

# AVISTA CORPORATION

## PUBLIC PARK/RECREATION LEASE

### DESIGNATED AREA: *POST FALLS* RECREATIONAL LEASE NO. *ID-K-253.4*

THIS LEASE entered into this 31st day of October 2005, by and between AVISTA CORPORATION, whose main address is East 1411 Mission Avenue, P. O. Box 3727, Spokane, Washington 99220- 3727, hereafter referred to as AVISTA, and THE CITY OF POST FALLS, a Municipal corporation of the State of Idaho, whose address is P. O. Box 789, Post Falls, Idaho, 83854, hereafter referred to as the CITY. On the date of this lease, AVISTA is the owner of certain real property located in the City of Post Falls, Kootenai County, State of Idaho, more particularly described in Exhibit A attached hereto and made a part hereof. The property identified in Exhibit A is hereafter referred to as the "PREMISES". AVISTA, in consideration of the payment of rent and the performance of the mutual agreements contained in this lease, hereby leases the PREMISES to the CITY.

The parties to this lease agree to the following terms and conditions:

**1. USE OF PREMISES.** The PREMISES shall be used to provide recreational opportunities for the general public at Falls Park and Q'emiln Park.

**2. RENTAL.** Rent is payable in advance in the amount of \$1.00 for the term of the lease.

**3. TERM.** This lease is for a term beginning on the date first above Written, and ending on December 31, 2025. Thereafter, said lease shall be extended for terms of ten (10) years each, subject to inspection, review and approval by AVISTA, to assure compliance with terms and conditions of the Federal Energy Regulatory Commission (FERC) License, Spokane River Project No. 2545, and further providing that: 1) CITY is not in default of any terms or conditions of this lease; 2) CITY is current with rental payment(s); and 3) no notice of termination has been sent by either party to this lease.

**4. CITY AGREES TO:**

a) Operate the PREMISES as public recreation parks and keep them in good presentable condition according to current industry standards and applicable laws, codes and regulations.

b) Maintain recreation facilities including buildings, restrooms, parking areas, lighting, landscaping, boat docks and ramps, sidewalks, trails, fences, rock climbing equipment, picnic shelters and tables, BBQ grills, playground equipment, signs and interpretive facilities, ditches, etc. on the PREMISES according to current industry standards and applicable laws, codes and regulations. Facilities will be ADA compliant where practical. No improvements, other than those listed and/or existing, may be placed upon or constructed on the PREMISES without prior written approval of AVISTA. City shall provide AVISTA an inventory, which shall be updated as required, of all existing and future facilities.

c) Assume full responsibility to control all noxious weeds through best practices and promote conservation on the PREMISES. Use herbicides or pesticides on the PREMISES in compliance with all provisions of federal and state laws regulating such substances and in accordance with "best practices" procedures.

- d) Use the PREMISES in a manner consistent with the terms of this lease and practices in the area and that will not cause riverbank damage or other soil erosion.
- e) Shall make reasonable efforts to maintain order and protect the property located on the PREMISES and enforce “no trespassing” beyond all fences, gates, cliffs and elsewhere, as posted by Avista. City shall also monitor and enforce “no parking” on or adjacent the access road to AVISTA’S Post Falls Hydroelectric Development.
- f) Take all reasonable precautions to prevent fires on the PREMISES.
- g) Identify and remove hazard trees that pose an immediate threat to the public or site facilities, e.g. those that have been damaged by fire, insects, wind and/or weather conditions.
- h) Not commit waste or damage to the PREMISES, nor authorize waste or damage to occur on the PREMISES by others.
- i) Maintain a litter control program for the PREMISES.
- j) Comply with all applicable laws, rules and regulations which affect the PREMISES or the operations conducted thereon in effect at the date of this lease, or which may, from time to time, be adopted.
- k) Indemnify and hold harmless AVISTA, its officers, agents and employees against any claims for personal injury or damage to persons or property occurring on or about the PREMISES or arising out of use of the PREMISES, except to the extent that any personal injury or damage is caused by the negligence, willful misconduct or direction of AVISTA, its officers, agents or employees. CITY’S liability shall not exceed the limits or proportion of responsibility established by the Idaho Tort Claims Act.
- l) Immediately, upon termination or expiration of the term of this lease, peaceably surrender and deliver up the PREMISES to AVISTA in good order and repair. Ordinary wear and tear is expected.
- m) Not use the PREMISES or this lease agreement as collateral or security for the extension of credit from any other lender, or in any other way, which might encumber AVISTA's title to the PREMISES. AVISTA shall not incur any liability or responsibility to any lender in the event CITY violates the prohibition contained herein, and no lender shall have any claim or cause of action against AVISTA nor the PREMISES on account of CITY's violation hereof. The CITY may, however use the value of the PREMISES to apply for matching grants related to recreational development on the PREMISES with prior written approval from AVISTA.
- n) Not disturb or remove any archaeological, historical, or other cultural features or any improvements that may currently exist, or may be found to exist, on the PREMISES without the express written approval of Avista. CITY, prior to making any improvements on the PREMISES, shall obtain proper cultural review and clearances in advance from Avista or its designee. CITY shall provide AVISTA copies of all applicable permits prior to initiating any ground disturbing activities on the PREMISES.
- o) Take all reasonable precautions to protect the PREMISES from and against any and all deposits, spills or releases of hazardous substances or hazardous waste materials whether caused by the CITY or others subject to the CITY’S direction and control during the term of this lease. CITY’S liability shall not exceed the limits or proportion of responsibility established by the Idaho Tort Claims Act. The determination of what constitutes hazardous substances or hazardous

