

**CITY OF POST FALLS, IDAHO  
ORDINANCE NO. 1280**

**AN ORDINANCE OF THE CITY OF POST FALLS, KOOTENAI COUNTY IDAHO, GRANTING AVISTA CORPORATION, d/b/a AVISTA UTILITIES, A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO LOCATE, CONSTRUCT, INSTALL, OWN, MAINTAIN, REPAIR, REPLACE POLES, ELEVATED AND UNDERGROUND WIRES AND CABLE; EXTEND, OPERATE AND USE ELECTRIC FACILITIES AND APPURTENANCES IN, UPON, OVER, UNDER, ALONG, AND ACROSS THE PUBLIC RIGHT-OF-WAY UNDER THE JURISDICTION OF THE CITY OF POST FALLS FOR PURPOSES OF THE TRANSMISSION, CONTROL, DISTRIBUTION AND SALE OF ELECTRICITY; PROVIDING TERMS AND CONDITIONS OF THE FRANCHISE; AND PROVIDING AN EFFECTIVE DATE THEREOF.**

Avista Corporation dba Avista Utilities (“Avista”), a Washington corporation, which is authorized to do business within the state of Idaho, has filed with the City of Post Falls, State of Idaho (the “City”) a written application for a renewal of its Franchise to locate, construct, operate, maintain poles, wires, underground cables and appurtenances, and use such plants, works, underground cables, equipment and appurtenances over, under, along and across all of City’s rights of way and public property in the City for the purposes of the transmission, control, distribution and sale of electricity; and the City has determined it is in the interest of persons and businesses in this jurisdiction (“Customers”) to have access to Avista’s services;

**THEREFORE, THE CITY OF POST FALLS DOES ORDAIN:**

**SECTION 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.

**1.1 Avista.** “Avista” means Avista Corporation, dba Avista Utilities, a Washington corporation, and its respective successors and assigns, agents and contractors.

**1.2 City.** “City” means the City of Post Falls, a municipal corporation of the State of Idaho, and its respective successors and assigns.

**1.3 Commission.** “Commission” means the Idaho Public Utilities Commission, or such successor regulatory agency having jurisdiction over investor-owned public utilities in the State of Idaho.

**1.4 Days.** “Days means business days.

**1.5 Electric Facilities.** “Electric 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, underground cables, vaults, transformers, supports, guy wires, conduits, meters, meter-reading devices, communication and control systems and other equipment, appliances, fixtures, attachments, appurtenances, and Electric Facilities incidental thereto for the purpose of transmitting, controlling and distributing electricity and other items necessary, convenient, or in any way appertaining to any and all of the foregoing for the purposes of transmission, control, distribution, and sale of electricity, whether the same be located above or below ground.

**1.6 Franchise.** “Franchise” means the grant by the City of rights, privileges and authority embodied in this Ordinance.

**1.7 Franchise Area.** “Franchise Area” means the surface and space above and below all Rights-of-way for:

(i) public roads, streets, avenues, alleys, bridges, tunnels, easements, and highways of the City, as now laid out, platted, dedicated, acquired or improved within the present corporate limits of the City;

(ii) public roads, streets, avenues, alleys, bridges, tunnels, 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;

(iii) 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; and

(iv) any other specifically designated City-owned property.

**1.8 Reserved.**

**1.9 Maintenance, maintaining, or maintain.** The meaning of the terms “Maintenance, maintaining, or maintain” includes, without limit, repairing, replacing, upgrading, examining, testing, self-inspecting, and removing Electric Facilities, vegetation management, digging and excavating, and restoration of affected Right-of-way surfaces.

**1.10 Parties.** “Parties” means City and Avista collectively.

**1.11 Party.** “Party” means either City or Avista individually.

**1.12 Person.** “Person” means a business entity or natural person.

**1.13 Public Project.** “Public Project” means any project funded solely by the City or other capital improvement project funded solely by a government agency/body on the Rights-of-way or City property within the Franchise Area.

