

After Recording Return to: Spokane County Engineer
Attn: Engineering Administration
1026 W. Broadway
Spokane, WA 99260



Document Title: Franchise
Grantor: Government, County of Spokane
Grantee: Avista Corporation
Location: See Exhibit A
Ref. # of Docs. Affected: 1971-0171, 1986-0736, 1988-0548, 1987-1146, 2007-1066, 2008-0076, 2008-0417, 2008-0522, 2013-0632, 2014-0351, 2015-0371, 2017-0365
Assessor's Tax Parcel Number: No Assessor's Tax Parcel Nos Assigned – Public Roadways

AUTHORIZED BY RESOLUTION NO. 17 - 0 4 7 8

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
SPOKANE COUNTY, WASHINGTON**

**IN THE MATTER OF THE)
APPLICATION OF AVISTA)
CORPORATION FOR RENEWAL OF A)
FRANCHISE TO CONSTRUCT,)
OPERATE, AND MAINTAIN A)
NATURAL GAS TRANSMISSION AND)
DISTRIBUTION SYSTEM IN, OVER,)
ALONG, AND UNDER COUNTY)
ROADS, HIGHWAYS, AND RIGHTS-)
OF-WAY IN SPOKANE COUNTY,)
WASHINGTON**

FRANCHISE

Franchise No. 17-0478

Application of AVISTA CORPORATION, a Washington Corporation, doing business in Washington, at Spokane, for a franchise to construct, operate, and maintain a natural gas transmission and distribution system in, over, along, and under County roads, highways, and rights-of-way in Spokane County, Washington, as hereinafter set forth, having come on regularly for hearing before the Board of County Commissioners of Spokane County ("Board"), Washington on the 23rd day of May, 2017, under the provisions of Chapter 187, State Sessions Laws of 1937, and as set forth in RCW 36.55.010, and it appearing to the Board that notice of said hearing has

been duly given as required by law, and that it is in the public interest to grant the franchise herein granted;

NOW THEREFORE:

IT IS ORDERED, that a franchise be and the same is hereby given and granted to AVISTA CORPORATION, doing business in the State of Washington, its successors and assigns, hereinafter referred to as the “Grantee”, for a period of twenty-five (25) years from and after the date of the entry of this order, to construct, operate, and maintain a natural gas transmission and distribution system in, under, along, and over the public County roads, highways, and rights-of-way in Spokane County, Washington, as further described herein.

This non-exclusive franchise is granted upon the following terms and conditions, to-wit.

WHEREAS, RCW 36.55.010 and RCW 36.55.030 authorize the County to grant, permit, and regulate “franchises to persons or private or municipal corporations to use the right-of-way of county roads in their respective counties for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines, sewers and any other such facilities”; and

WHEREAS, RCW 36.55.040, and RCW 36.55.050 further require that certain duties of County’s Auditor and County’s legislative body must occur before such a resolution or ordinance can be passed by the County’s legislative body; and

WHEREAS, the Board of County Commissioners finds that the grant of the Franchise contained in this Resolution, subject to its terms and conditions, is in the best interests of the public, and protects the health, safety, and welfare of the citizens of this County.

NOW, THEREFORE, the Board of County Commissioners of Spokane County, Washington, ordains as follows:

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PURPOSE: To enable the use of public rights of way by certain public utilities to reduce the cost of delivering public services while ensuring that all costs and risks of the utility’s installation and infrastructure are fully the responsibility of the utility.

Section 1. **Definitions.** For the purpose of this Resolution, the following words and terms shall have the meaning set forth below:

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

“County Engineer” means the duly appointed County Engineer for Spokane County or designee.

“Commission” means the Washington Utilities and Transportation Commission or such successor regulatory agency having jurisdiction over investor-owned public utilities in the State of Washington.

“construction” or “construct” shall mean constructing, digging, excavating, laying, testing, operating, extending, upgrading, renewing, removing, replacing, and repairing a facility.

“day” shall mean a 24-hour period beginning at 12:01 AM. If a thing or act is to be done in less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation of time, unless otherwise provided for by law.

“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 pipes, pipelines, mains, laterals, conduits, regulators, valves, meters, meter-reading 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, and sale of gas.

“franchise area” shall mean the roads outlined in Exhibit “A”

“gas” means natural, manufactured and/or mixed gases.

“hazardous substances” shall have the same meaning as RCW 70.105D.020(13).

“maintenance, maintaining or maintain” shall mean the work involved in the replacement and/or repair of facilities, including constructing, relaying, repairing, replacing, examining, testing, inspecting, removing, digging and excavating, and restoring operations incidental thereto.