wastes shall be in conformance with current or future definitions thereof by any local, state or federal government agency or by law. CITY shall be liable to AVISTA and shall indemnify and hold harmless AVISTA from and against any claims, liability, damages or personal injuries arising out of any condition on the PREMISES or adjoining property, including cleanup costs, on account of any deposits, spills, releases or discharges on the PREMISES or adjoining property of any hazardous substance or hazardous wastes during the term hereof, and the terms of any prior leases between the Parties pertaining to the PREMISES, including damages for the diminution in value of the PREMISES. CITY'S obligation to indemnify and hold AVISTA harmless shall not apply to any deposit, spill, release or discharge of hazardous substances or hazardous waste materials which occurred prior to the effective date of any prior leases between the Parties pertaining to the PREMISES. The obligations and covenants contained in this paragraph shall survive this lease.

p) Pay any and all special assessments or charges assessed against the PREMISES. This includes, but is not limited to, all charges for special improvement districts or for utilities such as water, lights, and heating.

**5. RESERVATIONS.** AVISTA reserves all rights and interests in the PREMISES other than those specifically granted by this lease. These reservations include but are not limited to the following:

a) Minerals and Timber. All coal, oil, gas and other minerals and all deposits of stone, gravel, gems and other non-minerals valuable for building, mining or other commercial purposes and all timber and trees, whether standing or down. The CITY shall not open any mine, quarry, pit or diggings or work or dig any of the minerals or non-minerals mentioned above from any mine, quarry, pit or diggings situated on the PREMISES whether such mine, quarry, pit or diggings was open at the date of this lease or not. The CITY shall not cut, remove, use or destroy any timber or trees, either standing or down without prior approval from AVISTA, except as identified in (4g).

b) Right of Entry. The right to have free access to and use of the PREMISES for AVISTA, its officers, employees, agents, licensees and permittees for the purposes of monitoring compliance with this lease agreement, constructing and maintaining utilities, other business or operational purposes, flowage and flooding, wildlife or habitat management and any other activities related to the obligations, rights and interests reserved by AVISTA.

c) Archaeological, Historical, and Cultural Features. AVISTA shall have the sole right to all such structures, features or finds, which may currently exist or may be found to exist, on the PREMISES and shall further be allowed to protect, interpret, preserve and remove the same. AVISTA shall be responsible for providing any and all fenced enclosures or other protection to any such structures, features or finds as determined necessary by Avista.

d) Additional Reservations. AVISTA reserves the right to sell, exchange or grant rights-of-way over, under, along and across all or any portion of the PREMISES or to otherwise dispose of interests in and to the PREMISES, and CITY hereby consents to any such conveyances; subject, however, to such interests granted to the CITY under the terms of this lease. AVISTA will notify the CITY, in advance and coordinate the conveyance of any such right-of-ways or the disposition of other interests with the CITY in regard to location, recreation facilities and the visitor use season. AVISTA further reserves the right to impose restrictions as necessary to adequately protect the land, water, air or improvements in the area.

e) Flowage and Flooding. It is specifically understood and agreed that AVISTA makes no assurance to the CITY, or to the public, as to the water level with reference to said PREMISES, it being acknowledged by the parties hereto that said PREMISES are either wholly or partially

subject to being overflowed. AVISTA reserves the right to raise or lower said water level at any time and for any purpose it may desire without any responsibility to the CITY, the public, or to anyone else by reason thereof. AVISTA reserves the right at any time to flood, sub-irrigate, drain, or otherwise affect the PREMISES by the regulation or control of the waters of the Spokane River, through the operation of AVISTA's Post Falls Hydroelectric Development. The CITY releases and forever discharges AVISTA, its successors and assigns, employees and agents, from all claims for damages of every kind, nature and character whatsoever during the term of this Lease, which may or might be caused by or arise out of the regulation or control of the waters of the Spokane River by AVISTA, or for any claims arising out of the use of said PREMISES by the CITY, its agents or invitees.