**1.14 Right-of-way.** “Right-of-way” means the surface of and the space along, above, and below any street, road, highway, freeway, bridge, tunnel, lane, sidewalk, alley, utility easement and/or Right-of-way now or hereafter held or administered by the City.

**1.15 State.** “State” means the State of Idaho.

**1.16 Tariff.** “Tariff” means the rate schedules, rules, and regulations relating to utility service, filed with and approved by the Commission in effect upon execution and throughout the term of this Franchise.

## SECTION 2 GRANT OF FRANCHISE

City hereby grants to Avista the right, power, privilege and authority to enter upon all roads, rights of way, streets, alleys, highways, public places or structures, lying within the Franchise Area to locate, construct, operate and maintain its Electric Facilities for the purpose of controlling, transmitting and distributing electricity, as may be necessary to provide electric service to Customers within the Franchise Area.

**2.1 Effective Date.** This Ordinance is effective as of the date of approval, passage and publication as required by law.

**2.2 Term.** The rights, privileges and Franchise hereby granted to Avista will extend for a term of 25 years from the Effective Date, and shall continue year-to-year thereafter, until it is otherwise renewed, or terminated by either Party, with not less than 180 days prior written notice to the other Party.

**2.3 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.

**2.4 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 six months’ notice of such action.

**2.5 Assignment Of Franchise.** Avista shall have the right to assign its rights, benefits and privileges under this Franchise. Any assignee shall, within thirty (30) days of the date of any

assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise. As permitted by law and Commission regulation, Avista shall have the right, without notice to or consent of the City, to mortgage or hypothecate its rights, benefits and privileges in and under this Franchise as security for indebtedness.

**2.6 Franchise Fees and Costs.** Avista shall pay all permitting, license fees, or costs which it might be required to pay in connection with the issuance, operation, maintenance, existence, continuation, or use of this franchise, to the extent permitted by 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 and costs owed by Avista in connection with this Franchise. To the extent that any Franchise fees, or other costs are imposed on Avista, City shall impose equivalent charges, fees, or costs upon any other electric franchisee.

**2.7 Franchise Fees.** As compensation for the Franchise granted by this ordinance, 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 electricity consumed within the City to be paid quarterly. Gross revenue will be computed by deducting from the total electric 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 electric service provider (other than the City) who utilizes the City's Right-of-way to provide electric 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.

### **SECTION 3 AVISTA'S OPERATIONS AND MAINTENANCE**

**3.1 Compliance with Laws, Regulations, Codes and Standards.** In carrying out any authorized activities under the privileges granted by this Franchise, Avista shall meet accepted industry standards and codes and shall comply with all applicable laws, regulations and ordinances of any governmental entity with jurisdiction over Avista's Electric Facilities and operations 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 Electric Facilities and 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 by the City of any new rule, procedure or policy affecting Avista's Electric Facilities and operations under this Franchise, the City shall provide Avista 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.

**3.2 Electric Facility Location by Avista and Non-Interference.** Avista shall have the discretion to determine the placement of its Electric 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 or relocation of Avista's Electric Facilities performed by Avista in the Franchise Area will be done in such a manner as not to interfere with the existing construction and maintenance of other utilities, drains, drainage and irrigation ditches and structures located therein, nor with the grading or improvement of the Franchise Area and City-owned property within the Franchise Area.

**3.3 Electric Facility Location Information.** Avista shall provide the City, upon the City's reasonable request, Electric Facility location information in electronic or hard copy showing the location of its Electric 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 Electric Facility location information provided and, to the extent the location of Electric 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.

**3.4 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 Electric 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 encroaching (either above or below the ground) vegetation on Avista's Electric Facilities can lead to power outages and other threats to public safety and welfare and can interfere with or limit access to Avista's Electric Facilities. Avista or its agents may inhibit the growth of, prune, or remove any trees and vegetation which overhangs or encroaches upon its 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 Electric Facilities.

**3.5 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 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 to its original state after excavation, in accordance with applicable City and Avista specifications.

**3.6 Emergency Work.** In the event of an emergency requiring immediate action by Avista to protect the public health and safety or for the protection of its Electric Facilities or the property of the City or other persons in the Franchise Area, Avista may immediately proceed with excavation or other Right-of-way work, with concurrent notice to the City to the extent possible.

