

RESOLUTION NO. 1455

A RESOLUTION OF THE CITY OF CENTRAL POINT, OREGON GRANTING AVISTA CORPORATION, d/b/a AVISTA UTILITIES, A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO LOCATE, CONSTRUCT, INSTALL, OWN, MAINTAIN, REPAIR, REPLACE, EXTEND, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF THE TRANSMISSION, DISTRIBUTION AND SALE OF GAS.

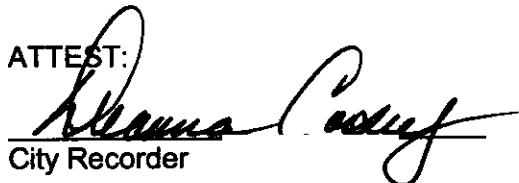
RECITALS:

1. The City of Central Point holds rights-of-way in trust for the public and has the responsibility and home-rule authority to manage and conserve the capacity of such rights-of-ways.
2. The City of Central Point is authorized by Chapter 221 of the Oregon Revised Statutes, the City of Central Point Charter and the Central Point Municipal Code to regulate, and receive compensation from, utilities occupying right-of-way within the City.
3. The existing ten-year natural gas utility franchise granted by the City to Avista expired on April 30th, 2016.
4. The City and Avista Utilities desire to extend the franchise for an additional ten years on the terms and conditions set forth in the attached franchise agreement.

Section 1. Franchise Agreement Adopted by City Council: The Franchise Agreement between the City of Central Point and Avista Utilities is hereby adopted by the City Council and approved for signature by the City Manager.

Passed by the Council and signed by me in authentication of its passage this 26th day of May, 2016.


Mayor Hank Williams

ATTEST:

City Recorder

City of Central
Point and Avista
Corporation
Franchise
Agreement

Franchise Agreement Resolution No. 1455

Effective June 1, 2016

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Resolution

CITY OF CENTRAL POINT, OREGON
Avista Corporation Franchise Agreement
Resolution No. 1455

Avista Corporation dba Avista Utilities, a Washington Corporation, ("Avista"), which is authorized to do business within the state of Oregon has filed with the City of Central Point, State of Oregon (the "City") a written application for renewal of its Franchise to locate, construct, operate, maintain and use such plants, works, underground pipelines, equipment and appurtenances over, under, along and across all of City's rights of way and public property in the City for the purposes of the transmission, distribution and sale of Gas; and the City has determined it is in the interest of persons and businesses in this jurisdiction to have access to Avista's services;

NOW, THEREFORE, THE CITY OF CENTRAL POINT DOES HEREBY RESOLVE:

SECTION 1.0 DEFINITIONS

For the purposes of this Franchise the following terms, phrases, words and their derivations shall have the meaning given in this Section. 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.

Avista: means Avista Corporation, dba Avista Utilities, a Washington corporation, and its respective successors and assigns, agents and contractors.

City: means the City of Central Point, a municipal corporation of the State of Oregon, and its respective successors, assigns, agents and contractors.

Commission: means the Oregon Public Utility Commission or such successor regulatory agency having jurisdiction over investor-owned public utilities in the State of Oregon.

Days: means business days.

Effective Date: means the date that the final signature is obtained, upon which the rights, duties and obligations of this Franchise shall come into effect, and the date from which the time requirement for any notice, extension and/or renewal shall be measured.

Facilities: means, collectively, any and all gas transmission, and distribution systems and appurtenances owned by Avista, now and in the future in the Franchise Area, including but not limited to, Gas plants, Gas pipes, pipelines, mains, laterals, conduits, services, regulators, valves, meters, meter-reading devices, fences, vehicular protection devices, communication and control systems and other equipment, appliances, fixtures, attachments, appurtenances and other

items necessary, convenient, or in any way appertaining to any and all of the foregoing for the purposes of transmission, distribution, storage and sale of Gas.

Franchise: means the grant by the City of rights, privileges and authority embodied in this Resolution

Franchise Area: means the surface and space above and below all public property and rights-of-way owned or held by the City, including, without limitation, rights-of-way for:

- public roads, streets, avenues, alleys, bridges, tunnels, City-owned easements, and highways as currently exist and/or as may hereafter be constructed, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be extended by annexation or otherwise during the term of this Franchise; and
- all City-owned utility easements dedicated for the placement and location of various utilities, provided such easements would permit Avista to fully exercise the rights granted under this Franchise within the area covered by the easement.

