

ORDINANCE NO.169

AN ORDINANCE GRANTING A FRANCHISE IN THE
CITY OF DALTON GARDENS , STATE OF IDAHO , TO AVISTA CORPORATION

WHEREAS, Avista Corporation, a corporation organized under the laws of the State of Idaho (hereinafter referred to as "Grantee"), has respectfully requested that the City of Dalton Gardens (hereinafter referred to as "Grantor") in the State of Idaho, renew its Franchise to locate, construct, operate and maintain such plants and works and all necessary or desirable appurtenances thereto for the manufacture, purchase, transmission and distribution of gas 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, 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, that Avista Corporation, its successors and assigns, is granted a non-exclusive franchise in the City of Dalton Gardens, State of Idaho, on the terms and conditions set forth below:

I. GRANT

Grantor hereby grants to Grantee, its successors and assigns, the right, power, privilege and authority to construct, or otherwise acquire, and to own, maintain, equip, and operate plants and works, and all necessary or desirable appurtenances thereto, for the production, purchase, transmission and distribution of gas, including the right 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 properties within the present or any future corporate limits of the Grantor, including streets, rights of way, bridges and other structures, for the purpose of 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 Grantor's corporate limits and to the Grantor and its inhabitants, and to other persons, firms, entities or municipal corporations. Grantee shall comply with applicable laws and regulations.

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. SERVICE TO BE FURNISHED

At all times during the term of this franchise, the Grantee, subject to its tariffs, rules and regulations as filed with the Idaho Utilities and Transportation Commission and subject to available natural gas supplies, shall supply natural gas to the City, its successors, and to its inhabitants and persons and corporations thereof and any other consumers who shall request the same and shall, as appropriate, acquire, construct, maintain, equip, and operate all necessary facilities for the purchase, transmission and distribution of natural gas for the benefit and convenience of the City of Dalton Gardens and its inhabitants.

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. In case any obstruction caused by Grantee shall remain longer than ten working 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. The Grantor shall be paid the reasonable costs of removal by the Grantee.

V. REMOVAL OF FACILITIES

Only under circumstances of demonstrated threat to public health and safety or obstruction of public construction projects within the right-of-way, the Grantor may require the Grantee to remove affected abandoned facilities. Upon a forfeiture of the franchise, or non-renewal of the franchise, the Grantor may require the Grantee, to remove such of its facilities from the public properties at its own expense and as soon as practicable, but only where such abandoned facilities constitute a demonstrated threat to public health and safety. If it becomes necessary for the Grantor to do so, the Grantor shall be paid the reasonable and actual costs of removal by the Grantee.

VI. 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 existing facilities of other utilities, public or private, including drains, drainage ditches and structures, irrigation ditches and structures located therein.

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 may be 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.

VII. 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 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 ten (10) working days' notice of said work. In the instance of blasting, Grantee shall be given not less than 120 days notice of such work. 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.

VIII. 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, 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 the facilities of the Grantee 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.

IX. RELOCATION OF FACILITIES

Section 1. Notice Requirement. Grantor shall notify Grantee of any intended or expected requirement or request to relocate Grantee's facilities as early as practicable, but not less than 120 days prior to any such relocation when the requirement or request could have been foreseen by that date. 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 of any road, highway or right-of-way wherein Grantee maintains facilities subject to this franchise by grading or re-grading, 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.

Section 2. Reimbursement of Cost. The relocation of Grantee's facilities shall be at the sole expense of Grantee when the relocation is paid solely by public funds unless the Grantor has failed to provide the required advanced notice, then any and all reasonable excess costs caused by the failure to provide such notice shall be paid by the Grantor, or the required move forces Grantee off public right of way then Grantor will provide for proper easement or right-of-way to accommodate said relocation.

Whenever 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 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; accordingly, the Grantor shall not authorize any improvement or change until the benefited developer, person or entity has agreed to pay Grantee for the cost 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.

X. 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.

XI. 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.

XII. TRIMMING/REMOVAL OF TREES

The right of Grantee to maintain its gas lines, facilities and appurtenances shall include the right, as exercised in Grantee's sole discretion, to utilize an integrated vegetation management program, including the right to cut, trim or remove any and all trees, brush or shrubs growing in, on, or hanging over any Grantor roads, rights of way, streets, alleys or Grantor property that interfere with or may interfere with Grantee's facilities, including pipes, valves, services, conduits or other apparatus of Grantee, its successors and assigns.