#### **SECTION 4 RESERVATION OF CITY'S RIGHTS AND POWERS**

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 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; and Rights-of-way 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.

**4.1 Necessary Construction/Maintenance by City.** The construction, operation and maintenance of Avista's Electric Facilities authorized by this Franchise shall not preclude the City, its agents or its contractors, from grading, excavating, or doing other necessary road work contiguous to Avista's Electric 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 caused by said work.

**4.2 Expansion of Avista's Electric Facilities.** Electric Facilities in the City's Franchise Area that are incidental to the Franchise Area, or that have been, or are at any future time acquired, newly constructed, leased, or utilized in any manner by Avista, shall be subject to all provisions of this Franchise.

**4.3 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.

**4.4 Removal of Abandoned Electric 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 Electric Facilities from the Franchise Area at its own expense and as soon as practicable, but only where such abandoned Electric Facilities constitute a demonstrated threat to public health and safety. Avista shall not be required to remove, or pay for the removal of Electric Facilities it has previously abandoned to another franchisee; or utility under a Joint Use Agreement; or person who has been granted permission to access Avista's Electric Facilities. If Avista fails to remove designated abandoned Electric Facilities requested by the City within ninety (90) days, the City may hire a qualified contractor to remove those abandoned Electric Facilities with Avista to bear the reasonable and actual costs of such removal, provided however that the City shall be solely responsible for the actions of its contractor.

**4.5 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 Electric Facilities on the affected property pursuant to Idaho Code 50-311. The City shall, in its vacation procedure, reserve and grant said easement to Avista for Avista's Electric Facilities and shall also expressly prohibit any use of the vacated properties which will interfere with Avista's full enjoyment and use of said agreement.

**4.6 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 to the extent necessary for utility worker safety and the proper construction, maintenance, operations, or repair of Avista's Electric Facilities and appurtenances. City assumes all responsibility for the installation and maintenance of City's facilities installed on Avista's Electric Facilities.

## **SECTION 5 RELOCATION OR CONVERSION OF AVISTA'S ELECTRIC FACILITIES**

City acknowledges that Avista is obligated to provide electric service and related line extension, relocation, or conversion of its Electric Facilities for the benefit of its Customers and to require compensation for such services on a non-preferential basis in accordance with applicable Tariffs.

**5.1 Relocation of Electric Facilities Requested by City.** Upon request of the City and when a Public Project, Avista shall relocate its Electric Facilities as necessary, and at Avista's cost, within the Franchise Area or other City-owned property as specifically designated by the City for such purpose. The City shall provide Avista reasonable notice of any intended or expected requirement or request to relocate Avista's Electric 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. If, at any time, the City shall cause or require the alteration or the improvement of any road, Right-of-way or other public property which is subject to rights granted by this Franchise within the Franchise Area, Avista shall, upon written notice from the City, change the location or readjust the elevation of its system and other Electric Facilities so that the same shall not interfere with

such work and so that such equipment and Electric Facilities shall conform to such new grades or routes as may be established.

In the event a relocation forces Avista off City's existing public Right(s)-of-way, then the City shall make a reasonable effort to accommodate said relocation on alternative Right(s)-of-way. If the City requires the subsequent relocation of any of Avista's Electric Facilities within three (3) years from the date of relocation of such Electric Facilities or installation of new Electric Facilities, the City shall bear the entire cost of such subsequent relocation. Avista agrees to relocate all Electric Facilities promptly within a reasonable time. Upon notice from the City, the parties agree to meet and determine a reasonable relocation time, which shall not exceed the time normally needed for construction projects of the nature of the City's relocation request unless otherwise mutually agreed.

Notwithstanding the above, Avista shall not be required to relocate facilities of other entities that were (i) granted access to Avista's Electric Facilities through a Joint Use Agreement or (ii) abandoned to another franchisee. Such relocation of these types of facilities shall be in accordance with Section 5.2 below.

