

AGREEMENT CONCERNING RECREATIONAL SITES ON LANDS ADMINISTERED BY  
THE CITY OF COEUR D'ALENE WITHIN OR ADJACENT TO THE POST FALLS  
HYDROELECTRIC PROJECT, FERC NO. 12606

This Agreement concerning public recreation, land use and aesthetic resources, and specific recreational sites on lands administered by the City of Coeur d'Alene ("City") within or adjacent to the Post Falls Hydroelectric Project ("Project"), FERC No. 12606, is made by the City and Avista Corporation ("Avista") who are referred to collectively as "the Parties."

RECITALS

A. The existing Project currently operates under a license issued by the Federal Energy Regulatory Commission ("Commission" or "FERC") on August 17, 1972, for the Spokane River Hydroelectric Project, FERC No. 2545 ("SR Project"), which expires on August 1, 2007. In April 2002, Avista requested the Commission to approve its use of the alternative licensing process ("ALP") for relicensing the SR Project, and on June 14, 2002, the Commission issued its approval. The ALP is intended to facilitate participation and improve communication among interested parties and avoid unnecessary conflict. The City is participating in the ALP process and, as part of the process, collaborated with the various Recreation, Land Use, and Aesthetics Work Group ("RLUAWG") stakeholders and Avista to resolve issues pertaining to recreation, land use, and aesthetic resources at the Project. The Project includes the Post Falls development, which is located in Idaho and controls the top 7.5 feet of Coeur d'Alene Lake during the summer season. Public recreational sites on lands managed by the City provide public access to Project lands and waters. *See* Preliminary Draft Environmental Assessment ("PDEA") Section 5.10 beginning on page 5-223. The PDEA is on file at Avista, the City and FERC.

B. The PDEA for Project relicensing notes that at the recommendation of the land and recreation managers (including the City, Idaho Department of Parks and Recreation, Idaho Department of Fish and Game, Bureau of Land Management, United States Forest Service, local cities and towns) and other stakeholders through the RLUAWG, Avista has included specific Recreation, Land Use, and Aesthetic Resource Measures in the Proposed Action. *See* PDEA at 5-233 to 5-239, 5-241 to 5-242, and 5-244 to 5-249 for recreation resources, and at 5-258 to 260 for public outreach. Under protection, mitigation and enhancement measures PF-REC-1, PF-REC-2, and PF-REC-4, *see* PDEA at B-61 to 76, Avista proposes to work with the various local, state and federal land and recreation managers to provide a variety of Project-related recreation, land use and aesthetic resource measures that will benefit the resource and significantly enhance public recreation opportunities associated with the Project.

C. The PDEA for Project relicensing notes that, at the recommendation of the above-referenced land managers and the RLUAWG, Avista has included specific Recreation Resource Measures in the Proposed Action. *See* PDEA at 5-237 to 5-239 and B-67. Under protection, mitigation and enhancement measure PF-REC-2, concerning recreational facilities at Coeur d'Alene Lake, Avista would contribute funds to and collaborate in the planning and design with the City to develop or enhance water-based recreational facilities on Coeur d'Alene Lake. The goal of this measure is to provide reasonable public access to Project lands and waters. The

Agreement shall apply to and be binding on the Parties and their successors and assigns. This Agreement may be amended through the mutual written agreement of Avista and the City.

4. The Parties agree that Avista's funding obligations relative to conducting the agreed-upon recreation projects including, but not limited to, planning, permitting, construction, and operation and maintenance costs associated with this Agreement are included in the funding referenced below. The funding provided by Avista shall be used to pay Avista, the City or any contractor thereto to implement the agreed upon recreation projects, as agreed to by the Parties. Avista's administrative costs to implement this Agreement will be part of Avista's internal overall costs for license implementation and compliance, and are not included in the funding identified above.

a. Avista shall collaborate with the City in the planning, design and construction of recreation project development on City lands, and shall pay 25 percent of the total project cost, not to exceed the agreed upon amounts, of such developments as specifically identified in Section 5 below. This funding commitment toward recreation project development shall be effective upon Avista's acceptance of the New FERC License and shall expire ten years after the issuance of the New FERC License. The dates upon which Avista shall provide the funding for the developments specifically identified in Section 5 below shall be mutually agreed upon by Avista and the City. In the event that the New FERC License imposes upon Avista funding obligations for such projects materially different from those set forth in this Agreement, Avista shall have the right to terminate this Agreement by providing the City written notice of termination within 60 days from the issuance of the New FERC License.