“grantee” shall mean Avista Corporation dba Avista Utilities, a Washington corporation, and its respective successors, assigns, agents, and contractors.

“right-of-way” shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, or drive in Exhibit “A”

“streets” or “highways” shall mean the surface of, and the space above and below, any public street, road, alley or highway, within the County used or intended to be used by the general public, to the extent the County has the right to allow the Grantee to use them.

Section 2. **Grant of Franchise.** The County of Spokane, political subdivision of the State of Washington (hereinafter the “County”), hereby grants unto Avista (hereinafter “Grantee”), a franchise for a period of twenty-five (25) years, beginning on the effective date of this Resolution, to install, construct, operate, maintain, replace and use all necessary equipment and facilities to place gas facilities in, under, on, across, over, through, along or below the public rights-of-way located in the County of Spokane, as approved under County permits issued pursuant to this franchise (hereinafter the “franchise”). The parties may renew this franchise for an additional twenty-five (25) years by mutual written agreement, which may be exercised at any time within the final year of the initial franchise term.

Section 3. Fee. Currently no right-of-way use fee is imposed for a Franchise. Any such right-of-way use or franchise fee that may be imposed by subsequent ordinance or resolution would apply to this franchise. The parties understand that there are restrictions by Washington statute precluding fees at this time. If, at some time in the future and during the pendency of this franchise statutory restrictions on fees are removed, Avista and the County shall negotiate a fair and reasonable franchise fee.

Section 4. Recovery of Costs. Grantee shall reimburse the County for any and all costs of appropriate publication(s) as required by chapters 36.55 RCW and 36.72 RCW, two publications of this franchise in a local newspaper, and required legal notices prior to any public hearing regarding this franchise, contemporaneous with its acceptance of this franchise or amendments hereto. Grantee shall be subject to all permit and inspection fees associated with activities undertaken through the authority granted in this franchise, under County Code, or State law.

Section 5. Non-Exclusivity. This franchise is granted upon the express condition that it shall not in any manner prevent the County from granting other or further franchises or permits to other parties in any of its rights-of-way. This and other franchises shall, in no way, prevent or prohibit the County from any use of its rights-of-way or affect its jurisdiction over its rights of way or any part of them. Should Grantee become aware of a gas franchise that is currently in effect, adopted after this franchise, and that contains more favorable or less onerous terms than this Franchise, the Grantee may at its election, exercise the option to enter into the desired Franchise in its entirety, as is.

Section 6. Non-Interference with Existing Facilities. Avista shall have the discretion to determine the placement of its Facilities as may be necessary to provide safe and reliable Gas service within the Franchise Area, subject to the following non-interference requirements. The County shall have prior and superior right to the use of its rights-of-way for installation and maintenance of its facilities and other governmental purposes. The County hereby retains full power to make all changes, relocations, repairs, maintenance, establishments, improvements, dedications or vacation of same as the County may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way, streets, avenues, thoroughfares and other public properties of every type and description.

The owners of all utilities, public or private, installed in or on such right-of-ways prior to the installation of the facilities of the Grantee, shall have preference as to the positioning and location of such utilities so installed with respect to the Grantee. Such preference shall continue in the event of the necessity of relocating or changing the grade of any such right-of-ways.

Grantee's facilities shall be constructed and maintained in such manner as not to interfere with any public use, or with any other pipes, wires, conduits or other facilities that may have been laid in the rights-of-way by or under the County's authority. If the work done under this franchise damages or interferes in any way with the public use or other facilities, the Grantee shall wholly and at its own expense make such provisions necessary to eliminate the interference or damage to the satisfaction of the County Engineer.

Section 7. Construction Standards. All work authorized and required hereunder shall comply with all generally applicable County Codes and regulations. Grantee shall also comply with all applicable federal and state regulations, laws and practices. Grantee is responsible for the supervision, condition, and quality of the work done, whether it is by itself or by contractors, subcontractors, assigns or agencies. Application of said federal, state, County Codes and regulations shall be for the purposes of fulfilling the County's public trustee role in administering the primary use and purpose of right-of-ways, and not for relieving the Grantee of any duty, obligation, or responsibility for the competent design, construction, maintenance, and operation of its facilities.

If Grantee shall at any time be required, or plan, to excavate trenches in any area covered by this franchise, the Grantee shall afford the County an opportunity to permit other franchisees and utilities to share such excavated trenches, provided that: (1) such joint use shall not unreasonably delay the work of the Grantee; and (2) such joint use shall not adversely affect Grantee's facilities or safety thereof. Joint users will be required to contribute to the costs of excavation and filling on a pro-rata basis.