Gas: means natural, manufactured, renewable and/or mixed gases.

Maintenance, maintaining, or maintain: means, without limit, repairing, replacing, upgrading, examining, testing, inspecting, and removing Avista Facilities, vegetation management, digging and excavating, and restoration of affected Right-of-way surfaces.

Parties: means City and Avista collectively.

Party: means either City or Avista individually.

Person: means a business entity or natural person.

Right-of-way: means the surface of and the space along, above, and below any street, road, highway, freeway, bridge, tunnel, lane, sidewalk, alley, City-owned utility easement and/or right-of-way now or hereafter held or administered by the City within its corporate limits.

State: means the State of Oregon.

Tariff: means the rate schedules, rules, and regulations relating to utility service, filed with and approved by the Commission in effect upon execution and throughout the term of this Franchise.

SECTION 2.0 GRANT OF FRANCHISE

2.1 Grant

City hereby grants to Avista the right, power, privilege and authority to enter upon all roads, rights-of-way, streets, alleys, highways, public places or structures, lying within the Franchise Area to locate, construct, operate and maintain its Facilities for the purpose of controlling, transmitting and distributing Gas, as may be necessary to provide Gas service.

2.2 Effective Date

This Resolution will be effective upon signing by the Mayor of Central Point as required by law.

2.3 Term

2.3.1 The rights, privileges and Franchise granted to Avista will extend for an initial term of ten (10) years from the Effective Date, and shall automatically extend for successive one (1) year terms unless (a) a new agreement is entered into; (b) this Franchise is renewed for a 10-year term subject to 2.3.2 below; (c) the Franchise is terminated by agreement between the Parties; or (d) either party provides the other party not less than one hundred eighty (180) days prior written notice of its intent not to renew a successive term.

2.3.2 In the event a party desire to renew the Franchise as provided in 2.3.1(b) above, such party shall notify the other Party in writing a request to renew for a ten (10) year period prior to the end of the initial term. If both Parties mutually agree to such a renewal, the renewal date shall commence the day immediately following the expiration date of the initial term, and all terms and conditions of the Franchise shall remain the same, except the effective date of such term.

2.4 Non-Exclusive Franchise

This Franchise is not an exclusive Franchise. This Franchise shall not prohibit the City from granting other franchises within the Franchise Area that do not interfere with Avista's rights under this Franchise. City may not, however, award a Gas Franchise to another party under more favorable or less onerous terms than those of this Franchise without this Franchise being amended to reflect such more favorable or less onerous terms.

2.5 Notice of City's Intent to Compete with Avista

In consideration of Avista's undertaking pursuant to this Franchise, the City agrees that in the event the City intends to engage in the business of providing Gas service during the life of this Franchise or any extension of this Franchise, in competition with Avista, the City will provide Avista with six (6) months' notice of such action.

2.6 Assignment of Franchise

Avista shall have the right to assign its rights, benefits and privileges under this Franchise. Avista shall, at least 30 days prior to such assignment, notify City in writing as to the proposed assignment and the name, address and contact information of said assignee. Upon effectuation of such assignment, the assignee shall be bound to all terms and conditions of this Agreement and shall provide to City, within 30-days of such assignment, its written acceptance of the terms and conditions herein. As permitted by federal and state law and Commission regulation, Avista shall have the right, without notice to or consent of the City, to mortgage or hypothecate its rights, benefits and privileges in and under this Franchise as security for indebtedness.

2.7 Payment of Franchise Fees

2.7.1 In consideration of the rights, privileges, and franchise granted by City to Avista under this Franchise, Avista will pay City five percent (5%) of Avista's gross revenues derived from service to customers located within City (the "Franchise Fee"). Avista will pay the Franchise Fee in quarterly installments, which quarterly installments will be due not later than thirty (30) days following the end of the quarter to which the payment relates. Except as otherwise provided in OAR 860-022-0040, "gross revenue(s)" means revenues received from utility operations within City, less related net uncollectables. Gross revenues of an energy utility shall include revenues from the use, rental, or lease of the utility's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another utility purchasing the service is not the ultimate customer, or revenue from joint pole use.

2.7.2 Contemporaneously with each quarterly payment, Avista will file with City a sworn statement describing the total gross revenues Avista received during the applicable quarter (the "Accounting Statement"). City's acceptance of any payments under this Section 2.7 will not constitute a waiver by City of any Avista breach of this Franchise.

