

**ORDINANCE NO. 199**

**AN ORDINANCE OF THE CITY OF LIBERTY LAKE, WASHINGTON,  
GRANTING THE RIGHT OF FRANCHISE TO AVISTA  
CORPORATION, A WASHINGTON CORPORATION, FOR THE  
OPERATION OF A NATURAL GAS DISTRIBUTION SYSTEM IN THE  
CITY OF LIBERTY LAKE.**

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**WHEREAS**, Avista Corporation, is a corporation organized under the laws of the State of Washington (hereinafter referred to as "Avista"), engaged in the business of providing utility services consistent with applicable laws and regulations; and

**WHEREAS**, Avista has respectfully requested that the City of Liberty Lake, Washington (hereinafter referred to as "City"), renew its Franchise to locate, construct, own, maintain, repair, replace, extend, operate, and use such Facilities, and all necessary appurtenances thereto for the distribution of Gas in the Public Right of Way as defined herein; and

**WHEREAS**, the City has determined it is in the best interest of the persons and businesses in the City to have access to Avista's services; **NOW THEREFORE, THE CITY OF LIBERTY LAKE, WASHINGTON DOES ORDAIN:**

**Section 1.** **Definitions.** For the purposes of this Franchise and all exhibits attached hereto (if any), the following terms, phrases, words and their derivations shall have the meaning given herein. 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, a corporation organized under the laws of the State of Washington.
- 1.2. City.** "City" means the City of Liberty Lake, a municipal corporation of the State of Washington.
- 1.3. Facilities.** "Facilities" means those facilities normally and regularly used in gas distribution and transmission, including but not limited to gas pipes, pipelines,

mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, and communication systems, provided, special permission is needed for above ground facilities in the Franchise Area.

- 1.4. Franchise.** “Franchise” means this Ordinance.
- 1.5. Franchise Area.** “Franchise Area” means the Public Right of Way.
- 1.6. Gas.** “Gas” means natural, manufactured, and/or mixed gases.
- 1.7. Maintenance, maintaining, or maintain.** “Maintenance, maintaining, or maintain” means and shall include: relaying, repairing, replacing, examining, testing, inspecting, removing, digging and excavating, and restoring operations incidental thereto.
- 1.8. Parties.** “Parties” means City and Avista collectively.
- 1.9. Party.** “Party” means either City or Avista individually.
- 1.10. Public Right of Way.** “Public Right of Way” means a dedicated tract of land that is conveyed or reserved by deed, dedicated by plat, or acquired by decree of court, which has been accepted and dedicated by action of the city council to the public right-of-way and for secondary use as an easement for public utilities.
- 1.11. State.** “State” means the State of Washington.

## **Section 2. Scope of Franchise; Purpose**

Subject to the terms and conditions of this Franchise, the City grants to Avista the non-exclusive privilege to use the Public Right of Way to operate a public utility for distribution and transmission of Gas, and for no other purpose. Avista accepts all areas in existing condition(s) and the City makes no express or implied assurances of the suitability of any area for Avista's needs or purposes, whether now or hereafter.

## **Section 3. Non-Franchise Area City-owned Property**

This Franchise shall not convey any right to Avista to locate, install, extend, or construct Facilities on or to otherwise use City-owned or leased properties outside the Franchise Area.

Existing Facilities installed or maintained by Avista prior to the enactment of this Ordinance on public grounds and places within the City’s Franchise Area in accordance with prior franchise agreements (but which such Facilities are not within the Franchise Area as

defined by this Franchise) may be maintained, repaired, replaced, operated, and used in like kind by Avista at the location where such Facilities exist as of the Effective Date of this Franchise for the term of this Franchise; provided, however, that 1) no such Facilities may be enlarged, improved, or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards, and procedures, 2) the City provides no express or implied assurances of suitability for all existing Facilities outside of the City's Franchise Area, and 3) Avista is otherwise bound by all other Franchise obligations.