Section 8. Right-of-Way Permits. Except in the case of an emergency presenting an immediate threat to health or property, no work shall be commenced within the public rights-of-way until a right-of-way permit for a site-specific location or installation has been issued by the County pursuant to Spokane County Code. All work shall be performed in accordance with current County standards, the approved plans and specifications, and the terms and conditions of the right-of-way permit and other permits and approvals under Spokane County Code necessary to accomplish the work (e.g., lane closure or road detour permits).

Section 9. Protection of Monuments. Grantee shall comply with applicable state laws relating to protection of monuments.

Section 10. Vegetation Management. The Grantee shall have the authority to conduct pruning, trimming and removal of vegetation for access to and maintenance of Grantee's facilities in the rights-of-way subject to compliance with the County Code, provided however, that Grantee shall whenever reasonably practical, give notice to the homeowner to whom the vegetation is adjoining at least 14 days in advance of any such work, and provided also that Grantee shall consult with and get approval from the County prior to the removal of any mature tree, defined as any tree that is more than 4 inches in diameter at breast height ("dbh"). All such pruning, trimming and removal shall be done by Grantee or its authorized contractors at the Grantee's sole cost and expense.

Section 11. Emergency Response. The Grantee shall, within thirty (30) days of the execution of this franchise, designate one or more responsible people and an emergency contact, along with the procedures to be followed when responding to an emergency. After being notified of an emergency, Grantee shall cooperate with the County to respond in a timely manner with action to aid in the protection the health and safety of the public.

In the event the Grantee refuses to promptly take the directed action or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the County may take such actions as it believes

are necessary to protect persons or property and the Grantee shall be responsible to reimburse the County for any of its costs and expenses.

Section 12. One-Call System. Pursuant to chapter 19.122 RCW, Grantee is responsible for becoming familiar with, and understanding, the provisions of Washington's One-Call statutes. Grantee shall comply with the terms and conditions set forth in the One-Call statutes.

Section 13. Safety. All of Grantee's facilities in the rights-of-way shall be constructed and maintained in a safe and operational condition. Grantee shall follow all safety codes and other applicable regulations in the installation, operation, and maintenance of the facilities.

Section 14. Movement of Grantee's Facilities for Others. Whenever any third party shall have obtained permission in the form of a permit or other means from the County to use any right-of-way for the purpose of moving any building or other oversized structure, Grantee, upon at least fourteen (14) days' written notice from the County, shall move, at the expense of the third party desiring to move the building or structure, any of Grantee's facilities that may obstruct the movement thereof; provided, that the path for moving such building or structure is the path of least interference to Grantee's and others' facilities, as reasonably determined by the County. Upon good cause shown by Grantee, the County may require more than fourteen (14) days' notice to Grantee to move its facilities.

Section 15. Acquiring New Facilities. Upon Grantee's acquisition of any new facilities in the rights-of-way, or upon Grantee's notice of any addition or annexation to the County of any area in which Grantee retains any such facilities in the rights-of-way, the Grantee shall submit to the County a written statement describing all facilities involved, whether authorized by franchise or any other form of prior right, and specifying the location of all such facilities. Such facilities shall immediately be subject to the terms of this franchise.

Section 16. Dangerous Conditions - Authority of County to Abate. Whenever, as determined the County Engineer, any of Franchisee's activities or facilities authorized by this franchise cause or contribute to a condition that substantially impairs the lateral support of the adjoining road or public place, or endangers the public, an adjoining public place, road facilities or County property, the Franchisee, at the direction of the County Engineer and at the Franchisee's own expense, shall take actions to protect the public, adjacent public places, County property or road facilities, and shall commence said actions within the time prescribed.

In the event that Grantee fails or refuses to promptly take the actions directed by the County, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the County may take such actions as are necessary to protect the public, adjacent public or private property, or street utilities, or to maintain the lateral support thereof, and all other actions deemed by the County to be necessary to preserve the public safety and welfare; and Grantee shall be liable to the County for all costs and expenses thereof to the extent caused by Grantee; provided, that in the event the County undertakes any actions contemplated by this Section 16, it will only hire third party contractors previously approved by Grantee or the Washington Utilities Commission as having the experience and technical knowledge to safely perform such repairs for public safety purposes. Grantee agrees to provide a list to Grantor of such

previously approved contractors upon entry of this Franchise, along with periodic updates.

Section 17. Hazardous Substances. Grantee shall comply with all applicable federal, state and local laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's facilities in the rights-of-way. Grantee agrees to forever indemnify the County against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the County arising out of the release or threat of release of hazardous substances caused by Grantee's ownership or operation of its facilities within the County's rights-of-way.

