

ORDINANCE NO 226

AN ORDINANCE OF THE CITY OF CLARK FORK, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, GRANTING A FRANCHISE TO THE AVISTA CORPORATION FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF ELECTRIC FACILITIES WITHIN THE CITY OF CLARK FORK; PROVIDING GRANT OF FRANCHISE, TERM, FRANCHISE AS A CONTRACT AND EFFECT OF INVALIDITY; PROVIDING PURPOSE, TRIMMING/REMOVAL OF TREES, RIGHT OF EXCAVATION AND RIGHTS OF INGRESS/EGRESS; PROVIDING CONDUCT OF GRANTEE'S BUSINESS, NON-INTERFERENCE WITH EXISTING FACILITIES, NECESSARY CONSTRUCTION/MAINTENANCE BY GRANTOR AND EMERGENCY REMOVAL BY GRANTOR; PROVIDING VACATION OF PROPERTIES BY GRANTOR; PROVIDING RELOCATION OF FACILITIES BY GRANTOR/GRA NTEE; PROVIDING PRESERVATION OF GRANTOR'S RIGHTS TO CONTROL, EXPANSION OF GRANTEE'S FACILITIES AND CHANGE IN BOUNDARIES OF GRANTOR; PROVIDING INDEMNITY; PROVIDING DEFAULT AND FORFEITURE; PROVIDING FEES; PROVIDING REPEAL OF CONFLICTING ORDINANCES AND SUPERSEDING PRIOR FRANCHISES; PROVIDING FOR ACCEPTANCE, ASSIGNMENT OR ABANDONMENT OF FRANCHISE; AND PROVIDING AN EFFECTIVE DATE

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CLARK FORK:

SECTION 1.0: GRANT OF FRANCHISE

The City of Clark Fork, Bonner County, State of Idaho, hereinafter called the "City" or "Grantor," does hereby grant to Avista, a corporation, and to its successors and assigns, hereinafter called "Grantee," a right and franchise, to supply electricity and electric service for municipal or other uses.

1.1 TERM

This Franchise shall be for a period of twenty five (25) years from and after the effective date of this Franchise and shall be deemed to be an exclusive Franchise, prohibiting the Grantor from granting other franchises of a like nature to other public or private utilities upon any property of grantor subject to this Franchise.

1.2 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 and Grantee.

1.3 EFFECT OF INVALIDITY

This Franchise is granted pursuant to the laws of the State of Idaho relating to the granting of such right 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.

## SECTION 2.0 PURPOSE OF FRANCHISE

Grantor hereby grants to Grantee, its successors and assigns, the right, power, privilege and authority to enter upon, over, along and across all roads, rights of way, present and future streets, alleys, public places or structures lying within the boundaries of Grantor and owned and maintained by Grantor, to locate, construct, operate and maintain poles, wires, underground cables, with all the necessary or desirable appurtenances for the purpose of transmitting and distributing electricity and electric service to the City and the inhabitants thereof, and to persons and corporations beyond the limits of the City, subject to the terms and conditions and to the making of payments hereinafter specified. The purpose of this franchise specifically include:

### 2.1 TRIMMING/REMOVAL OF TREES

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

### 2.2 RIGHT OF EXCAVATION

The right of grantee, at any time to make all necessary excavations in the streets, alleys, roads, rights of way and public grounds within the franchised area. Such excavations 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 agreed upon with the City 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 the Grantee.



### 2.3 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.

### 3.0 CONDUCT OF GRANTEE'S BUSINESS

The Grantee shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of 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. In the conduct of Grantee's business the following conditions apply:

#### 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.

#### 3.2 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 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.

#### 3.3 EMERGENCY REMOVAL BY GRANTOR

The Grantor reserves the right to remove any such wires, poles, or apparatus ("Grantee's Facilities") 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. However if there is any question as to the advisability of restoring Grantee's facilities or the cost, then either the Grantor or the Grantee shall call a meeting within seven (7) days to fairly assess the cost and obligation of Grantor to restore Grantee's facilities removed as a result of the emergency.

#### 4.0 VACATION OF PROPERTIES BY GRANTOR

If Grantor shall, at any time, vacate any road, right of way or other public property subject to this franchise, to the extent permitted by law, such vacation shall be subject to the reservation of a perpetual easement in favor of Grantee for the purpose of operating and maintaining overhead and underground electric lines and installations and other public utilities. Such easements shall 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. Grantee shall continue to be permitted to operate and maintain its facilities in or on the vacated property consistent with and subject to this Franchise.

