

TOWN OF FARMINGTON, COUNTY OF WHITMAN

In the Matter of the Application of:

AVISTA CORPORATION)
for a franchise to locate, construct)
operate and maintain poles, wires,)
underground cables and)
appurtenances over, under, along and)
across road rights of way and public)
properties herein mentioned for the)
purpose of transmitting and)
distributing electricity.)
_____)

Ordinance No. 186-05

GRANTING A FRANCHISE TO
AVISTA CORPORATION, FOR
THE CONSTRUCTION, OPERATION,
AND MAINTENANCE OF ELECTRIC
FACILITIES WITHIN THE TOWN OF
FARMINGTON

WHEREAS, Avista Corporation, a corporation organized under the laws of the State of Washington (hereinafter referred to as "Grantee"), has heretofore filed with the Town of Farmington, State of Washington (hereinafter referred to as "Grantor") 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 Town of Farmington, State of Washington; 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 20 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 under, along, across, over and upon any of Grantor's roads, rights of way or other property of Grantor subject to this Franchise, that do not interfere with Grantee's rights under this Franchise. Grantor may not, however, award an electric franchise to another party under more favorable or less onerous terms than those of this Franchise without this Franchise being amended to reflect such more favorable or less onerous terms.

This Franchise shall not prohibit or prevent the Grantor from using Grantor's property 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 or any proposed amendments to 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.

1.5 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.

1.6 EFFECTIVE DATE

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

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 Franchised Area.

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. Prior to the adoption of any new rule, procedure or policy, Grantee shall be provided a written draft document for comment with a response period of not less than thirty 30 days. Service shall be supplied to the 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 regulatory agency 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 Grantor 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 Grantor 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 TRIMMING/REMOVAL OF TREES

The right of Grantee to maintain its 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 that obstructs or may obstruct the Grantee's Facilities. 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 public rights of way that may interfere with Grantee's Facilities.

3.3 RIGHT OF EXCAVATION

For the purpose of carrying into effect the privileges granted hereunder and after all necessary and required permits are secured, 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.

3.4 EXPANSION OF GRANTEE'S FACILITIES

Any Facilities and appurtenances in streets, alleys, rights of way and public places, incidental to the Franchised Area, 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.

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. 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. 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, 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. If the relocation forces the Grantee off public right-of-way then Grantor will accommodate said relocation on alternative public right-of-way.

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 COSTS

The Grantor shall have no responsibility for the costs of such relocations unless: 1) 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. 2) 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. 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. Grantor shall not authorize any improvement or change until the benefited developer, person or entity has paid Grantee for the cost of relocation. 3) If the Grantor requires the subsequent relocation of a Grantor funded capital improvement to the public right-of-way of any Facilities within five (5) years from the date of the initial relocation, the Grantor shall bear the entire cost of such subsequent relocation.

Nothing in the "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.

SECTION 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 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.

6.2 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) business 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.

6.3 EMERGENCY REMOVAL BY GRANTOR

The Grantor reserves the right to remove any such wires, poles, or apparatus ("Grantee's facilities") herein provided for in case of general conflagration or in other cases of extreme emergency where there is neither the time nor the opportunity for Grantee to perform such work. Grantor shall use reasonable care in the exercise of such emergency powers. Grantor shall indemnify and hold harmless the Grantee, its successors and assigns, against any and all property damage, personal injury, death, or other liability to third parties sustained as a result of the negligent exercise of such reserved emergency powers, and shall, at its expense, restore Grantee's facilities removed as a result of such exercise.

6.4 REMOVAL OF ABANDONED 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 this Franchise, or non-renewal of this 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.

6.5 UNDERGROUNDING OF FACILITIES

Grantor, subject to applicable laws, rules, regulations and tariffs, may direct Grantee to install (or relocate from above ground to below ground wires, for the distribution of electricity underground, after a finding by Grantor, with Grantee's concurrence, that such installation is

feasible, practical and required for the public interest, safety and convenience. The excess cost of such installation or relocation of existing Facilities to provide for underground service shall be borne and paid by the Grantor or other party requesting the same, subject to law and such rules, regulations, and tariffs as the appropriate state regulatory agency may prescribe or approve.

SECTION 7 . 0 EQUALITY OF FRANCHISE FEES AND COSTS

The Grantor shall not grant a franchise to another electric service provider during the term of this Franchise agreement unless the electric service provider has received approval to provide electrical service within the Franchised Area from the appropriate governing regulatory body, and the Grantor has imposed the same franchise fee on the electric service provider as paid by the Grantee.

SECTION 8 . 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, its employees or agents.

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, its employees or agents.

SECTION 9 . 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 10 . 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 11 . 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.

PASSED AND APPROVED on this 10th day of October, 2005.

Town of Farmington, Washington

By 
Title: MAYOR

ATTEST:

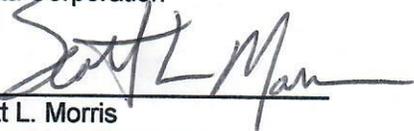
By 
Title: Clerk - Treasurer

Franchise\Town\Elec\Farmington

October 25, 2005

Comes now Avista Corporation and on this date accepts that certain Electric Franchise granted to it by the Town of Farmington, Whitman County, State of Washington, under Ordinance No. 186-05 approved October 10, 2005.

Avista Corporation

By: 
Scott L. Morris
Senior Vice President

We hereby acknowledge receipt of the Formal Acceptance by Avista Corporation of the Electric Franchise granted to said Company by the Town of Farmington, Whitman County, State of Washington, under Ordinance No. 186-05 said Acceptance being duly signed by Scott L. Morris, Senior Vice President of the Company on October 25, 2005.

Town of Farmington, Washington

By: 
Title: MAYOR

11-7-05, 2005

CITY ELECTRIC
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