In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of Hazardous Substances in compliance with applicable environmental cleanup standards related thereto.

In addition, Franchisee agrees that it will not cause nor permit in any manner, including negligent or intentional acts or omissions, release of any hazardous substance, waste, or pollutant or contaminant into or upon any county road or right-of-way contrary to any state or federal law or local regulation with respect thereto. Franchisee shall notify the Washington State Department of Ecology and Spokane County in writing immediately upon any such release. Franchisee shall indemnify, hold harmless, defend and covenant not to sue the County, from and against any and all claims, actions or suits in equity or at law and any judgments, damages, awards, penalties or fines, including reasonable attorneys' fees and costs incurred in the defense thereof, arising out of the release or spill of any such hazardous materials, dangerous waste, or pollutant within the County right-of-way or on private property. Franchisee shall be responsible for completely cleaning up and remediating, as required by any government agency, any and all hazardous materials, dangerous waste or pollutants released or spilled within the public right-of-way or on private property. The County shall be entitled to indemnification by Franchisee for all costs incurred by it as the result of any release or spill of such materials by Franchisee, its agents, officials, officers and employees.

Upon any release or spill of any such substance mentioned herein the County, where it deems necessary to protect the public health, safety and welfare, may immediately take whatever steps it deems necessary and advisable to contain, clean up or remediate the release or spill. In such cases, the County shall be entitled to repayment from the Franchisee of any costs or expenses incurred in responding to such a release or spill. The County's ability to act in case of an emergency shall in no way create a duty to act, nor a continuing duty to act where initial emergency action is undertaken.

Section 18. Environmental. Grantee shall comply with all environmental protection laws, rules, recommendations, and regulations of the United States and the State of Washington, and their various subdivisions and agencies as they presently exist or may hereafter be enacted, promulgated, or amended, and shall indemnify and hold the County harmless from any and all damages arising, or which may arise, or be caused by, or result from the failure of Grantee fully to comply with any such laws, rules, recommendations, or regulations, whether or not Grantee's acts or activities were intentional or unintentional. Grantee shall further indemnify the County against all losses, costs, and expenses (including legal expenses) which the County may incur as a result of the requirement of any government or governmental subdivision or agency to clean and/or

remove any pollution caused or permitted by Grantee, whether said requirement is during the term of the franchise or subsequent to its termination or expiration.

Section 19. Relocation of Facilities

The County shall have the right to require Grantee to protect, support, temporarily disconnect, remove or change the location (collectively, "Relocation") of its facilities within the Rights of Way when so required by the County by reason of traffic conditions, public safety, dedications and/or establishment of new rights-of-way, widening, alteration and improvement of existing rights-of-way, right-of-way vacations, freeway construction, change or establishment of road grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity (collectively, "Public Improvement"), and the expense thereof shall be paid solely by Grantee provided, that Grantee shall in such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the County, any section of its facilities required to be temporarily disconnected or removed. However, if it is found in the opinion of the County Engineer that conditions are such that a temporary bypass is impossible, no such accommodation will be made.

In those instances where Relocation is requested, the County shall provide the Grantee with the standard notice, as stated below.

Should Grantee fail to comply with the County's request for Relocation as provided herein, the County may cause and/or effect such Relocation using a qualified Contractor as provided in Section 16, above, and the expense thereof shall be paid by Grantee, including all direct, indirect and/or consequential costs and expenses incurred by the County due to Grantee's delay. If the County requires Grantee to relocate its facilities located within the County's Rights of Way, the County will make a reasonable effort to provide Grantee with an alternate location for its facilities within the County's Rights of Way.

During the life of this Franchise, the County reserves the right to order any Facility moved or changed as ordered and determined by the County Engineer, so as to accommodate Public Improvements in the vicinity.

Relocation of Grantee's facilities shall be at the sole expense of Grantee unless the County Engineer determines, after consultation with Grantee and at Grantee's request, that the benefit of such improvements or changes to the County road, highway or Right of Way inures primarily to adjacent property owners or developers and not the general public. In such case, the County agrees to make reasonable efforts to facilitate an agreement between such owners or developers and Grantee, and where appropriate, as determined by the County Engineer, withhold approval and/or acceptance of the improvements or development until the owner or developer has entered into an agreement to pay for the costs of relocation. In addition, the relocation requirements of this Section shall not apply to facilities that are in place pursuant to an existing private easement.

The County shall in no way be held liable for any damages to Grantee that may occur by reason of any of the County's improvements, changes or works above enumerated, except for damage caused by the negligence of the County, its employees or agents.