2.7.3 Inspection of Books and Records

On an annual basis, no more frequently than every twelve (12) months, upon thirty (30) days prior written notice, the Grantor shall have the right to audit the books and records of Grantee to determine whether the Grantee has paid the franchise fees owed in accordance with generally accepted accounting principles. The audit shall not last longer than six (6) months. Grantee and Grantor agree to reasonably cooperate to complete the audit within the six (6) month period. Any undisputed additional amounts due to the Grantor as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the Grantor, which notice shall include a copy of the audit findings. Reimbursements for underpayments as a result of audit findings are subject to late payment interest as set forth herein. In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, the Grantee, upon request from the Grantor, shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate, plus one percent (1%) during the period such unpaid amount is owed. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

2.7.4 Equality of Franchise Fees and Costs

In the event that the City increases charges as prescribed by law upon Avista for any fees, taxes or other costs in connection with the issuance, maintenance, existence, continuation, and/or use of the Franchise or public right-of-way granted herein, City shall impose equivalent charges for any fees, taxes or other costs upon any and all other franchisee(s) doing the same business as or competing with Avista. In the event that City does not impose equivalent charges upon other franchisee(s) doing the same business as or competing with Avista, the City will charge Avista the fee imposed upon Avista prior to the increase until all franchisee(s) doing the same business as or competing with Avista are charged the same.

2.7.5 Late Payments to Grantor

Except as provided for payments due under Section 2.7.3 herein, City may assess any late franchise fees due under this Franchise at an annual interest rate of prime plus one percent (1%).

2.7.6 Tax Liability

Payment of Franchise Fees to City shall not be a credit against any license, occupation, business, privilege, or excise taxes of general applicability which City may now or hereafter legally impose upon Avista. Nothing contained in this Franchise shall give Avista any credit against utility fees or systems development charges imposed by City or any ad valorem property tax now or hereafter levied against real or personal property within City limits, or against any local improvement assessment, unless it can be considered Franchise Fees as defined by applicable law.

SECTION 3.0 AVISTA'S OPERATIONS AND MAINTENANCE

3.1 Compliance with Laws, Regulations, Codes and Standards

In carrying out any authorized activities under the privileges granted by this Franchise, Avista shall meet accepted industry standards and codes and shall comply with all applicable laws, regulations and ordinances of any governmental entity with jurisdiction over Avista's Facilities in the Franchise Area. This includes all applicable, laws, regulations and ordinances existing as of the Effective Date or as may be subsequently enacted by any governmental entity with jurisdiction over Avista's operations within the Franchise Area. The City shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of Avista's operations within the Franchise Area. Prior to the adoption of any new rule, procedure or policy of general applicability such as right-of-way construction standards, public works standards, right-of-way permit fees, street cutting fees, and/or development permit fees, Avista shall be provided a written draft document for comment with a response period of not less than thirty days. Notwithstanding the foregoing, failure to provide such notice shall not invalidate such new rules, proce-

dures, or policies of general applicability, nor exempt Avista from compliance with such new rules, procedures or policies. In the event new rules, procedures or policies would modify the franchise fee payable by Avista, or modify the grant of franchise under Section 2.0 herein, the provisions of this Franchise shall prevail. Service shall be supplied to the City and its inhabitants in accordance with Avista's rules and regulations and Tariffs currently or subsequently filed with and approved by the Commission.

3.2 Facility Location by Avista and Non-Interference

Avista shall have the discretion to determine the placement of its Facilities as may be necessary to provide safe and reliable Gas service, subject to the following non-interference requirements. All construction, installation, repair or relocation of Avista's Facilities performed by Avista in the Franchise Area will be done in such a manner as not to interfere with the construction and maintenance of other utilities, drains, drainage and irrigation ditches and structures, and City-owned property within the Franchise Area.

3.3 Facility Location Information

Avista shall provide the City, upon the City's reasonable request, Facility location information in electronic or hard copy showing the location of its Facilities at specific locations within the Franchised Area, to the extent such information is reasonably available. Avista does not warrant the accuracy of any such Facility location information provided and, to the extent the location of Facilities are shown, such Facilities may be shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of Avista or the City, nothing stated in this Franchise is intended (nor shall be construed) to relieve either party of their respective obligations arising under the State one-call law with respect to determining the location of existing underground utility facilities in the vicinity of such excavations prior to commencing work.

