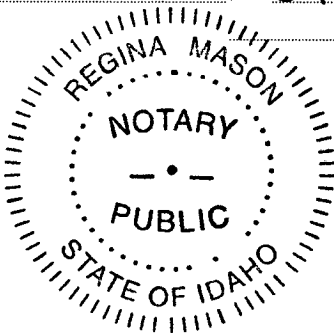
3. The Legal Notice

of which the annexed is a printed copy, was published in the regular Wednesday issue of said newspaper for one consecutive day commencing on the 18 day of August 2004 and ending on the 18 day of August 2004 and such publication was made as often during said period as said Daily newspaper was regularly issued.

4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice

Kattie Hoy  
Personally appeared before me this 18 day of August, 2004

Regina Mason  
Notary Public for the State of Idaho,  
residing at Coeur d'Alene, Idaho.



MY COMMISSION EXPIRES 6/18/09