When relocation of Grantee's facilities are required by County projects, the County will at all times endeavor in good faith to cause the following Standard Notice to be sent unless emergency conditions dictate otherwise, as determined by the County Engineer:

1. Spokane County shall make available to Grantee a list of anticipated projects for each new budget period as soon as is reasonably practicable.
2. Spokane County shall send a Preliminary Utility Notice with a section map showing the job limits and a typical section or a preliminary plan if it is available.
3. Spokane County shall send a Second Utility Notice once the plans are at 80% complete and show the existing utilities.
4. Spokane County shall hold a Utility Design Meeting for all the utilities affected.
5. Spokane County shall send a "Utility Notice to Proceed" with the proposed bid opening date and final plans.
6. Relocation of Grantee's facilities shall be completed in a timely manner defined as follows:

Relocation of Grantee's facilities shall, where reasonably feasible, be accomplished ten (10) days in advance of County projects, provided that the County has timely completed all grade staking and grade changes. If Grantee cannot relocate its facilities ten days in advance of the County's project the Grantee shall notify Spokane County and work with the Grantor to devise a written Schedule that both parties agree to and said schedule will be the duty of the Grantee to follow. In no event shall relocation of Grantee's facilities interfere with the progression and completion of County projects.

7. Grantee hereby indemnifies and holds Spokane County, its employees, officers, officials, and agents totally free and harmless from all and any liability which may arise from damages caused by the relocation by Spokane County of the facilities of Grantee except to the extent that such damages and liability arise from the negligence of Spokane County, its employees, officers, officials, and agents.
8. Grantee hereby indemnifies and holds harmless Spokane County, its officers, officials, and employees, from damages which may arise from Grantees' failure to relocate its facilities in accordance with the dates for completion of relocation of facilities set forth above.

9. The exercise by Spokane County of its rights herein in no way relieves Grantee of completing and/or finalizing the relocation of its facilities at no expense to Spokane County if the relocation work done by Spokane County is incomplete.
10. In the event that the Grantee does not comply with the aforementioned stipulations, after a reasonable opportunity to remedy its non-compliance the Grantee shall forfeit all rights granted under this Franchise, and said Franchise shall be null and void. Grantee shall then remove all of its Facilities from the County Right of Way. If Grantee has the right to be within County Right of Way by another method other than a Franchise the County shall use any other means at its disposal to bring the Grantee into compliance with this Franchise Document.

The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person other than the County, where the improvements to be constructed by said person are not or will not become County-owned, operated or maintained, provided that such arrangements do not unduly delay a County construction project.

Upon the request of the County, to facilitate public right-of-way improvements, the Franchisee agrees to locate and mark its facilities upon the ground, at its sole cost and expense. If reasonably determined necessary by the County, Franchisee shall, at its sole cost and expense, excavate and expose portions of its facilities for inspection so that the location of the facilities may be taken into account in the improvement design; PROVIDED, that Franchisee shall not be required to excavate and expose its facilities for inspection unless the Franchisee's as-built plans and maps of its facilities submitted are reasonably determined by the County Engineer to be inadequate for purposes of evaluating improvements.

The decision to relocate Franchisee's facilities in order to accommodate road improvements shall be made by the County Engineer upon review of the location and construction of the Franchisee's facilities. If Franchisee proposes an alternative plan which is agreed to by the County Engineer to save costs for the Franchisee to relocate which causes additional costs and/or additional ongoing costs, then the Franchisee agrees to pay the County the full amount of additional costs, if any, and also those costs that accrue to the County during maintenance, operation, or improvement of public facilities related to avoidance of damage or accommodation of the Franchisee's facilities.

Section 20. Abandonment of Grantee's Facilities.

The County has discretion and authority to direct Grantee to remove a facility abandoned by Grantee (whether or not the entity had permission to abandon the facility) and restore the rights-of-way to their pre-installed condition in the following circumstances:

- (a) the abandoned facility poses a hazard to the health, safety, or welfare of the public;

the abandoned facility has or could collapse in such a manner so as to threaten the integrity of the surface roadway ; or

- (b) The underground space within the roadway is already at or nearly at capacity, such that abandonment in place would prevent the installation of future underground facilities.

Grantee shall identify to the County facilities that it intends to abandon in place in order to afford the County an opportunity to exercise the rights provided in this Section.

Grantee shall only be required to remove, or pay for the removal of facilities it maintains ownership in. However, in the event Avista transfers ownership of an abandoned facility to another party, Avista will transfer such property subject to the terms set forth in this Section.

Grantee may delay removal of the abandoned “in place” facility until such time as the County commences a construction project in the rights-of-way unless (a) or (b) above applies. When (a) or (b) applies, Grantee shall remove the abandoned facility from the rights-of-way as soon as weather conditions allow, unless the County expressly allows otherwise in writing.