**5.2 Relocation Of Electric Facilities Requested By Third Parties.** If Avista's Electric Facilities within the Franchise Area are to be relocated at the request of or for the primary benefit of a third party (including compliance by such party with any condition or requirement associated with approvals or permits to be obtained pursuant to any zoning, land use, construction or other development regulation), Avista is authorized to make arrangements with the benefitted third party prior to relocation to receive reasonable compensation for such relocation costs incurred. Avista agrees to indemnify, defend and hold City harmless for any disputes between Avista and such third parties regarding compensation. In the event the required move forces Avista off public Right-of-way, City will provide for proper easement or Right-of-way to accommodate said relocation. Nothing in this Section 5.2 shall require Avista to bear any cost or expense in connection with the location or relocation of any Electric Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

**5.3 Availability of Other Funds.** In the event federal, state or other funds are available in whole or in part for utility relocating purposes related to a Public Project as set forth in Section 5.2 above, the City, in its sole discretion, may apply for such funds and Avista will be reimbursed to the extent any such funds are actually obtained and designated for utility relocating costs.

**5.4 Temporary Relocation of Electric 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 Electric 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.



**5.5 Conversion of Existing Electric Distribution Facilities.** City, subject to applicable laws, rules, regulations, and the Tariff, may request that Avista convert existing Electric Facilities 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 Electric Facilities shall be borne and paid by the City or other party requesting the same, subject to law and such rules, regulations, and the Tariff of the Commission. It is expressly agreed by both parties that this Section 5.5 does not apply to any conversion of transmission (65kv or above) infrastructure.

## **SECTION 6 INDEMNITY**

**6.1 Indemnification of City.** Avista agrees to defend and indemnify the City, its appointed and elected officers, employees, or agents from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorneys' 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 in connection with Avista's obligations under this Franchise; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages and losses were caused by or result from the negligence of the City, its elected officers, employees or agents.

**6.2 Indemnification of Avista.** To the extent permitted by law, City agrees to defend and indemnify Avista, its officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorneys' fees, that Avista may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of the City, its appointed and elected officers, employees or agents in connection with City's obligations under this Franchise; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of Avista, its employees or agents.

## **SECTION 7 FRANCHISE DISPUTE RESOLUTION**

**7.1 Non-waiver.** Failure of a Party to declare any breach or default of this Franchise immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but the Party shall have the right to declare any such breach or default at any time. Failure of a Party to declare one breach or default does not act as a waiver of the Party's right to declare another breach or default. In addition, the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation and forfeiture for breach of the conditions of the Franchise.

**7.2 Revocation and Forfeiture of Franchise.** If Avista 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 Avista under the provisions of this grant, this Franchise may be revoked by the City and Avista shall forfeit all

rights conferred under the Franchise; provided, however, the City shall give ninety (90) days' written notice of its intention to revoke the Franchise during which period Avista shall have the opportunity to remedy any breach.

**7.3 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 a representative of Avista's Legal Department for resolution. If a mutually satisfactory or timely resolution cannot then be reached by the above process, prior to resorting to a court of competent jurisdiction, the Parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the Parties.

**7.4 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. Any litigation between the City and Avista arising under or regarding this Franchise shall occur, if in the state courts, in Kootenai County, Idaho, a court of competent jurisdiction, and if in the federal courts, in the United States District Court for the District of Idaho.

**7.5 Attorneys' Fees and Costs.** Each Party shall pay for its own attorneys' fees and costs incurred in any dispute resolution process or legal action arising out of the existence of this Franchise.

## SECTION 8 GENERAL PROVISIONS

**8.1 Franchise As Contract, No Third Party Beneficiaries.** This Franchise is a contract between the Parties and binds and benefits the Parties and their respective successors and assigns. This Franchise does not and is not intended to confer any rights or remedies upon any persons, entities or beneficiaries other than the Parties.

**8.2 Force Majeure.** In the event that Avista is delayed in or prevented from the performance of any of its obligations under the 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 civil commotion, 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.

**8.3 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 City, and shall affirm, authorize and ratify all prior installations authorized by permits or other action 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.

