

RIGHT OF FIRST OFFER

THIS RIGHT OF FIRST OFFER (“ROFO”) is dated as of November ____, 2020 and is made by and between AVISTA CORPORATION, a Washington public utility corporation (“Avista”) whose address is 1411 E. Mission Avenue, MSC-25, Spokane, WA 99202 and AVISTA DEVELOPMENT, INC., a Washington corporation (“Development”) whose address is 1411 E. Mission Avenue, MSC-68, Spokane, WA 99202 or its assigns. Development and Avista are collectively referred to herein as the “Parties”.

1. First Offer Notice. If Avista decides to sell the its real property legally described in Exhibit A (the “Property”), other than as part of an Excluded Transaction, as defined below, (a “Proposed Transfer”), Development shall have a right of first offer to acquire the Property in accordance with this Paragraph 1. In exchange for this Right of First Offer, Development shall pay to Avista two thousand five hundred and no/100 dollars (\$2,500.00). Pursuant to this ROFO, as long as Development’s rights have not been waived or terminated as provided in Paragraph 3 herein, Avista shall not consummate a sale of the Property unless Avista shall first deliver to Development a notice (the “First Offer Notice”) of its intent to sell the Property.

2. Response Period. Development shall, within thirty (30) days of receiving the First Offer Notice (the “ROFO Response Period”), notify Avista in writing, of its acceptance (“Acceptance”) of the First Offer Notice. Such acceptance must be received by Avista before 5:00 p.m. on the last day of the ROFO Response Period. Upon receipt of Development’s Acceptance, Avista and Development shall promptly execute a purchase and sale agreement (“Purchase and Sale Agreement”) to sell the Property to Development on terms typical to commercial real estate transactions in Spokane County, State of Washington. The sale price for the Property under the Purchase and Sale Agreement shall be the fair market value as determined by the average of two arm’s length appraisals conducted by Washington licensed and certified appraisers according to the Uniform Standards of Professional Appraisal Practice (“USPAP”); Avista and Development shall each commission and pay for one appraisal with a USPAP certified appraiser of their choice.

3. Waiver/Termination of ROFO. Development’s rights under this ROFP shall conclusively be deemed to be waived, shall automatically terminate, and shall be of no further force or effect if Development: (a) delivers written notice of rejection of the First Offer Notice to Avista; (b) fails to deliver written notice of acceptance of the First Offer Notice within the ROFO Response Period; (c) fails, through no fault of Development or Avista, to enter into a mutually agreeable purchase and sale agreement with respect to the Property within forty-five (45) days of Development’s acceptance of the First Offer Notice; or (d) fails, through no fault of Development, to close on the transaction within one hundred eighty (180) days of receiving the First Offer Notice.

4. Excluded Transactions. Notwithstanding anything to the contrary contained in Paragraph 1, Development's Right of First Offer shall not apply to the following transactions (the “**Excluded Transactions**”):

- (a) any transfer or conveyance by Avista to any affiliate of Avista; or
- (b) any transfer in the nature of a financing transaction with a financial institution that is made for a bona fide business purpose (i.e., other than in order to allow a transfer of the Property in avoidance of Development’s rights under Paragraph 1), including, without

limitation, any foreclosure of a mortgage on the Property or conveyance by deed-in-lieu of foreclosure.

5. Sale Under ROFO. A sale pursuant to this ROFO shall be conducted in accordance with the provisions of this Paragraph 5.

(a) Avista shall deliver to Development or its designee a deed with warranty on an “AS-IS, WHERE-IS BASIS” without any representations or warranties, together with any ancillary documents necessary for the recordation thereof and any required tax documents;

(b) The closing shall be held in accordance with local custom in Spokane County, Washington; and

(c) All title insurance premiums, and other costs, fees, and expenses (including reasonable attorneys fees and expenses) incurred in connection with the transfer of the Property to Development shall be paid in accordance with local custom for commercial real estate transactions in Spokane County, Washington.

6. Notices. Unless specifically stated otherwise in this ROFO, all notices, waivers, and demands required or permitted hereunder shall be in writing and delivered to the addresses set forth below, by one of the following methods: (a) hand delivery; (b) a nationally recognized overnight courier company; (c) registered United States mail, signature required and postage-prepaid; or (d) email transmission provided that the transmission is completed no later than 5:00 p.m. Pacific Standard Time on a business day with the original sent via first class US Mail the same or following day. Notices shall be sent to the parties at the following:

To Development: Name: Troy Dehnel
Address: 1411 E. Mission Avenue, MSC-68, Spokane,
WA, 99252
Telephone: 509-495-4876
Facsimile: 509-777-5677
Email: troy.dehnel@avistacorp.com

with a copy to: Name: Jillian Caires
Address: 1411 E. Mission Avenue, MSC-33, Spokane,
WA, 99252
Telephone: 509-495-8635
Email: jillian.caires@avistacorp.com

To Avista: Name: Rod Price
Address: 1411 E. Mission Avenue, MSC-25, Spokane,
WA, 99252
Telephone: 509-495-2436
Facsimile: 509-495-8734
Email: rod.price@avistacorp.com

with a copy to:

Name: Todd Colton

Address: 1411 E. Mission Avenue, MSC-8, Spokane, WA,
99252

Telephone: 509-495-2344

Email: todd.colton@avistacorp.com

Any party may change its address for purposes of this Section 6 by giving written notice as provided in this Section 6. All notices and demands delivered by a party's attorney on a party's behalf shall be deemed to have been delivered by said party. Notices shall be valid only if served in the manner provided in this Section 6.

7. Amendment. This ROFO may not be modified, amended, or terminated except in a writing signed by each party hereto.

8. Limited Assignment. Development may assign its rights and obligations under this ROFO. No assignee of Development may assign its rights and obligations under this ROFO. For sake of clarity, the ability to assign the rights granted by this ROFO is an exclusive right of Avista Development Inc., a Washington corporation.

9. Counterparts. This ROFO may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument. A signed copy of this ROFO delivered by facsimile/email shall be deemed to have the same legal effect as delivery of an original signed copy of this ROFO.

10. Venue; Governing Law. Any action at law or in equity to enforce the terms of the ROFO will be brought in Spokane County, Washington. The ROFO will be construed and interpreted in accordance with the laws of the State of Washington, excluding any choice of law rules that may direct the application of laws of a jurisdiction other than Washington.

11. Severability and Waiver. The invalidity or unenforceability of any provision of the ROFO will not affect any other provisions; the ROFO will be construed in all respects as if such invalid or unenforceable provisions were omitted. The failure of either party to insist upon or enforce strict performance of any of the provisions of the ROFO, or to exercise any rights under the ROFO, will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same will be and remain in full force and effect.

12. Commission Approval Contingency. This ROFO is subject to the approval of the Washington Utilities and Transportation Commission (the "Commission"). This ROFO will not be effective until such time as the Commission chooses to either approve the ROFO or otherwise chooses not to act. Should the Commission disapprove, this ROFO will be null and void.

Signatures and Notaries Follow

Date: _____, 2020

AVISTA CORPORATION, a Washington corporation

By: _____

Title: _____

STATE OF WASHINGTON)
) ss
SPOKANE COUNTY)

I certify that I know or have satisfactory evidence that _____ is the individual(s) who appeared before me, and said individual(s) acknowledged that _____ signed this instrument, on oath stated that _____ was authorized to execute the instrument and acknowledged it as the _____ of Avista Corporation, a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2020

NOTARY PUBLIC
In and for the State of Washington
Residing _____
My appointment expires: _____

Exhibit A
Legal Description of the Property

[INSERT LEGAL]