f) Federal Energy Regulatory Commission Approval. It is understood that all or part of the PREMISES leased hereunder are within, or adjoining the boundaries of the Spokane River Hydroelectric Project licensed under the provisions of the Federal Power Act. It is also understood that the CITY takes possession of the PREMISES subject to the provisions of said Act, and that this Lease may be subject to approval by the Federal Energy Regulatory Commission.

g) Utility Reservations and Right of Use. AVISTA reserves the right to enter upon the PREMISES for the purpose of inspection and also reserves the right to construct, reconstruct, and maintain all electric transmission and distribution lines, telephone Lines, natural gas lines or roads over, on, under or across said lands, and the right of ingress and egress for the purpose of maintaining or repairing any such transmission lines, distribution lines, telephone lines, natural gas lines, or roads, and to carry on any work necessary in connection with the Spokane River Hydroelectric facilities and project lands. AVISTA reserves the right to protect the land, water, air or improvements in the area. AVISTA agrees to reimburse CITY for any and all damages to any improvements as a direct result of any access, construction, reconstruction, or maintenance of AVISTA's facilities as described herein. Further, AVISTA reserves the right to occupy and use the leased area in the event of emergency.

**6. PUBLIC ACCESS.** The PREMISES shall remain open to the public for recreational activities deemed appropriate by the City and Avista, subject to the Federal Energy Regulatory Commission's Spokane River Hydroelectric Project License, and other applicable federal and state laws and regulations in effect on the Effective Date of this lease or subsequently imposed on AVISTA, and subject to any further rules or regulations that AVISTA may from time to time be required to impose.

**7. DEFAULT AND TERMINATION.**

a) The CITY shall have 30 days to respond to an AVISTA claim that a violation of, or noncompliance with the terms of this lease exists. If, however, AVISTA and the CITY agree that additional time and effort is required to correct the violation or discrepancy the CITY shall have up to 90 days to prepare a plan to resolve the violation or discrepancy for AVISTA's approval.

AVISTA will take into consideration the recreation season, weather and materials availability in its decision to approve or disapprove the CITY's plan. AVISTA may terminate this lease if the CITY fails to resolve the violation or discrepancy within 180 days of the original 30-day written notice.

b) In the event AVISTA requires portions of the PREMISES or the PREMISES in its entirety for purposes, which in its discretion renders the joint use between the parties hereto unfeasible, then AVISTA shall have the right to terminate this lease anytime with 90 days written notice sent to CITY at the mailing address listed herein. In this instance, AVISTA will compensate the CITY

for the un-depreciated costs (initial capital cost minus depreciation) for the improvement(s), provided the improvement(s) were paid for by the CITY.

c) AVISTA may cancel this lease for fraud or misrepresentation, or for concealment of facts relevant to the execution hereof.

d) The CITY may terminate this lease for the following summer recreation season and for the remainder of the Term by providing AVISTA 60 days written notice or by providing AVISTA written notice by March 1<sup>st</sup>, on the same year as the recreation season, at the mailing address listed herein.

e) Notice of termination shall be deemed given upon deposit in the United States mail, addressed to the CITY at the address shown above, unless a change of address has been provided in writing to AVISTA's liaison.

f) The CITY shall, upon termination of this lease, promptly and peaceably surrender possession and occupancy of the PREMISES, leaving them in as good a condition as existed at the beginning of the term of this lease. Upon such termination, all rights of the CITY in and to the PREMISES shall cease and the CITY shall not be entitled to any refunds of rent paid.

**8. SUBLEASING AND ASSIGNMENT.** CITY shall not sublease or assign this lease or any interest in the PREMISES to any other person or entity without AVISTA's prior written consent, which consent shall not be unreasonably withheld.

**9. CONCESSIONAIRES AND FACILITY RENTAL.** CITY may utilize concessionaires to provide recreation services and may charge reasonable fees for recreation facility rental or vehicular parking on the PREMISES. AVISTA must approve all concessionaire and rental fees prior to them being implemented on the PREMISES.

**10. ANNUAL OPERATION AND MAINTENANCE COSTS.** AVISTA will provide the CITY with \$25,000 annually for operation and maintenance of the PREMISES beginning January 1, 2006. This amount will be increased to \$50,000 annually, within the first year of the issuance date of the new Spokane River Project FERC license, and in accordance with the terms of said license, to assist in the operation and maintenance of the PREMISES.