**8.4 Severability.** The Franchise is granted pursuant to the laws of the State of Idaho relating to the granting of such rights and privileges by City. If any article, section, sentence, clause, or phrase of this Franchise is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the Franchise or any of the remaining portions. The invalidity of any portion of this Franchise shall not abate, reduce, or otherwise affect any obligation required of Avista.

**8.5 Changes or Amendments.** No change or amendment to this Franchise shall be effective until lawfully adopted by the City and agreed to by Avista.

**8.6 Supremacy and Governing Law.** This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Idaho. In the event of any conflict between this Franchise and any City ordinance, regulation or permit, the provisions of this Franchise shall control notwithstanding Idaho law. The City acknowledges that Avista is subject to its Tariff with the Commission, and while this relationship is separate and not binding between the Parties to this Franchise, in the event the terms of this Franchise create a conflict under Avista's Tariff, Avista may be required to suspend or abandon this Franchise if such conflict is not capable of being resolved. Such suspension or abandonment shall be in accordance with Section 8.10 below.

Avista agrees that it will not knowingly petition or persuade the Commission to amend or modify its Tariff to create a conflict.

**8.7 Headings.** The headings or titles in this Franchise are for the purpose of reference only and shall not in any way affect the interpretation or construction of this Franchise.

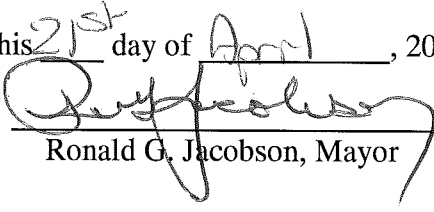
**8.8 Acceptance of Franchise.** Avista shall, within thirty (30) days after passage of this Ordinance, file with the City Clerk, its acceptance of the terms and conditions of this Franchise.

**8.9 Franchise Effective Date.** The Effective Date of this Franchise shall be \_\_\_\_\_, 2015, after passage, approval and legal publication of this ordinance as provided by law, and provided that it has been duly accepted by Avista as specified above.


**8.10 Abandonment or Suspension of Franchise Rights and Obligations.** Avista may at any time abandon the rights and authorities granted hereunder, provided that six (6) months' written notice of intention to abandon is given to City. In addition, pursuant to Section 8.6 and in the event a conflict exists between the terms of this Franchise and Avista's Tariff with the Commission that cannot be resolved, Avista may suspend or abandon the rights and obligations of this Franchise upon reasonable notice to the City.

**City's Language Attesting to Approval and Passage of the Ordinance**

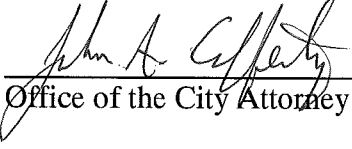
PASSED AND APPROVED on this 21<sup>st</sup> day of April, 2015.

By:   
Ronald G. Jacobson, Mayor

Attest:

By:   
Shannon Howard, City Clerk

APPROVED AS TO FORM:

  
Office of the City Attorney



**Letter of Acceptance by Avista**

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF POST FALLS, COUNTY OF KOOTENAI, ID

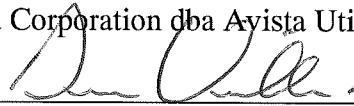
IN RE: City of Post Falls Ordinance No. \_\_\_\_\_

**“Granting a Franchise to Avista Corporation for the Construction,  
Operation and Maintenance of Electric Facilities for the Transmission,  
Control, and Distribution Within the City.”**

Avista Corporation dba Avista Utilities, for itself, its successors and assigns, hereby accepts the terms and conditions of the Franchise Agreement contained in the subject Ordinance and files this written acceptance with the City of Post Falls. This acceptance is executed on 5/4/15, 2015.

Avista Corporation dba Avista Utilities

By: \_\_\_\_\_


  
Dennis Vermillion  
President, Avista Utilities

**Copy Received for the City of Post Falls**

On: \_\_\_\_\_

5/5/15

By: \_\_\_\_\_

  
Sharon Haged City Clerk  
City Representative – Name