ORDINANCE NO. 53

CITY OF DOVER, COUNTY OF BONNER

In the Matter of the Application of AVISTA CORPORATION for an exclusive franchise to locate, construct, operate and maintain plants and works, and all necessary or desirable appurtenances thereto for the manufacture, purchase, transmission and distribution of gas along and across rights of way and present and future public properties.	ORDINANCE NO. 53 GRANTING AN EXCLUSIVE FRANCHISE TO AVISTA CORPORATION FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF NATURAL GAS FACILITIES WITHIN THE CITY OF DOVER

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 Dover, State of Idaho (hereinafter referred to as "Grantor" or the "City"), its written application for an exclusive 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 Dover, 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, that Avista Corporation, its successors and assigns, is hereby granted a Franchise for the purposes identified below and subject to the following terms and conditions:

I. GRANT

Grantor hereby grants to Grantee, its successors and assigns, the exclusive 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 City and to the City and its inhabitants, and to other persons, firms, entities or municipal corporations.

II. TERM

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

III. TRIMMING/REMOVAL OF TREES

There is given in connection herewith, unto the grantee, its successors and assigns, the right during the life of this Franchise to cut and trim any and all trees growing in, on or over the streets or alleys of the City of Dover that might or may interfere with any pipes, conduits or other apparatus of the Grantee, its successors or assigns.

Notification of intent to cut or trim trees shall be given to the City and property owners in writing no less than fourteen (14) days prior to said cutting and trimming; however, in the event of an emergency situation in which there is neither time nor the opportunity for Grantee to notify Grantor and in which the public's health, safety or welfare are affected, Grantee may cut and trim trees without prior notice.

IV. RIGHT OF EXCAVATION

For the purpose of carrying into effect the privileges granted hereunder, Grantee is authorized at any time to make all necessary excavations in the streets, alleys, roads, rights of way and public grounds within the franchised area, but such excavation shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the rights of the public as may be feasible. Grantee shall 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. In case any obstruction caused by Grantee shall remain longer than seven (7) days after notice to remove it, or in case of neglect by Grantee to safeguard any dangerous places, Grantor may remove such obstruction or safeguard such dangerous places at the expense of Grantee.

V. NON-INTERFERENCE WITH EXISTING FACILITIES

All construction, installation, repair or relocation of lines and appurtenances performed by Grantee along or under the roads, 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.

VI. NECESSARY CONSTRUCTION/MAINTENANCE BY GRANTOR

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

VII. CONDUCT OF GRANTEE'S BUSINESS

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

VIII. RIGHTS OF INGRESS/EGRESS

The Grantee, its agents and employees, shall have the right and power of ingress and egress upon its customers' properties for the purpose of installing, servicing and maintaining its facilities, including the testing and reading of service meters.

IX. 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 overhead and underground gas and electric transmission and distribution lines and installations and other public utilities. Such easement shall also expressly prohibit any use of the vacated properties which will interfere with Grantor's ability to provide Grantee's full enjoyment of its rights under this Franchise. Grantor shall also continue to permit Grantee to operate and maintain its facilities in or on the vacated property consistent with and subject to this Franchise.

X. RELOCATION OF FACILITIES

Grantor shall notify Grantee of any intended or expected requirement or request to relocate Grantee's facilities as early as practicable, but not later 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 (the "Improvement") of any road, highway or right-of-way wherein Grantee maintains facilities subject to this franchise by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same or by constructing drainage or sanitary sewer facilities, the Grantee upon written notice from the Grantor shall, with all convenient speed, change the location or readjust the elevation of its

system and other facilities so that the same shall not interfere with such work and so that such equipment and facilities shall conform to such new grades or routes as may be established. The relocation of Grantee's facilities shall be at the sole expense of Grantee unless: (i) the Improvement was not paid for solely by public funds, in which case the Grantor agrees to make reasonable efforts to facilitate an agreement between the adjoining property owners or developers to pay for the costs of relocation; or (ii) Grantor has failed to provide the required advance notice, in which case any and all excess costs caused by the failure to provide such notice shall be paid by Grantor.

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. EMERGENCY REMOVAL BY GRANTOR

The Grantor reserves the right to remove any such distribution lines, equipment and related appurtenances ("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.

XIII. EXCLUSIVE FRANCHISE

This Franchise shall be deemed to be an exclusive franchise, but 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. 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.

XV. 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.

XVI. 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.

XVII. PRIOR FRANCHISES SUPERSEDED

This Franchise shall update and supersede all prior franchises 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.

XVIII. ASSIGNMENT OF FRANCHISE

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

XIX. 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.

XX. 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.

XXI. INDEMNITY

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

Grantor agrees to defend, indemnify and hold harmless the Grantee, its officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorneys fees, that the Grantee may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of the Grantor, its officers, employees or agents; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of the Grantee.

XXII. 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.

XXIII. 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.

XXIV. 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 9 day of December, 1999.

City of Dover

By ~~Bob~~ Paul Randy Curles

Title: Mayor

ATTEST:

By Ruth Guthrie

Title: Clerk/Treasurer

CITY OF DOVER GAS FRANCHISE
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