3.4 Vegetation Management --Removal of Trees/Vegetation Encroachment

The right of Avista to maintain its Facilities shall include the right, as exercised in Avista's professional discretion to minimize the likelihood that encroaching (either above or below the ground) vegetation can interfere with or limit access to Avista's Facilities, or pose a threat to public safety and welfare. Avista or its agents may accordingly remove or limit, without recourse or payment of compensation at its sole expense, the growth of vegetation which encroaches upon its Facilities and/or Gas transmission and distribution corridors within the Franchise Area.

3.5 Right of Excavation

For the purpose of implementing the privileges granted under this Franchise, and subject to the conditions described herein, Avista is authorized to make any necessary excavations in, under and across the streets, alleys, roads, rights-of-way and public grounds within the Franchise Area. Such excavation shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the public as may be feasible. Avista shall remove all debris stemming

from excavation and construction. The Right-of-way surface shall be restored by Avista after excavation, in accordance with applicable City and Avista specifications. Prior to performing such work, Avista shall obtain all legally required permits, including the opening or disturbance of any Right-of-way-within the Franchise Area. City shall cooperate with Avista in granting any permits required, providing such grant and subsequent construction by Avista shall not unduly interfere with the use of such Rights-of-way. Avista shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Gas Franchise in the Franchise Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by City as to other public utility companies and other entities operating in the City. The payment of any generally applicable and non-discriminatory right-of-way permit fees, street cutting fees, or development permit fees is required in addition to payment of the Franchise Fee herein.

3.6 Emergency Work

In the event of an emergency requiring immediate action by Avista to protect the public health and safety or for the protection of its Facilities, or the property of the City or other persons in the Franchise Area, Avista may immediately proceed with excavation or other Right-of-way work, with concurrent notice to the City to the extent possible.

SECTION 4.0 RESERVATION OF CITY'S RIGHTS AND POWERS

4.1 Reservation of Right

The City, in granting this Franchise, does not waive any rights which it may not have or may subsequently acquire with respect to road rights-of-way or other property of 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 City's roads, rights-of-way and other public property covered by this Franchise. Nothing in the terms of this Franchise shall be construed or deemed to prevent the City from exercising at any time and any power of eminent domain granted to it under the laws of the State.

4.2 Necessary Construction/Maintenance by City

The construction, operation and maintenance of Avista's Facilities authorized by this Franchise shall not preclude the City, its agents or its contractors, from grading, excavating, or doing other necessary road work contiguous to Avista's Facilities; provided that Avista shall be given not less than ten (10) business days' notice of said work, except in events of emergency when there exists an unforeseen and substantial risk or threat to public health, safety, welfare, or waste of resources in which case the City will make reasonable efforts to contact Avista prior to doing the necessary work; and provided further that the City, its agents and contractors, shall be liable for any damages, including any consequential damages to third parties, caused by said work to any Facilities belonging to Avista, up to the amount of liability under the Oregon Tort Claims Act.

4.3 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.

4.4 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 or in accordance with applicable state laws and shall include all prior installations authorized by permits or other action not previously covered by this Franchise.

4.5 Removal of Abandoned Facilities

During the Term of this Franchise, or upon a revocation or non-renewal of this Franchise, the City may direct Avista to remove designated abandoned Facilities from the Franchise Area at its own expense and as soon as practicable, but only where such abandoned Facilities constitute a demonstrated threat to public health and safety. Avista shall not be required to remove, or pay for the removal of facilities it has previously abandoned to another franchisee, or utility under a joint use agreement, or Person granted permission to access Avista's facilities.

4.6 Vacation of Properties by City

If, at any time, the City shall vacate any road, right-of-way or other public property which is subject to rights granted by this Franchise, such vacation shall be subject to the reservation of a perpetual easement to Avista for the purpose of constructing, reconstructing, operating, maintaining, repairing and upgrading Avista's Facilities on the affected property. The City shall, in its vacation procedure, reserve and grant said easement to Avista for Avista's Facilities and shall also expressly prohibit any use of the vacated properties which will interfere with Avista's full enjoyment and use of said easement.

SECTION 5.0 RELOCATION OF AVISTA'S FACILITIES

5.1 Relocation of Facilities Requested by City

Upon request of the City, Avista shall relocate its Facilities as necessary within the Franchise Area as specifically designated by the City for such purpose. For purposes of this provision, all reasonable efforts shall be made by the City, with input from Avista, to minimize the impacts of potential relocation. The City shall provide Avista reasonable notice of any intended or expected requirement or request to relocate Avista's Facilities. Said notice shall not be less than ninety (90) calendar days prior to any such relocation and, depending on the circumstances, may be greater than ninety (90) calendar days if necessary to allow Avista sufficient time to arrange for

relocation. In cases of emergency, or where not otherwise reasonably foreseeable by the City, the notice requirements of this Section may be shortened by discussion and agreement between the Parties. 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.