#### 5.0 RELOCATION OF FACILITIES BY GRANTOR/GRANTEE

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 one hundred twenty (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 relocation to be consistent with any applicable long term development plan or projection of Grantor or approved by Grantor.

If Grantor shall cause or require the alteration or improvement of any road, highway or right of way wherein Grantee maintains facilities under this franchise by grading, altering, planking, paving, changing the grade, relocating the same or by constructing drainage or 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 by Grantor.

If Grantor shall require Grantee to adapt or conform its plants and



systems or any part thereof, or to in any way alter, relocate or change its property to enable any other person, firm, corporation or entity (whether public or private), other than Grantor, to use the public ways, Grantee shall be entitled to reimbursement by the person, firm, corporation or entity desiring or occasioning such change.

#### 6.0 PRESERVATION OF GRANTOR'S RIGHTS TO CONTROL

This Franchise shall in no way prevent or prohibit the Grantor from constructing, altering, maintaining or using any of said roads, rights of way, drainage structures or other facilities, irrigating structures, or facilities or any other property of Grantor or affect its jurisdiction over such property to make all necessary changes, relocations, maintenance, etc., insofar as Grantor deems fit. The Grantor does not waive any rights which it may now have or may hereafter acquire with respect to roads, rights of way or other property of Grantor under this Franchise, and this grant shall not be construed to deprive the Grantor of any powers, rights or privileges which it now has or may acquire to regulate the use of and to control the Grantor's property covered by this Franchise. Grantor's rights of control are subject to the following conditions:

##### 6.1 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 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 the provisions of this franchise.

##### 6.2 CHANGE IN 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 changes of boundaries not less than sixty (60) days prior to such changes becoming effective.

#### 7.0 INDEMNITY

Grantee agrees to defend, indemnify and hold harmless the Grantor, its appointed and elected officials 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, its officers, agents or employees

#### 8.0 DEFAULT AND FORFEITURE

If Grantee shall fail to perform or comply with any of the obligations and requirements imposed by this Franchise, and shall continue to so fail after the receipt of written notice from the City, specifying the respect in which Grantee is deemed to be in default or breach hereunder, and demanding that such default or breach be remedied within a reasonable time as fixed in such notice, the right and Franchise granted hereby may be terminated and annulled by the City Council; provided, however, that the Grantee shall be afforded reasonable opportunity to be heard before any determination is made with respect to such alleged default. If Grantee fails to remedy any breach after given appropriate notice and opportunity to be heard, then Grantee shall forfeit all rights conferred under this Grant and this Franchise may be revoked. However, Grantor shall give ninety (90) days' written notice of its intention to revoke or annul the Franchise, during which time Grantee shall have one final opportunity to remedy the breach and provide proof of same to Grantor.

#### 9.0 FEES

In consideration of the rights and privileges granted herein, the Grantee shall pay to the Grantor the sum of one hundred dollars (\$100.00) per month to be paid on or before the 15th of each month during the term of this franchise.

#### 10.0 REPEAL OF CONFLICTING ORDINANCES/PRIOR FRANCHISES SUPERSEDED

Ordinance No. 178 granting Pacific Power and Light a 20-year Franchise to provide electrical service to Grantor and the attached assignment of that said Franchise to Washington Water Power Company



is hereby repealed. This Franchise shall update and supersede all prior franchises heretofore granted to the Grantee or its predecessors, and shall affirm, authorize and ratify all prior installations authorized by permits or other action not previously covered by this franchise.

11.0 ACCEPTANCE, ASSIGNMENT OR ABANDONMENT 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.

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.

Grantee may at any time abandon the rights and authorities granted hereunder, provided that at least six (6) months' written notice of intent to abandon is given to Grantor.

12.0 EFFECTIVE DATE

This Ordinance shall be in full force and effect following its approval, passage and publication in summary form in one (1) issue of the Bonner County Daily Bee.

PASSED AND APPROVED AS AN ORDINANCE OF THE CITY OF CLARKFORK, IDAHO AT A SPECIAL MEETING THIS 21<sup>ST</sup> DAY OF March, 2001.