**Section 4.     Duration of Franchise**

Unless this Franchise be sooner terminated, as herein provided, it shall extend for a term of ten (10) years from the Effective Date.

**Section 5.     Compliance with Laws**

In carrying out any authorized activities under the Franchise granted herein, Avista shall meet accepted industry standards and regulatory requirements of state and federal agencies and comply with all applicable laws of any governmental entity with jurisdiction over the Facilities and their operation. This shall include all applicable laws, rules and regulations existing at the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over Avista and/or the Facilities. These requirements also include applicable requirements of the City Municipal Code.

**Section 6.     Conduct of Avista's Business**

**6.1.     Reasonable Rules and Regulations**

The City shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of Avista's business. Service shall be supplied to the City and persons and businesses within the City's jurisdiction in accordance with Avista's rules and regulations or the appropriate regulatory body of this State having jurisdiction over Avista.

**6.2.     Non-Interference with Existing Facilities**

All location, construction, installation, repair, replacement, relocation, or operation of Facilities and appurtenances performed by Avista in the Franchise Area 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, nor with the grading or improvement of the Franchise Area.

### **6.3. Facility Location Information**

Avista shall provide the City, upon the City's reasonable request, Facility location information, electronic or hard copy, showing the location of Avista's Facilities at specific locations within the Franchise Area to the extent such information is available. With respect to any excavations within the Franchise Area undertaken by or on behalf of Avista or the City, nothing herein is intended, nor shall be construed, to relieve either the City or Avista of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

## **Section 7. Excavation**

### **7.1. Permit Requirement**

Avista shall only commence excavation work upon the issuance of applicable permits by the City. Avista also acknowledges that excavations required in arterial streets, especially during peak hours of operation, or during special civic events require substantial coordination with the City prior to issuance of a permit. Avista agrees to coordinate such activity prior to commencing excavation as necessary to minimize impacts to the public as required by the City.

In the event of an emergency requiring immediate action by Avista for the protection of its Facilities, the City's property, or other persons or property, Avista may proceed without first obtaining the normally required permits. In the event of such an emergency requiring immediate action, Avista shall: (i) take all necessary and prudent steps to protect, support, and keep safe from harm its Facilities, or any part thereof, the City's property, or other persons or property, and to protect the public health and safety; (ii) as soon as possible thereafter, obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit; and (iii) the City shall not be responsible for any and all costs associated with such emergency action.

## **7.2. Workman-like Completion**

Any excavation work performed in the Franchise Area shall be carried out in accordance with all applicable City permit requirements, rules, and procedures. Additionally, such excavation work shall be performed with reasonable dispatch, in a workmanlike manner, and with as little interference or inconvenience to the rights of the public as may be reasonable.

## **7.3. Restoration of Franchise Area**

Upon completion of any phase of an excavation project within the Franchise Area, Avista shall, without delay, and at Avista's sole expense, remove all debris and restore the surface of the Franchise Area to as good or better condition as it was in before the work began. Avista shall replace any property corner monuments, survey references, or hubs that were disturbed, damaged, or destroyed during Avista's work in the Franchise Area. Such restoration shall be done in a manner consistent with applicable codes and laws, under the supervision of the City, and to the City's specifications, and in accordance with the City's most current adopted Pavement Cut Policy, if applicable.

## **7.4. Compliance with Rules and Regulations**

Avista shall comply with all ordinances, codes, rules, regulations, or policies now or hereafter adopted by the City regarding excavations in the Franchise Area and the Facilities contained therein.