In the event a relocation forces Avista off City's existing Public Right(s) of Way then the City shall accommodate such relocation by securing an acceptable, alternate location for utilities and removing any obstructions, including, without limitation, trees, vegetation, or other objects that may interfere with the installation, operation, repair, upgrade or maintenance of Avista's Facilities on the affected Property.

If the City requires the subsequent relocation of any of Avista's Facilities within two (2) years from the date of relocation of such Facilities or installation of new Facilities that is a result of the same Right-of-way project, 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.

Notwithstanding the above, Avista shall not be required to relocate facilities of other entities that were abandoned to another franchisee. Such relocation of these types of facilities shall be accordance with Section 5.2 below.

This Section shall not apply to Facilities in place pursuant to private easement held by Avista, regardless of whether such Facilities are also located within the Franchise Area. In the event the City requests relocation of Facilities that are in place pursuant to an existing easement, said relocation shall be treated in the same manner as a relocation requested by third parties under Section 5.2, below, with the City bearing the expense of relocation.

5.2 Relocation of Facilities Requested by Third Parties

City acknowledges that Avista is obligated to provide gas service and related line extension or relocation of Facilities for the benefit of its customers and to require compensation for such services on a non-preferential basis in accordance with applicable Tariffs.

If Facilities are to be relocated at the request of or for the primary benefit of a third party, the City shall not require Avista to relocate its Facilities until such time as a suitable location can be found and the third party has entered into an agreement to reimburse Avista for its reasonable costs of relocation.

5.3 Availability of Other Funds

In the event federal, state or other funds are available in whole or in part for utility relocating purposes, 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 6.0 INDEMNITY

6.1 Indemnification of City

Avista agrees to defend and indemnify the City, its appointed and elected officers and employees or agents, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's fees, that the City may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of Avista, its officers, employees or agents in connection with Avista's obligations under this Franchise; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages and losses were caused by or result from the negligence of the City, elected officers and employees or agents. Liability of City is limited to the extent of the City's liability under the Oregon Tort Claims Act.

6.2 Indemnification of Avista

To the extent permitted by law, City agrees to defend and indemnify Avista, its officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's fees, that Avista 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 City, its appointed and elected officers and employees or agents in connection with City's obligations under this Franchise; 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 Avista, its employees or agents.

SECTION 7.0 FRANCHISE DISPUTE RESOLUTION

7.1 Non-waiver

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

7.2 Dispute Resolution by the Parties

Disputes regarding the interpretation or execution of the terms of this Franchise that cannot be resolved by department counterparts representing the Parties, shall be submitted to the City's

Attorney and an attorney representing Avista for resolution. If a mutually satisfactory or timely resolution cannot then be reached by the above process, prior to resorting to a court of competent jurisdiction, the Parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the Parties.

7.3 Right of Enforcement

No provision of this Franchise shall be deemed to bar the right of the City or Avista to seek judicial relief from a violation of any provision of the Franchise to recover monetary damages for such violations by the other Party or to seek enforcement of the other Party's obligations under this Franchise by means of specific performance, injunctive relief or any other remedy at law or in equity pursuant to Section 7.4. Any litigation between the City and Avista arising under or regarding this Franchise shall occur, if in the state courts, in a court of competent jurisdiction, and if in the federal courts, in the United States District Court for the District of Oregon.

7.4 Attorneys' Fees and Costs

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

SECTION 8.0 GENERAL PROVISIONS

8.1 Franchise as Contract, No Third Party Beneficiaries

This Franchise is a contract between the Parties and binds and benefits the Parties and their respective successors and assigns. This Franchise does not and is not intended to confer any rights or remedies upon any persons, entities or beneficiaries other than the Parties.

8.2 Force Majeure

In the event the Parties are delayed in or prevented from the performance of any of its obligations under the Franchise by circumstances beyond said Party's control (Force Majeure) including, without limitation, third party labor disputes, fire, explosion, flood, earthquake, power outage, acts of God, war or other hostilities and civil commotion, then said Party's performance shall be excused during the period of the Force Majeure occurrence. Each affected Party will use all commercially reasonable efforts to minimize the period of the disability due to the occurrence. Upon removal or termination of the occurrence, said Party will promptly resume performance of the affected Franchise obligations in an orderly and expeditious manner.