b. Avista shall provide annual operation and maintenance costs not to exceed the agreed upon amount for such developments specifically identified in Section 5 below to the City for the term of the New FERC License, with the first such annual payment to be made within one year from the issuance date of the New FERC License.

c. The sums in Section 5 below are stated in 2007 dollars and shall be adjusted yearly in accordance with the Consumer Price Index for all Urban Consumers (US City Averages, All Items, Not Seasonally Adjusted). If the publication of such Consumer Price Index is discontinued, the Parties shall select an appropriate alternative index to achieve a similar economic effect.

5. Avista and/or the City will obtain all necessary permits and approvals for the agreed-upon Coeur d'Alene Lake recreation projects and will coordinate their implementation with the implementation of any Historic Properties Management Plan required by the New FERC License.

a. City Parks

Avista will cooperate with the City to develop new and/or improve existing recreation facilities at numerous city parks adjacent to Coeur d'Alene Lake and the upper Spokane River. This includes (1) installing showers at Coeur d'Alene City Park for beach users, (2) installing a new restroom shelter at McEuen Field and Park, and (3) connecting Mill

River Park to the Idaho Centennial Trail at the Huetter Road Overpass. Avista shall collaborate in the planning and design and provide funding in an amount not to exceed \$27,750 for constructing the three projects (approximately 25 percent of the total project cost per the RLUAWG). Avista shall also provide \$3,500 annually to supplement the City's costs for operation and maintenance associated with the three projects.

b. Future Recreation Projects

Avista will consult with the City and the other recreation management entities on Coeur d'Alene Lake in the planning and development of new and/or reconstructed recreation projects after the projects identified in PF-REC-2 Coeur d'Alene Lake Recreation PME measure that was proposed in the Post Falls PDEA are completed. Avista shall provide funding, in an amount not to exceed \$60,000 annually after the initial recreation projects are completed, for new and/or reconstructed recreation projects on or adjacent to the Project waters upstream of the Project.

6. General Provisions

a. Non-Discrimination

During the performance of this Agreement, the City shall comply with all Federal and State non-discrimination laws, regulations and policies.

b. Assignability

This Agreement and any claim arising under this Agreement are not assignable or delegable by the City, either in whole or in part.

c. Disputes

When a dispute arises between the Parties concerning this Agreement, and the Parties are not able to resolve such dispute by mutual agreement, each Party shall designate an arbitrator, and those two (2) arbitrators shall appoint a third arbitrator to comprise the panel to resolve the dispute. The panel will render a decision on the dispute, and both Parties agree to be bound by the determination of the panel of arbitrators; provided, however, that if required by the New FERC License, the final decision of the arbitrator(s) shall be filed with FERC and Avista shall comply with any requirements imposed by FERC with respect to implementation of the final decision.

d. Indemnification

The Parties each agree, to the extent permitted by law, to defend, protect, save and hold harmless, the other Party, its officers, agents and employees from any and all claims, costs, damages and expenses suffered due to each Party's own actions or omissions or those of its agents, employees, or subcontractors in the performance of this Agreement. Neither Party shall be liable for the acts, omissions or conduct of the other Party.

e. Governing Law

This Agreement shall be governed by the laws of the State of Idaho.

f. Entire Contract

This Agreement contains all covenants, stipulations and provisions agreed by both Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments or modifications of the terms hereof shall be valid unless reduced to writing and signed by the Parties as an amendment to this Agreement.

g. Severability

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement are declared to be severable.

h. Independent Relationship

This is an agreement to provide funding to the City as discussed herein. Avista and the City are independent contracting parties. Neither Party, nor any subcontractor of either Party, is authorized to act as an agent, employee or representative of the other Party for any purpose.

7. Signature Clause

The signatories hereto represent that they have been authorized to enter into this Agreement on behalf of the Party for whom they sign.

  
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License Manager, Avista Utilities

Date: 11/07/07

  
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Mayor, City of Coeur d'Alene

Date: 10/30/07