## **Section 8. Relocation of Facilities**

**8.1** Upon request of the City, Avista shall relocate its Facilities as necessary within the Franchise Area or other City-owned property as specifically designated by the City for such purpose. Whether relocation is necessary shall be determined by the City in its sole discretion, which discretion shall be reasonably exercised taking into account all facts and circumstances. The City shall provide Avista reasonable notice of any intended or expected requirement or request to relocate Avista's Facilities, but not less than thirty (30) 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 street or alley within the Franchise Area, Avista shall, upon

written notice from the City 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. 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 Public Right(s) of Way. If the City requires the subsequent relocation of any of Avista's Facilities within three (3) years from the date of relocation of such Facilities or installation of new Facilities, the City shall bear the entire cost of such subsequent relocation. Avista agrees to relocate all 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.

## **8.2 Costs of Relocation**

The City shall have no responsibility for the costs of such relocations except as set forth in Section 8.1 above. If Facilities are to be relocated at the request of and for the primary benefit of a third party, the City shall not require Avista to relocate its Facilities until such time as the third party has entered into an agreement to reimburse Avista for its reasonable costs of relocation, but without expense or liability to the City.

## **8.3 Availability of Other Funds**

In the event federal, state or other funds are available in whole or in part for utility relocating purposes, upon Avista's request in writing, the City agrees to use reasonable efforts to apply for such funds, provided such funds do not interfere with the City's right to obtain the same or similar funds, or otherwise create any expense or detriment to the City. The City may recover all costs, including internal costs, associated with obtaining such funds.

## **Section 9. Vegetation Management**

Avista may operate and maintain its Facilities and appurtenances in the Franchise Area including the use of an integrated vegetation management program to cut, trim, or remove any and all trees, brush, or shrubs growing in, on, or hanging over any portion of the Franchise Area, whether such trees or vegetation originate within or outside said Franchise Area that interfere with or may interfere with Avista's Facilities subject to the City's Development Code,

Ordinances, or applicable regulations, as now or hereafter amended. All tree pruning and removal work shall be done under the direction of a Certified Arborist (International Society of Arboriculture) and in compliance with ANSI A300 and Z1333 Safety Standards. Nothing contained in this Section shall prevent Avista, when necessary and with the approval of the record owner of the property on which they may be located, from cutting down and removing any vegetation in the Franchise Area that may interfere with Avista's Facilities; provided that any such action is not inconsistent with the City's Development Code, Ordinances, or applicable regulations, as now or hereafter amended.

**Section 10. Vacation of Properties by City**

If, at any time, the City shall vacate any Franchise Area which is subject to rights granted by this Franchise, to the extent permitted by law and in the event Avista has already constructed Facilities in the subject Franchise Area, such vacation shall, upon reasonable request from Avista, be subject to the reservation of a perpetual easement in favor of Avista for the purpose of operating and maintaining the Facilities of Avista.

**Section 11. Abandonment of Facilities**

Except as otherwise provided in this Section, in the event Avista abandons and permanently ceases use of any of its Facilities within the Franchise Area, Avista shall, within a reasonable period of time after such permanent cessation of use, remove such Facilities only if required by applicable rules and regulations of the Federal Department of Transportation ("DOT") or the City of Liberty Lake Municipal Code, and at its sole cost and expense.

**Section 12. Recovery of Franchise Cost**

**12.1 Authority**

So long as provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon Avista, except a fee as provided in RCW 35.21.860 that recovers from Avista actual administrative expenses incurred by the City that are directly related to:

- (i) receiving and approving a permit, license or this Franchise;

- (ii) inspecting plans and construction; or
- (iii) preparing a detailed statement pursuant to Chapter 43.21C RCW, as the same exists now or may hereafter be amended.

## **12.2 Fee**

The parties understand that the restrictions of RCW 35.21.860 forbid the imposition of a franchise fee. If, at some time, the restrictions of this statute should be removed, Avista and the City shall negotiate a fair and reasonable franchise fee.

## **12.3 Additional Fees**

Nothing in this Section shall preclude the City from collecting from Avista fees lawfully imposed by the City (related to this Franchise or otherwise) including fees for permits and inspections.