The expense of the removal, and restoration of improvements in the rights-of-way that were damaged by the facility or by the removal process, shall be the sole responsibility of the Grantee. If Grantee fails to remove the abandoned facilities in accordance with the above, then the County may incur costs to remove the abandoned facilities and restore the rights-of-way, and is entitled to reimbursement from Grantee for such costs, including reasonable attorney's fees and costs.

Section 21. Maps and Records Required. Upon request, Grantee shall provide the County, at no cost to the County:

- a) A route map that depicts the general location of the Grantee’s facilities placed in the rights-of-way. The route map shall identify facilities as aerial or underground and is not required to depict service lines to individual subscribers and is not survey grade. Avista does not warrant the accuracy of such facility location information provided and, to the extent the location of facilities are shown, such facilities may be shown in their approximate location.
- b) In connection with the construction of any County project, Grantee shall provide to the County, upon the County’s request, copies of available drawings in use by Grantee showing the location of such facilities. Grantee shall field locate its facilities in order to facilitate design and planning of County improvement projects.
- c) Upon written request of the County, Grantee shall provide the County with the most recent update available of any plan of potential improvements to its facilities within the franchise area; provided, however, any such plan so submitted shall be deemed confidential and for informational purposes only, and shall not obligate Grantee to undertake any specific improvements within the franchise area.

- d) In addition to the requirements of subsection a) of this section, the parties agree to periodically share GIS files upon written request, provided Grantee's GIS files are to be used solely by the County for governmental purposes. Any files provided to Grantee shall be restricted to information required for Grantee's engineering needs for construction or maintenance of facilities that are the subject of this franchise. Grantee is prohibited from selling any GIS information obtained from County to any third parties. Spokane County does not warrant that any GIS data is accurate being a compilation of data from many different sources of varying degrees of accuracy.
- e) Public Disclosure Act. Grantee acknowledges that information submitted to the County may be subject to inspection and copying under the Washington Public Disclosure Act codified in chapter 42.56 RCW. Grantee shall mark as "PROPRIETARY/CONFIDENTIAL" each page or portion thereof of any documentation/information which it submits to the County and which it believes is exempt from public inspection or copying. The County agrees to timely provide the Grantee with a copy of any public disclosure request to inspect or copy documentation/information which the Grantee has provided to the County and marked as "PROPRIETARY/CONFIDENTIAL" prior to allowing any inspection and/or copying as well as provide the Grantee with a timeframe, consistent with RCW 42.56.520, to provide the County with its written basis for non-disclosure of the requested documentation/information. In the event the County disagrees with the Grantee's basis for non-disclosure, the County agrees to withhold release of the requested documentation/information in dispute for a reasonable amount of time to allow Grantee an opportunity to file a legal action under RCW 42.56.540.

Section 22. Limitation on Future Work. In the event that the County constructs a new street or reconstructs an existing street, the Grantee shall not be permitted to excavate such street except as set forth in the County's then-adopted regulations relating to street cuts and excavations.

Section 23. Reservation of Rights by County. The County reserves the right to refuse any request for a permit to extend facilities. Any such refusal shall be supported by a written statement from the County Engineer that extending the facilities, as proposed, would materially interfere with a proposed project of the County's, public health, safety or welfare, or have other significant negative public impacts.

Section 24. Remedies to Enforce Compliance. In addition to any other remedy provided herein, the County reserves the right to pursue any remedy to compel or force Grantee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the County shall not prevent the County from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 25. County Codes, Resolutions, and Regulations. Nothing herein shall be deemed to direct or restrict the County's ability to adopt and enforce all necessary and appropriate County Codes and resolutions regulating the performance of the conditions of this franchise, including any reasonable ordinances or resolutions made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The County shall have the authority at

all times to control by appropriate regulations the location, elevation, and manner of construction and maintenance of any facilities by Grantee, and Grantee shall promptly conform with all such regulations, unless compliance would cause Grantee to violate other requirements of law or the tariff.

Section 26. Vacation. The County may vacate any County road, right-of-way or other County property which is subject to rights granted by this franchise in accordance with state and local law. It is the responsibility of the Grantee when notified by either the publishing in the newspaper or by letter of a potential Vacation of County Road Right of Way to contact the County Engineer with the location of the facilities within the proposed Vacation. It is the Grantee's responsibility to work with the petitioners of the Vacation to acquire any easements for its facility before a Vacation takes place.

Section 27. Indemnification.