Linda V. Reed

LINDA V. REED, MAYOR

CITY COUNCIL MEMBERS

Lynn Siple  
Marlene Syth  
Tom Shields  
Mary Milotz

YES

NO

ABSENT

ABSTAIN

✓  
✓  
✓

✓  
        
      

ATTEST:

Elizabeth Parenti

Elizabeth Parenti, City Clerk


Avista Utilities  
1411 East Mission PO Box 3727  
Spokane, Washington 99220-3727  
Telephone 509-489-0500  
Toll Free 800-727-9170



July 9, 2001

Comes now Avista Corporation and on this date accepts that certain Electric Franchise granted to it by the City of Clark Fork, State of Idaho, under Ordinance No. 226, approved March 21, 2001.

Avista Corporation

By   
Gary G. Ely  
Chairman, President & CEO

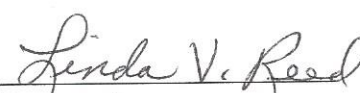
D/M

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We hereby acknowledge receipt of the Formal Acceptance by Avista Corporation of the Electric Franchise granted to said Company by the City of Clark Fork, State of Idaho, under Ordinance No. 226, said Acceptance being duly signed by Gary G. Ely, Chairman, President and CEO, of the Company on July 9, 2001.

We further acknowledge the late acceptance date was due to the delay in Avista Corporation's receipt of the final executed document and thereby waive the Acceptance of Franchise paragraph 11.0..

City of Clark Fork, Idaho

By:   
Title: Mayor

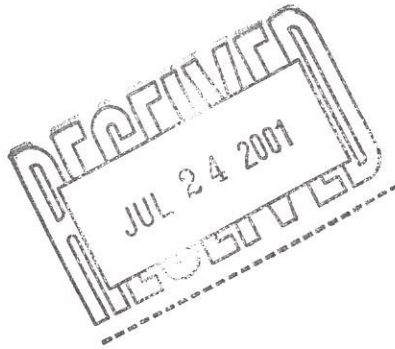
July 24, 2001



**Avista Utilities**

1735 North 15<sup>th</sup>  
Coeur d' Alene, Idaho 83814  
Telephone 208-769-1320  
Facsimile 208-665-1966  
panderson@avistacorp.com

**Paul H. Anderson**  
Coeur d' Alene Area Manager



July 19, 2001

Mayor Linda Reed  
City of Clark Fork  
P. O. Box 10  
Clark Fork, ID 83811

Dear Linda:

I've enclosed three copies of Avista's acceptance of the new electric franchise agreement granted by the City of Clark Fork. One copy is for your records. I would appreciate if you would sign and return the other two copies to me. The new monthly franchise fee of \$100.00 per month starts in April, 2001.

*done  
7/24/01*

Thanks for all of your help in the franchise process. Please let Will Menghini or me know if you have any concerns regarding the franchise or our service. We truly want to provide the best possible service for the citizens of Clark Fork and we are always open to any constructive comments.

Best wishes,

A handwritten signature in dark ink, appearing to read "Paul", with a long, sweeping horizontal line extending to the right.

C – Will Menghini

Keep with  
Ord. #226

RESOLUTION NO. 1-2001

A RESOLUTION OF THE CITY OF CLARK FORK, BONNER COUNTY, IDAHO PROVIDING FOR AN INFLATION ADJUSTMENT IN THE AVISTA FRANCHISE FEES EVERY FIVE (5) YEARS, FOR AND IN CONSIDERATION OF THE RIGHTS AND PRIVILEGES SET FORTH:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLARK FORK, IDAHO, as follows:

SECTION 1: On each fifth (5th) anniversary of the Avista Franchise Agreement, the Grantor will notify the Grantee of its obligation to adjust the monthly franchise fee for inflation. The Grantee will adjust the monthly amount by multiplying the current monthly amount by the quotient obtained by dividing the U.S. Bureau of Labor Statistics Consumer Price Index-Urban (CPI-U) of the current five (5) year anniversary month by the CPI-U of the corresponding month five (5) years earlier.

SECTION 2: This Resolution shall take effect and be in force from and after its passage and approval.

DATED this 14th day of May, 2001.