## **Section 13. Utility Tax**

Avista acknowledges that the City is authorized under the laws of the state of Washington to impose certain taxes upon Avista. Nothing in this Section shall exempt (nor shall be construed to exempt) Avista from payment of any and all such taxes lawfully imposed by the City of Liberty Lake Municipal Code, City Ordinance, or City Resolution, as any may hereafter be lawfully amended, adopted, or superseded, and due from Avista; provided, nothing in this Section shall be construed in any way as a waiver of Grantee's rights to contest the validity of any such tax or the amount of any tax due. In the event payment of such taxes is not made by Avista in a timely manner, the City reserves the right, at its sole option, to suspend the rights granted to Avista by this Franchise until such time that Avista pays such taxes or Avista and the City otherwise resolve any matter concerning payment thereof.

## **Section 14. No Waiver, Expansion, Change of Boundary**

### **14.1 No Waiver**

The City, in granting this Franchise, does not waive any rights which it may now have or may hereafter acquire with respect to the Franchise Area 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 Franchise Area covered by this Franchise. Avista shall be bound by all ordinances, resolutions, codes, rules, regulations or policies now or hereafter adopted regarding the City's Franchise Area.

**14.1 Expansion of Avista's Facilities**

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.

**14.2 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.

**Section 15. Dangerous Conditions**

**15.1 Notice to Avista**

In the event that Avista's Facilities or operations cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of any portion of the Franchise Area, or other public or private property or create other risk of loss or liability to the City, the City may direct Avista, at no charge or expense to the City, to take actions to resolve the condition or remove the endangerment to the extent of non-compliance with applicable safety standards, rules, and regulations. Such directive may include compliance within a reasonable prescribed period of time.

**15.2 Authority for City to Abate**

In the event Avista fails to promptly take action as directed by the City, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take actions as it believes are necessary to protect persons or property and Avista shall be responsible to reimburse the City for its costs.

### **15.3 Avista Reporting Requirements**

Upon request, Avista will provide the City with a copy of the Annual Report of Gas Distribution and Transmission Operations that is provided to the DOT Office of Pipeline Safety.

## **Section 16. Ruptures, Leaks and Emergencies**

### **16.1 Operations**

So long as its Facilities remain in the Franchise Area or otherwise create risk to the City, Avista shall operate in accordance with DOT and Washington Utilities and Transportation Commission (“WUTC”) regulations and any other applicable federal, state, and local laws or standards as amended from time to time.

### **16.2 Emergency Plan and Procedure**

Upon acceptance of this Franchise, Avista shall provide a copy upon request of its then-current emergency response plans and procedures, including, but not limited to, emergency rupture response recognizing that these plans and procedures may change from time to time. Avista also agrees to provide the City with periodic updates upon reasonable request. Avista's emergency plans and procedures shall designate Avista's responsible local emergency response officials and a direct 24-hour emergency contact number. Avista shall, after being notified of an emergency, cooperate with the City and make every effort to respond as soon as possible to protect the public's health, safety and welfare. The parties agree to meet as necessary to review the emergency plans and procedures.

### **16.3 Leaks, Ruptures, or Release of Gas**

Avista shall operate in accordance with DOT and WUTC regulations and any other applicable federal, state, and local laws or standards, as enacted or amended from time to time.

### **16.4 Emergency Management**

Upon the reasonable request of the City, Avista shall meet with the City's fire and emergency personnel to coordinate emergency management operations and participate in emergency preparedness drills or planning sessions.

**Section 17. Indemnity**

**17.1 Avista's Obligation**

Avista shall indemnify, defend, and hold the City, its officers, elected officials, agents, representatives, engineers, consultants, employees, and volunteers ("indemnities") harmless from and against any and all claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including all costs and attorneys' fees, made against the indemnities on account of injury, harm, death, or damage to persons or property which is caused by, in whole or in part and then only to the extent of, the intentional, willfully tortious, or negligent acts, or negligent omissions of Avista or its officers, directors, agents, representatives, servants, employees, contractors, subcontractors, and/or volunteers in the exercise of the rights granted to Avista by this Franchise. Avista's obligation to indemnify, defend, and hold harmless shall not extend to the negligent acts or omissions of the City and its agents and employees.