**11. CAPITAL IMPROVEMENT CONTRIBUTIONS BY AVISTA.** AVISTA and the CITY will cooperate to adequately fund capital improvement projects that are mutually agree upon by AVISTA and the CITY. AVISTA and the CITY will utilize AVISTA's ongoing recreation visitor surveys, established through the Spokane River Hydroelectric Project relicensing efforts to provide guidance for all future recreation improvements related to the PREMISES. The CITY will seek local, state and federal grant dollars when feasible to assist in funding capital improvement projects on the PREMISES and will use AVISTA'S dollars for matching funds to obtain the grants whenever possible.

**12. MODIFICATIONS.** No statements, promises or inducements made by either party which are not contained in this agreement are valid or binding unless evidenced in writing and signed by both parties.

**13. SUCCESSORS IN INTEREST.** All terms, conditions and provisions of this lease shall be binding upon, inure to the benefit of, and be enforceable by and upon the successors in interest of AVISTA and the CITY.

**14. LIAISONS.** AVISTA and CITY liaisons will meet at least twice a year, once in the spring and once in the fall to review operation and maintenance, capital improvement and visitor use related to the PREMISES.

CITY will make all official contacts with AVISTA's named liaison or officially designated replacement:

Elvin (Speed) Fitzhugh – Relicensing Specialist – (509) 495-4998.  
Avista Corporation, 1411 E. Mission Ave., Spokane, WA 99220

AVISTA will make all official contacts with the CITY's named liaison or officially designated replacement:

Dave Fair – Director,  
Parks, Recreation and Cemetery Department – (208) 773-0539  
City of Post Falls, 408 Spokane Street, Post Falls, ID 83854

AVISTA and the CITY may change these designations at any time upon written notice to the other party.

**15. ATTORNEY'S FEES.** In the event of the bringing of any action by either party hereto against the other hereon or hereunder, the party in whose favor final judgment shall be entered shall be entitled to have and recover from the other party, reasonable attorney's fees to be fixed by the court which shall have rendered such judgment, together with all costs and expenses expended or incurred by prevailing party in connection with such default or action.

**16. PREVIOUS LEASES.** This lease cancels and supercedes any and all prior verbal and/or written agreements between the two Parties pertaining to the PREMISES and specifically those certain leases entered into on June 25, 1981 and supplemental thereto entered into December 22, 1981 (South Park) and on June 9, 1992 (North Park).

IN WITNESS WHEREOF, the parties have executed this lease on the day and year first above written.

AVISTA CORPORATION

By: *Donald J. Malisani*  
Its: *Manager, Real Estate Dept*

THE CITY OF POST FALLS

By: *Megan Kay Sankin*

Its: *MAYOR*

Attest: *Christine Lapper*

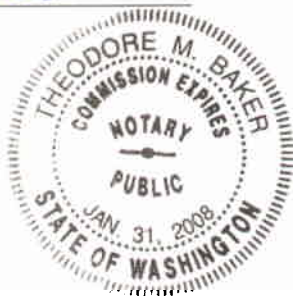


State of Washington  
County of Spokane

I certify that I know or have satisfactory evidence that Donald J. Malisari is the person who appeared before me, and said person acknowledged that (he/she) signed the foregoing instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mgr., Real Estate Dept. of Avista Corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10/31/05

Signature: Theodore M. Baker  
Print Name: THEODORE M. BAKER  
NOTARY PUBLIC



My appointment expires: 1/31/08

STATE OF IDAHO )  
 ) :ss  
County of Kootenai )

On this 31<sup>st</sup> day of Oct, 2005 before me, a Notary for the state of Idaho, personally appeared Clay Larkin and Christene Lappin known, or identified to me to be the Mayor and City Clerk, of the city of Post Falls, Kootenai County, Idaho, executing the herein instrument, and acknowledged to me that such city of Post Falls executed the same.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal the date and year in this certificate first above written.