CITY OF CLARK FORK,  
Bonner County, Idaho

Linda V. Reed  
Linda V. Reed, Mayor

CITY COUNCIL MEMBERS	YES	NO	ABSENT	ABSTAIN
Lynn Siple	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Marlene Syth	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Tom Shields	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Mary Miltz	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>

ATTEST: Elizabeth Parenti  
Elizabeth Parenti, City Clerk



## SUMMARY OF CLARK FORK AVISTA FRANCHISE ORDINANCE NO 226

The City of Clark Fork, Idaho hereby gives notice of the adoption of Clark Fork Ordinance No. 226, an ordinance granting a franchise to the AVISTA Corporation for the construction, operation and maintenance of electric facilities within the City of Clark Fork. The ordinance contains the following provisions: A section granting the franchise, setting the term, establishing the franchise as a contract and the effect of any invalidities; a section setting forth the purpose of the franchise and allowing for trimming/removal of trees, rights of excavation and rights of ingress/egress; a section establishing conduct of grantee's business and providing for non-interference with existing facilities, necessary construction/maintenance by grantor and emergency removal by grantor; a section providing for vacation of properties by grantor; a section providing relocation of facilities by grantor or grantee; a section providing for preservation of grantor's rights to control and allowing for expansion of grantee's facilities and change in boundaries of grantor; a section providing indemnity; a section on default and forfeiture; a section on fees; a section repealing conflicting ordinances and superseding prior franchises, a section providing for acceptance, assignment or abandonment of franchise and a section providing for an effective date. The full text of the Clark Fork Avista Franchise Ordinance is available at City Hall in Clark Fork.

Dated this 12<sup>th</sup> day of Feb., 2001.

Elizabeth Parenti

Elizabeth Parenti, City Clerk

## STATEMENT OF LEGAL ADVISOR

I, Terry J. Lopez, am the City Attorney for the City of Clark Fork, Idaho. I have examined the summary of the Clark Fork Avista Franchise Ordinance dated Feb. 12, 2001 and find it to be a true and complete summary of said ordinance which provides adequate notice to the public of the contents thereof.

Terry J. Lopez  
Terry J. Lopez, Attorney  
Dated: 2/12/01

AFFIDAVIT OF PUBLICATION

State of Idaho

ss.

County of Bonner,

Sherilyn Jones

being first duly sworn on oath

deposes and says that he/she is

Bookkeeper

of the Bonner County Daily Bee, a newspaper printed and

published at Sandpoint, Bonner County, Idaho; that the

said newspaper has been continuously and uninterruptedly

published in said Bonner County during a period of 12

months prior to the first publication of the hereto attached

notice of publication in the case of:

Ord. # 226

as it was published in the regular and entire issue of the

said paper for a period of 1 day consecutive weeks,

commencing on 24 day of Mar, 2001

and ending on the 24 day of Mar, 2001

and that said notice was published in said newspaper.

On this 24 day of March in the year  
of 2001, before me, a Notary Public, personally

appeared Sherilyn Jones,

known or identified to me to be the person whose name

subscribed to the within instrument, and being by me

first duly sworn, declared that the statements therein are

true, and acknowledged to me that he executed the same.

Carolyn L. Inge  
Notary Public for Idaho

Residing at

Sandpoint

My Commission expires:

8/06

**SUMMARY OF  
CLARK FORK AVISTA  
FRANCHISE ORDINANCE  
NO. 226**

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Dated this 12th day of February, 2001.

/s/Elizabeth Parenti,  
City Clerk  
Legal SNP#2467 - March 24, 2001

2467



AFFIDAVIT OF PUBLICATION

State of Idaho

ss.

County of Bonner,

Debra Bergman

being first duly sworn on oath

deposes and says that he/she is

Bookkeeper

of the Bonner County Daily Bee, a newspaper printed and

published at Sandpoint, Bonner County, Idaho; that the

said newspaper has been continuously and uninterruptedly

published in said Bonner County during a period of 12

months prior to the first publication of the hereto attached

notice of publication in the case of:

Ordinance No. 226

as it was published in the regular and entire issue of the

said paper for a period of 1 <sup>day</sup> ~~consecutive weeks~~,

commencing on 16<sup>th</sup> day of Feb., 20 01

and ending on the 16<sup>th</sup> day of Feb., 20 01

and that said notice was published in said newspaper.

On this 16<sup>th</sup> day of Feb. in the year

of 2001, before me, a Notary Public, personally

appeared Debra Bergman,

known or identified to me to be the person whose name

subscribed to the within instrument, and being by me

first duly sworn, declared that the statements therein are

true, and acknowledged to me that he executed the same.

Notary Public for Idaho

Residing at

Sandpoint

My Commission expires:

8/06

SUMMARY OF  
CLARK FORK AVISTA  
FRANCHISE ORDINANCE  
NO. 226

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Dated this 12th day of February, 2001.

/s/Elizabeth Parenti, City Clerk  
Legal SNP#2392 - Feb. 16, 2001

# 2392