Avista's indemnification obligations pursuant to this Section shall include assuming liability for actions brought by Avista's own employees and the employees of Avista's agents, representatives, contractors, and subcontractors even though Avista might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of Avista's exercise of the rights set forth in this Franchise. The obligations of Avista under this Section have been mutually negotiated by the parties hereto, and Avista acknowledges that the City would not enter into this Franchise without Avista's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Avista waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

**17.2 Notice to Avista of Intent to Assert Rights**

In the event any matter (for which the City intends to assert its rights under this Section) is presented to or filed with the City, the City shall promptly notify Avista thereof and Avista shall have the right, at its sole cost and expense, to settle and compromise such matter as it pertains to Avista's responsibility to indemnify, defend, and hold harmless the City, its officers, elected officials, agents, representatives, engineers, consultants, employees, and volunteers provided Avista supplies the City with written

acceptance of its indemnification obligations as contained in this Section. In the event any suit or action is commenced against the City based upon any such matter, the City shall likewise promptly notify Avista thereof, and Avista shall have the right, at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to Avista's responsibility to indemnify, defend and hold harmless the City, its officers, elected officials, agents, representatives, engineers, consultants, employees, and/or volunteers; provided Avista has agreed in writing to the full indemnification and defense of the City and its officers, elected officials, agents, representatives, engineers, consultants, employees and volunteers. In the event of a less than full written agreement to indemnify and defend, the City may select attorneys and bill the costs of the same to Avista and Avista shall pay the same. Failure of the City to give notice as required herein shall not be a defense except and to the extent that Avista demonstrates actual prejudice therefrom.

## **Section 18. Insurance**

### **18.1 Coverage Required**

Avista shall procure and maintain for the duration of the Franchise, insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the Franchise granted herein to Avista, its officers, directors, agents, representatives, servants, employees, or volunteers. Upon request, Avista shall provide certificate(s) of insurance and all policy endorsements naming the City as an additional insured. The required insurance shall provide that the insurer will endeavor to provide thirty (30) days' prior written notice to the additional insured upon cancellation or material alteration of the required coverage. If the insurance is canceled or materially altered within the term of this Franchise, Avista will provide replacement continuous uninterrupted coverage in the terms and amounts required pursuant to this Section. Such certificate(s) of insurance shall evidence the following minimum coverage amounts:

- (i) Comprehensive general liability insurance including coverage for premises - operations, explosions, and collapse hazard, underground hazard and product completed hazard, written

on an occurrence basis, with limits not less than: \$10,000,000 for bodily injury or death to each person; and \$10,000,000 for property damage resulting from any one accident.

- (ii) Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000 for each person and \$5,000,000 for each accident.

## **18.2 Duration of Coverage**

The liability insurance policies required by this Section shall be maintained by Avista throughout the term of this Franchise. Payment of deductibles and self-insured retentions shall be the sole responsibility of Avista. Such coverage shall continue to apply after termination, cancellation, or expiration of the Franchise as to all claims accruing during any hold-over period for a minimum of three (3) years, or longer if the Facilities remain in the ground.

## **18.3 Primary Coverage**

Avista's insurance with respect to Avista's Franchise obligations and indemnity to the City shall be primary insurance with respect to the City, its officers, elected officials, agents, representatives, engineers, consultants, employees, and volunteers. Any insurance, including self insured retention maintained by the City, its officers, elected officials, agents, representatives, engineers, consultants, employees, and/or volunteers shall be in excess of Avista's insurance and shall not contribute with it.