8.3 Prior Franchises Superseded

As of the Effective Date this Franchise shall supersede all prior gas franchises for the Franchise Area previously granted to Avista or its predecessors by City, and shall affirm, authorize and ratify all prior installations authorized by permits or other action not previously covered by franchise. Termination of the prior Franchise shall not, however, relieve the Parties from any obliga-

tions which accrued under said Franchise prior to its termination, including but not limited to, any outstanding indemnity, reimbursement or administrative fee payment obligations.

8.4 Severability

The Franchise is granted pursuant to the laws of the State of Oregon relating to the granting of such rights and privileges by City. 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 Avista.

8.5 Changes or Amendments

Changes or amendments to this Franchise shall be in writing and shall not be effective until lawfully adopted by the City and agreed to by Avista.

8.6 Supremacy and Governing Law

This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Oregon. In the event of any conflict between this Franchise and any City ordinance, regulation or permit, the provisions of this Franchise shall control. In the event of a conflict between the provisions of this Franchise and Avista's applicable Tariff on file with the Commission, the Tariff shall control.

8.7 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.

8.8 Acceptance of Franchise

Avista shall, within thirty (30) days after passage of this Resolution, file with the City Recorder, its acceptance of the terms and conditions of this Franchise.

8.9 Abandonment or Suspension of Franchise Rights and Obligations

Avista may at any time abandon the rights and authorities granted hereunder, provided that six (6) months' written notice of intention to abandon is given to City. In addition, pursuant to Section 8.6 and in the event a conflict exists between the terms of this Franchise and Avista's Tariff with the Commission that cannot be resolved, Avista may suspend or abandon the rights and obligations of this Franchise upon reasonable notice to the City.

8.10 Franchise Effective Date

The Effective Date of this Franchise shall be June 1 2016, after passage, approval and final passage of this Resolution as provided by law, and provided that it has been duly accepted by Avista as specified above.

This Franchise Agreement has been made entirely within the state of Oregon. If any suit or action is filed by any party to enforce this Franchise Agreement or otherwise with respect to the subject matter of this Agreement, venue shall be in the federal or state courts in Jackson County, Oregon.

PASSED by the Council and signed by me in authentication of its passage this 26th day of May 2016.


Mayor Hank Williams

ATTEST:

City Recorder

Letter of Acceptance by Avista

HONORABLE MAYOR AND CITY COUNCIL
CITY OF CENTRAL POINT, COUNTY OF JACKSON, OREGON

IN RE: City of Central Point, Resolution No. 1455.

“Granting a Franchise to Avista Corporation for the Construction, Operation and Maintenance of Natural Gas Facilities Within the City.”

Avista Corporation dba Avista Utilities, for itself, its successors and assigns, hereby accepts the terms and conditions of the Franchise Agreement contained in the subject Resolution and files this written acceptance with the City of Central Point. This acceptance is executed on . 20__.

Avista Corporation dba Avista Utilities

By:

Dennis Vermillion
President, Avista Utilities

Copy Received for the City of Central Point

On:

By:

City Representative - Name

Gas Franchise Resolution Summary

NOTICE: CITY OF CENTRAL POINT PROPOSED FRANCHISE RESOLUTION NO. 1455 SUMMARY

Resolution No. 1455 will grant Avista Corporation dba Avista Utilities a non-exclusive public utility franchise to locate, construct, install, own, maintain, repair, reconstruct, operate and use facilities within the City's public right of way [the Franchise Area] for the purposes of the transmission, control and distribution of natural gas within the City for a term of 10 years. Avista agrees to meet accepted industry standards and conform with applicable federal and state laws, as well as the regulations of the appropriate state regulatory body with jurisdiction, in the conduct of its operations under the Franchise. The City reserves the right to make reasonable rules and regulations pertaining to the conduct of Avista's operations within the Franchise Area. Avista must not interfere with any existing facilities of other utilities. Avista is authorized to make necessary excavations within the Franchise Area; excavations must be carried out with reasonable dispatch, and the area restored, with as little interference to the public as may be reasonable. Avista must relocate its facilities in the franchise area at the City's request. Avista may remedy encroachment of vegetation in connection with franchised activities. Provisions are made for informal dispute resolution.

(The Resolution is anticipated to be held before the Central Point City Council on May 26, 2016 at 7:00 pm in the City Council Chambers).