XIII. NON-EXCLUSIVE FRANCHISE

This Franchise shall not be deemed to be an exclusive Franchise. It shall in no manner prohibit the Grantor from granting other franchises of a like nature or franchises to other public or private utilities under, along, across, over and upon any of Grantor's roads, rights of way or other property of Grantor subject to this Franchise and shall in no way prevent or prohibit the Grantor from constructing, altering, maintaining or using any of said roads, rights of way, drainage structures or facilities, irrigation structures or facilities, or any other property of Grantor or affect its jurisdiction over such property to make all necessary changes, relocations, repairs, maintenance, etc., insofar as the Grantor may deem fit.

XIV. 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 electrical power 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.

"gas"
collected
by Ord
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XV. 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.

XVI. FORFEITURE

If Grantee shall willfully violate or fail to substantially 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.

XVII. 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, newly constructed, 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.

XVIII. 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.

XIX. PRIOR FRANCHISES SUPERSEDED

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

XX. ASSIGNMENT OF FRANCHISE

Grantee, its successors and assigns, shall have the right to sell, transfer or assign this Franchise upon the written consent of the Grantor, which consent shall not be unreasonably withheld. 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.

XXI. 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 or intent 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.

XXII. 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.

XXIII. 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.

XXIV. INSURANCE

During the term of this franchise, the Grantor may review the relative risk of the Grantee's installation and operations and request changes to insurance and liability protections at least sixty (60) days before the anniversary date of the franchise. Unless so modified, Grantee shall furnish satisfactory evidence of commercial general liability insurance and maintain the same in good standing, with limits of at least five hundred thousand dollars (\$500,000) per occurrence and one million dollars (\$1,000,000) aggregate, with the City of Dalton Gardens named as an additional insured. Self insurance is acceptable, if approved by the Grantor and backed by the resources of the Grantee.

Any Grantee insurance policy or approved self insurance arrangements addressing requirements of section XXIII above or otherwise because of Grantee's negligent or intentional acts or omissions shall be primary to any Grantor insurance coverage or, in the event Grantor is self insured, any Grantee policy shall afford first dollar protection coverage for risks included in Grantee's operations. On or before thirty (30) days of the anniversary date of the franchise, Grantee shall file with the City Clerk proof of continued insurance coverage, at least in the amounts required in this section, through a Certificate of Insurance, including the additional insured endorsement indicating Grantor coverage required herein and a provision that the coverage may not be cancelled or reduced without at least thirty (30) days notice to the Grantor.

XXV. 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 Grantor.

XXVI. AGREEMENT NOT TO COMPETE

RESERVE TO GRANTOR POWER OF EMINENT DOMAIN


In consideration of Grantee's undertaking hereunder as evidenced by its acceptance hereof the Grantor agrees not to engage in the business of distribution and selling gas during the life of this franchise or any extension thereof in competition with the Grantee, its successor and assigns; but nothing herein contained shall be construed or deemed to prevent the Grantor from exercising at any time any power or eminent domain granted to it under the laws of the State of Idaho

XXVII. 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.

PASSED AND APPROVED on this 7th day of October, 2004

Grantor of 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 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*, 20 *04*, and ending on the *18* day of *August*, 20 *04*, and such publication was made as often during said period as said *Daily* newspaper was regularly issued.

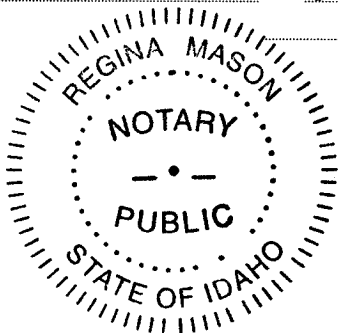
4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice

Kattie Hoy

Personally appeared before me this *18* day of *August*, 20 *04*

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 Monday issue of said newspaper for one consecutive day commencing on the 18 day of October 2004 and ending on the 18 day of October 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

On this 18 day of October in the year of 2004, before me, a Notary Public, personally appeared Kattie Hoy, 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