## **18.4 Proof of Continued Coverage**

On or before sixty (60) days of the anniversary Effective Date of the Franchise, Avista shall file with the City Clerk/Treasurer proof of continued insurance coverage, at least in the amounts required in this Section, through a Certificate of Insurance, indicating City coverage required herein and a provision that the coverage may not be cancelled or reduced without at least thirty (30) days prior written notice to the City.

**Section 19. Non-exclusive Franchise**

**19.1 Scope**

This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises in, upon, over, under, along, and across the Franchise Area. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

**19.2 Non-assumption of Risk by City**

By granting this Franchise, the City is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Avista. Avista shall, at its sole cost and expense, take all necessary and prudent steps to protect, support, and keep safe from harm its Facilities, or any part thereof, when necessary to protect the public health and safety.

**19.3 Limited Rights**

This Franchise is only intended to convey a limited right and interest. It is not a warranty of title or interest in the Franchise Area or any other City-owned property. None of the rights granted herein shall affect the City's jurisdiction over its property, including but not limited to the Franchise Area.

**Section 20. Forfeiture**

If Avista shall materially violate any of the provisions of this Franchise through material or unreasonable neglect or material or unreasonable failure to heed or comply with any notice given Avista under the provisions of this Franchise, then Avista shall forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the City; provided, however, the City shall give sixty (60) days written notice of its intention to revoke or annul the Franchise during which period Avista shall have the opportunity to remedy any breach. No forbearance by the City shall constitute a waiver of the City's right to enforce any provision of this Franchise.

**Section 21. Non-waiver**

Failure of the City 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 City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City'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 forfeiture or revocation for breach of the conditions herein.

**Section 22. Franchise Dispute Resolution**

Except in cases of forfeiture under Section 20, disputes regarding the interpretation or execution of the terms of this Franchise shall be resolved by direct discussion between a decision-making representative of Avista and the City's Engineer. Such discussion shall take place as soon as reasonably possible once the Parties are aware of the dispute.

In the event that direct discussions do not result in resolution of the dispute, the Parties shall in good faith attempt resolution of the matter through mediation. The Parties shall select a mediator as soon as reasonably possible after the failure of direct discussions. Should the Parties not agree on mediator selection, either of them may request that one be appointed by the Seattle office of the American Arbitration Association. Once a mediator is appointed, the Parties shall abide by the rules and instructions of the mediator. A mediation session shall be held as soon as reasonably possible after appointment of the mediator, and decision makers with authority to resolve the dispute shall personally attend the mediation session.

Participation in direct discussions and mediation shall be conditions precedent to the commencement of any other form of dispute resolution. The Parties shall share the cost of mediation fees and expenses equally. If a dispute continues to exist, venue for any legal action arising out of the existence of this Franchise shall be in the state or federal court located in Spokane County, Washington.

**Section 23. Attorneys Fees and Costs**

Each Party shall pay for its own attorneys' fees and costs incurred in any action arising out of the existence of this Franchise.

**Section 24. Prior Franchises Superseded**

Upon Avista's acceptance of this Franchise, all rights and obligations of the City and Avista under the prior Franchise granted by the City (Ordinance No. 36) shall terminate, and the Parties' rights and obligations shall be governed by the terms and conditions provided in this Franchise as of the Effective Date. Termination of the prior Franchise shall not, however, relieve the Parties from any obligations which accrued under said Franchise prior to Avista's acceptance, including but not limited to, any outstanding indemnity or administrative fee payment obligations.

**Section 25. Assignment of Franchise**

All of the provisions, conditions and requirements herein contained shall be binding upon Avista and the City. Avista shall not assign or otherwise transfer its Franchise herein without the prior written authorization and approval of the City, which such authorization and approval shall not be unreasonably withheld. Notwithstanding the foregoing, Avista 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 26. 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.

**Section 27. Acceptance of Franchise by Avista**

Avista has provided its unconditional written acceptance of all the terms and conditions of the Franchise.

**Section 28. Severability**

If any section, sentence, clause or phrase in this Franchise shall be held to be invalid, unenforceable, or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity, enforceability, or the constitutionality of any other section, sentence, clause or phrase of this Franchise.

