

AGREEMENT CONCERNING RECREATIONAL SITES ON LANDS ADMINISTERED BY
KOOTENAI COUNTY PARKS AND WATERWAYS 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 Kootenai County Parks and Waterways (“County”) within or adjacent to the Post Falls Hydroelectric Project, FERC No. 12606, is made by the County and Avista Corporation (“Avista”) who are referred to collectively as “the Parties.”

RECITALS

A. The existing Post Falls Hydroelectric Project (“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”). 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 was intended to facilitate participation and improve communication among interested parties and avoid unnecessary conflict. The County participated 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 County 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 County and FERC.

B. The PDEA for Project relicensing notes that at the recommendation of the land and recreation managers (including the County, 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 County 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

measure would allow the County to improve existing access sites and enhance recreational opportunities, as needed.

D. The PDEA (see page 5-235) notes that Avista, the RLUAWG, and the land managers believe that Avista's Proposed Action to fund a portion of the capital and operation and maintenance costs recognizes the nexus between Project-related operations and that portion of the recreation sites that is within or provides public access to the Project.

E. The Parties recognize that it is up to FERC to determine whether it is in the public interest to incorporate PF-REC-2 into the new FERC license that the Parties expect will replace the existing License ("New FERC License"). While the Parties intend for and have requested that FERC include PF-REC-2, or a substantially similar provision acceptable to Avista and the County in the New FERC License issued for the Project, this Agreement also seeks to address the potential situation in which FERC does not include PF-REC-2, or a substantially similar provision acceptable to Avista and the County, in the New FERC License for the Project.

F. Avista and the County concur that public recreational sites that are within or adjacent to the Project boundary provide public access to Project lands and waters and that it is desirable for Avista to enhance opportunities for recreationists and mitigate the demand on public fiscal resources through agreeing to cost-share facility improvements for recreational sites on County-administered lands adjacent to or within the Project boundary. County lands and/or resources are directly affected by PF-REC-1 and PF-REC-4, and the County fully supports them as currently written.

NOW, THEREFORE, the Parties agree as follows:

1. The Parties agree that PF-REC-2 and this Agreement are in the public interest. The contribution of money and services by Avista will assist with management and protection of public lands providing recreational access to the Project. The Parties recognize that PF-REC-2 and this Agreement will serve the public's recreational needs while avoiding potentially expensive and time-consuming administrative processes and litigation. The Parties agree to the PF-REC-2 and this Agreement in consideration of the certainty that this Agreement provides and the avoidance of potential costs and delays.
2. This Agreement establishes no principle or precedent with regard to any issue in any other pending or future licensing proceeding. By entering into this Agreement, no Party shall be deemed to have made any admission or waived any contention of law or fact.
3. Without limiting the applicability of rights granted to the public pursuant to applicable law, this Agreement shall not create any right or interest in the public, or any member of the public, as a third-party beneficiary of this Agreement and shall not authorize any non-party to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law. Unless or until terminated pursuant to the terms of this Agreement, this 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 County.

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 County 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 County in the planning, design and construction of recreation project development on County 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 County. 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 County 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 County 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 County 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 County 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. Mowry State Park

Avista will cooperate with the County and Idaho Department of Parks and Recreation to provide mooring buoys and annual operation and maintenance dollars. Avista shall, pursuant to this Agreement and a separate settlement agreement with the Idaho Department of Parks and Recreation ("IDPR"), provide funding to the County and/or the IDPR in amounts not to exceed a total of \$1,500 for project redevelopment (approximately 25 percent of the total project cost per the RLUAWG) and \$3,500

annually to supplement the County's and/or IDPR's costs for operation and maintenance of the facilities.

b. Abandoned Dock/Debris Removal

Avista will cooperate with the County, other appropriate recreation managers and private landowners to remove abandoned docks, other human-made structures, and debris from Coeur d'Alene Lake. This will occur over a 2-year period to accommodate removal during the spring runoff season. Avista shall collaborate in the planning and provide funding in amounts not to exceed \$40,000 a year, during the first 2 years after the issuance of the New FERC License, and \$6,000 annually for debris removal thereafter.

c. Private Aids to Navigation

Avista will cooperate with the County and other appropriate recreation managers to install private aids to navigation on Coeur d'Alene Lake and along the Coeur d'Alene River as it enters the lake. Avista shall collaborate in the planning, and provide funding, in an amount not to exceed \$20,000 for new or enhanced navigational aids and \$1,000 annually to supplement the parties' costs for operation and maintenance (approximately 25 percent of the total project cost per the RLUAWG). The Parties recognize that a portion of the \$20,000 will also be used to fund similar new or enhanced navigational aids on the St. Joe River, which is located in Benewah County.

d. Boat Ramp Extensions

Avista will cooperate with the County to extend two motorboat ramps to accommodate "off-season" recreational use on Coeur d'Alene Lake. The specific boat ramps include those at Sun Up Bay (\$15,000) and Harrison (\$10,000). Avista shall collaborate in the planning and design and provide funding in an amount not to exceed \$25,000 for both boat ramp extension projects (approximately 25 percent of the total project cost per the RLUAWG).

e. Future Recreation Projects

Avista will consult with the County 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 County 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 County, either in whole or in part. Avista shall provide written notice to the County regarding any assignment of this Agreement, or any claim arising under this Agreement, prior to, or within a reasonable time after, such assignment occurs.

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. Satisfaction of Avista's Responsibilities

This Agreement establishes Avista's obligations for the protection, mitigation, and enhancement of the recreation related resources within the responsibility of the County relating to the Project, and Avista's obligation to comply with all related County laws applicable to the New FERC License for the Project. The County therefore agrees not to seek any additional recreation related obligations, measures or amendments to the existing or New FERC License during the term of the New FERC License that are inconsistent with this Agreement.

g. 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.

h. 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.

i. Independent Relationship

This is an agreement to provide funding to the County as discussed herein. Avista and the County 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.

AVISTA CORPORATION



License Manager

Date: 10-16-07

**KOOTENAI COUNTY
BOARD OF COMMISSIONERS**



Elmer R. Currie, Chairman

Date: 10-9-07

ATTEST:

DANIEL J. JOHNSON, CLERK