1. Grantee hereby covenants not to bring suit and agrees to indemnify, defend and hold harmless the County, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person arising from injury, sickness or death of any person or damage to property of any nature whatsoever relating to or arising out of this franchise agreement; except for injuries and damages caused solely by the negligence of the County. This includes but is not limited to injury:

- a) For which the negligent acts or omissions of Grantee, its agents, servants, officers or employees in performing the activities authorized by a franchise are a proximate cause;
- b) By virtue of the County permitting grantee's use of the County's rights-of-ways or other public property;
- c) Arising as a result of the negligent acts or omissions of Grantee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction or work upon the facility, in any right-of-way, or other public place in performance of work or services permitted under a franchise.

2. Grantee's indemnification obligations pursuant to subsection 1 of this section shall include assuming liability for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors and subcontractors even though grantee might be immune under RCW Title 51 from direct suit brought by such an employee. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the County arising by virtue of Grantee's exercise of the rights set forth in a franchise. The obligations of Grantee under this subsection have been mutually negotiated by the parties, and Grantee acknowledges that the County would not enter into a franchise without Grantee's waiver. To the extent required to provide this indemnification and this indemnification only, Grantee waives its immunity under RCW Title 51.

3. The County shall indemnify and hold harmless Grantee and its officers, volunteers, agents, and employees, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the County, its officers, agents and employees, relating to or arising out of the performance of this franchise.

4. If the comparative negligence of the parties and their officers, volunteers, agents, and employees is a cause of such damage or injury, the liability, loss, cost, or expense shall be shared between the Parties in proportion to their relative degree of negligence and the right of indemnity shall apply to such proportion.

5. Inspection or acceptance by the County of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided, that Grantee has been given prompt written notice by the County of any such claim, said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The County has the right to defend or participate in the defense of any such claim.

6. In the event any matter (for which the County intends to assert its rights under this Section) is presented to or filed with the County, the County shall promptly notify Grantee thereof and Grantee shall have the right, at its sole cost and expense, to settle and compromise such matter as it pertains to Grantee's responsibility under this Section 26. In the event any suit or action is commenced against the County based upon any such matter, the County shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to Grantee's responsibility under this Section 26. Failure of the County to give notice as required herein shall not be a defense except and to the extent that Grantee demonstrates actual prejudice therefrom.

7. In the event that Grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this section, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Grantee, then Grantee shall pay all of the County's costs for defense of the action, including all reasonable expert witness fees, reasonable attorneys' fees, the reasonable costs of the County, and reasonable attorneys' fees of recovering under this subsection.

8. Grantee's duty to defend, indemnify and hold harmless County against liability for damages caused by the concurrent negligence of (a) County or County's agents, employees, or contractors, and (b) Grantee or Grantee's agents, employees, or contractors, shall apply only to the extent of the negligence of Grantee or Grantee's agents, employees, or contractors. In the event that a court of competent jurisdiction determines that a franchise is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity

provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided herein.

9. Notwithstanding any other provisions of this section, Grantee assumes the risk of damage to its facilities located in the rights-of-way and upon County-owned property from activities conducted by the County, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from the negligence or any willful or malicious actions on the part of the County, its officers, agents, employees or contractors. Grantee releases and waives any and all such claims against the County, its officers, agents, employees or contractors. Grantee further agrees to indemnify, hold harmless and defend the County against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Grantee's facilities as the result of any interruption of service due to damage or destruction of Grantee's facilities caused by or arising out of activities conducted by the County, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the negligence or any willful or malicious actions on the part of the County, its officers, agents, employees or contractors.

10. The provisions of this section shall survive the expiration, revocation or termination of this franchise.

Section 28 Insurance. Avista shall furnish and maintain all insurance as required herein and comply with all limits, terms and conditions stipulated therein, at their expense, for the duration of the Franchise. Following is a list of requirements for this Franchise. The County reserves the right to review this franchise on an annual basis and adjust limits to meet current county standards. Any exclusion that may restrict required coverage must be pre-approved by the Spokane County Risk Management Department. Work under this Franchise shall not commence until evidence of all required insurance, policy endorsement and bonding are provided to the County of Spokane. Avista's insurer shall have a minimum A.M. Best's rating of A-VII and shall be licensed to do business in the State of Washington. Evidence of such insurance shall consist of a completed copy of the certificate of insurance, signed by the insurance agent for Avista and returned to the Spokane County Engineering and Roads Department. The insurance policy or policies will not be canceled, materially changed or altered without forty-five (45) days prior notice submitted to the department with whom the Franchise is executed. The policy shall be endorsed and the certificate shall reflect that the County of Spokane is an additional named insured on Avista's general liability policy with respect to activities under the Franchise. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

The policy shall be endorsed and the certificate shall reflect that the insurance afforded therein shall be primary insurance and any insurance or self-insurance carried by the County shall be excess and not contributory insurance to that provided by Avista.