**Section 29. Notice**

Notwithstanding any other provision in this Franchise, the City shall not be liable for any failure or alleged failure to provide notice or timely notice to Avista unless Avista can demonstrate that it has been substantially harmed by the City's failure to provide such notice. For purposes of this Franchise, the contact information and addresses for the City and Avista shall be as follows:

If to the City:           Community Development Director  
                                  22710 E. Country Vista Drive  
                                  Liberty Lake, WA 99019

With Copy to:           Sean P. Boutz, City Attorney  
                                  Evans, Craven & Lackie, P.S.  
                                  818 W. Riverside, Suite 250  
                                  Spokane, WA 99201

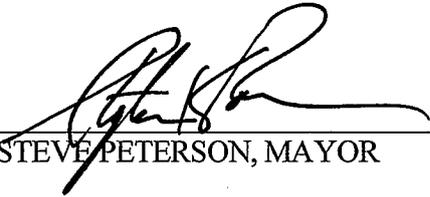
If to Avista:             Director of Operations  
                                  P.O. Box 3727  
                                  Spokane, WA 99220-3727

From time to time the City and Avista may designate another person and/or address for all purposes of this Franchise by a notice given to the other party in accordance with the provisions hereof.

**Section 30. Effective Date**

This Ordinance takes effect after publication in accord with the requirements of the City Municipal Code, enactment by the City Council, with approval of the Mayor, and acceptance by Avista. The City Clerk is authorized to indicate the effective date upon these events.

Passed the City Council this 17<sup>th</sup> day of April, 2012

  
STEVE PETERSON, MAYOR

Date: 4/17/12

ATTEST:

  
ANN SWENSON, CITY CLERK

APPROVED AS TO FORM:

BY:   
SEAN P. BOUTZ, City Attorney

**UNCONDITIONAL ACCEPTANCE BY AVISTA:**

I, the undersigned official of Avista Corporation, am authorized to bind Avista Corporation and to unconditionally accept the terms and conditions of the foregoing City of Liberty Lake Franchise Ordinance, which are hereby accepted by Avista Corporation this 27 day of April, 2012.

AVISTA CORPORATION

By: 

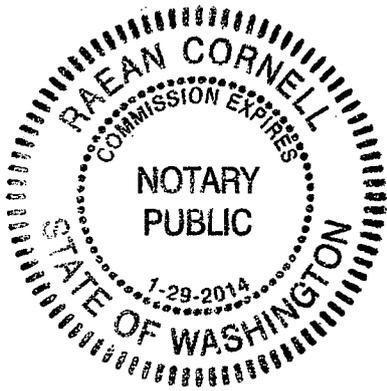
Name: Dennis Vermillion

Title: President, Avista Utilities

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Spokane )

I certify that I know or have satisfactory evidence that Dennis Vermillion is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the President of Avista Corporation, a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: April 27, 2012



Rae An Cornell  
Notary Public  
Print Name Rae An Cornell  
My commission expires 1-29-2014

**CERTIFICATION**

I, the undersigned City Clerk of the City of Liberty Lake, of Spokane County, Washington, HEREBY CERTIFY that the foregoing Ordinance is a full, true, and correct copy of Ordinance No. 199 duly adopted at a regular meeting of the City Council of said City, duly and regularly held at the Liberty Lake Sewer & Water District on April 17, 2012 of which meeting all members of said City Council had due notice and at which a majority thereof were present; and that at said meeting said Ordinance was adopted by the following vote: 6-0, unanimous.

AYES, and in favor thereof: Mayor Pro Tem Langford and Council Members Kaminskas, Dunne, Schuler, Brickner, and Kopelson.

NAYS: None.

ABSENT: Council Member Beckett.

ABSTAINED: None.

CITY OF LIBERTY LAKE

  
\_\_\_\_\_  
CITY CLERK