Carol Fairhurst  
Notary Public for the state of Idaho  
Residing at: Coeur d'Alene  
Commission Expires: 9/4/08

**Falls Park and Q'emiln Park Legal Descriptions****Falls Park**

AVISTA is the owner of certain real property consisting of approximately 18.9 acres and as shown on the attached survey, located in Kootenai County, more particularly described as follows:

Those portions of Government Lots 3, 4, and 5 of Section 3, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho, described as follows:

Commencing at the northwest corner of said Section 3, being a 3/4" square bolt set in asphalt pavement; thence S1°26'09"W along the west line of said Section 3 a distance of 1099.41 feet (16.6 chains record) to the meander corner on the right bank of the North Channel of the Spokane River, said point being marked by a #4 rebar in a mound of stones, and the POINT OF BEGINNING; THENCE N1°26'09"E along said west line of Section 3 a distance of 50.00 feet (50 ft. record) to the westerly extension of the centerline of Sixth Street, City of Post Falls, Idaho; thence S89°03'08"E along said centerline extension and the north line of Tax No. 1138, a distance of 309.43 feet to the southerly right-of way take line of Interstate Highway 90, Federal Aid Project No. I-IG-90-1 (99) 3; thence S70°22'53"E along said line 1133.15 feet to the east line of Tax No. 1138, originally described as the centerline of proposed Canal Street, thence S0°57'24"W along said line and parallel with the east line of Spokane Street, City of Post Falls, a distance of 486.29 feet to the south line of Fourth Street, City of Post Falls; thence S89°01'14"E along said south line 292.77 feet to a point lying 1000.00 feet from the northwest corner of Block 21, City of Post Falls; thence S0°57'24"W parallel with existing Spokane Street 246.00 feet (246 ft. record); thence S89°01'14"E 4.90 feet to the westerly right-of-way line of the abandoned Spokane and Idaho Railroad spur; thence southerly along the arc of said right-of-way line, the center of circle of which bears N89°15'47"E 965.37 feet, through a central angle of 2°15' 30" for a distance of 38 .05 feet thence N89°01'E 14"W 252.51 feet to the apparent high water line on the westerly bank of the original spillway canal, said point to be known as "Point A", being marked by a #5 steel rebar, and lying S51°55'03"E 1794.08 feet from the Point of Beginning of this description; thence southerly along said apparent high water line to a point on the apparent high water line on the right bank of the Spokane River, said point to be known as "Point B", being marked by a #5 steel rebar, and lying S6°08' 30"E 382.89 feet from aforesaid "Point A"; thence westerly along said apparent high water line, approximately 237 feet to the upstream face of the dam across the North Channel of the Spokane River; thence continuing westerly along said apparent high water line approximately 124 feet to "Point C", lying N82°42'40"W 303.88 feet from aforesaid "Point B"; thence northwesterly along the apparent high water line on the right bank of the North Channel of the Spokane River to the west line of said Section 3, said point to be known as "Point D" lying N38°46'43"W 1839.45 feet from aforesaid "Point C", thence N1°26'09"E along said west line 14.75 feet to the Point of Beginning.

**Q'emiln Park**

AVISTA is the owner of certain real property consisting of approximately 77.9 acres and as shown on the attached survey, located in Kootenai County, more particularly described as follows:

Beginning at the Southwest corner of Section Three (3), Township Fifty (50) North, Range Five (5) WBM, said corner being marked with a WWPCo. brass cap monument; thence N.89° 30'16"E. along the southerly line of said Section 3 a distance of 1286.31 feet to a concrete monument and the true Point of Beginning of the tract to be described; thence continuing along the southerly line of said Section 3, N. 89°30' 16"E. a distance of 451.33 feet; thence N.1031'40"E. a distance of 392 feet; thence N.89°30'16"E. a distance of 166.5 feet; thence N. 1°31'40"E. a distance of 180 feet to the 2128-foot contour line of the Spokane River;



thence northwesterly downstream along the 2128-foot contour line to a point that bears N.78°01'08"W. 658.5 feet from the last-described point; thence S.45°00'00"W. a distance of 85.0 feet; thence West a distance of 170.0 feet; thence S.45°20'24" W. a distance of 58.48 feet; thence South a distance of 265.0 feet; thence S.39°11'40"E. a distance of 447.49 feet, more or less, to the true Point of Beginning.

AND

Beginning at the Southwest corner of Section Three (3), Township Fifty (50) North, Range Five (5) WBM, said corner being marked with a WWPCo. brass cap monument; thence N.89°30'16"E. along the southerly line of said Section 3 a distance of 1286.31 feet to a concrete monument; thence N.39°11'40"W. a distance of 447.49 feet; thence North a distance of 265 feet; thence N.45°20'24"E. a distance of 58.48 feet; thence East a distance of 170.0 feet; thence N.45°00'00"E. 85.0 feet to the 2128 foot contour of the Spokane River; thence Northwesterly and Westerly downstream along the 2128 foot contour to the south channel spillway dam; thence continuing downstream, below the south channel spillway dam, along the Southerly water line of the South Channel to the West line of Said Section3; Thence Southerly along the West line of Said Section 3 to the Point of Beginning.

**END OF EXHIBIT A**