Avista shall not commence work, nor shall Avista allow any subcontractor to commence work on any subcontract until a Certificate of Insurance meeting the requirements set forth herein, has been

approved by Spokane County Risk Management Department and filed with the department with whom the Franchise is executed. Upon request, the contractor shall forward to the Spokane County Risk Management Department the original policy, or endorsement obtained, to Avista's policy currently in force.

Failure of Avista to fully comply with the insurance requirements set forth herein, during the term of the Agreement, shall be considered a material breach of contract and cause for immediate termination of the Agreement at the County's discretion.

The insurance limits specified herein may be met with a combination of self-insurance and excess coverage. Grantee is required to provide a Letter of Self Insurance stating that Grantee is self-insured above the Agreement's minimum insurance coverage requirement and has the financial resources readily available for paying loss claims when required under this Franchise Agreement.

Providing coverage in the amounts listed shall not be construed to relieve Avista from liability in excess of such amounts.

REQUIRED COVERAGE: The insurance shall provide the minimum coverage as set forth below:

- a) **GENERAL LIABILITY INSURANCE:** Avista shall have Commercial General Liability with limits of \$1,000,000.00 per occurrence, which includes general aggregate, products, completed operation, personal injury, fire damage and medical expense.

ADDITIONAL INSURED ENDORSEMENT: Grantee's General Liability Insurance must include coverage of Spokane County, its officers, agents and employees, and any other entity specifically required by the provisions of this Agreement as additional insured(s) for all coverage provided by this policy of insurance..

- b) **PROOF OF AUTOMOBILE INSURANCE:** Avista shall carry, for the duration of this Agreement, comprehensive automobile liability coverage of \$1,000,000.00 for any vehicle used in conjunction with the provision of services under the terms of this Franchise. Said policy shall provide that it shall not be canceled, materially changed, or renewed without forty-five (45) days written notice prior thereto to Spokane County.
- c) **WORKERS' COMPENSATION:** When Avista has employees of the company, Avista shall carry Workers' Compensation Industrial Injury Insurance coverage and effective in Washington State. Proof of insurance shall be reflected on Avista's Certificate of Insurance or by providing Avista's State Industrial Account Identification Number.

Section 29. Modification. The County and Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 30. Forfeiture and Revocation. If Grantee willfully violates or fails to comply with any of the provisions of this franchise, or through willful or unreasonable negligence fails to

heed or comply with any notice given Grantee by the County under the provisions of this franchise, and an adequate opportunity to cure the violation or non-compliance has been given in writing to Grantee, then Grantee shall, at the election of the County, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the County after a hearing held upon reasonable notice to Grantee. The County may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the Spokane County Superior Court compelling Grantee to comply with the provisions of this franchise and to recover damages and costs incurred by the County by reason of Grantee's failure to comply.

Section 31. Assignment. This franchise may not be assigned or transferred without the written approval of the County, except that Grantee can assign this franchise without approval of, but upon notice to the County to, any parent, affiliate or subsidiary of Grantee or to any entity that acquires all or substantially all the assets or equity of Grantee, by merger, sale, consolidation or otherwise.

Section 32. Acceptance. Not later than sixty (60) days after passage of this Resolution, the Grantee must sign and accept the unaltered franchise herein returning it to the County Engineer's Office. Failure of Grantee to so accept this franchise within said period of time shall be deemed a rejection thereof by Grantee, and the rights and privileges herein granted shall, after the expiration of the sixty (60) day period, absolutely cease, unless the time period is extended by resolution or ordinance duly passed for that purpose.

Section 33. Survival. All of the provisions, conditions and requirements of this franchise shall be in addition to any and all other obligations and liabilities Grantee may have to the County at common law, by statute, by ordinance, by resolution, or by contract, and shall survive termination of this franchise, and any renewals or extensions hereof. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Grantee and County and all privileges, as well as all obligations and liabilities of Grantee shall inure to their respective heirs, successors and assigns equally as if they were specifically mentioned herein.

Section 34. Severability. If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise. In the event that any of the provisions of this Franchise are held to be invalid by a court of competent jurisdiction, the County reserves the right to reconsider the grant of the franchise and may amend, repeal, add, replace or modify any other provision of the franchise, or may terminate the franchise.

Section 35. Eminent Domain. Nothing in this agreement shall be deemed by the parties or any court of competent jurisdiction to limit the powers of the Board of County Commissioners for Spokane County or the people of Spokane County, regarding the power of eminent domain.

Section 36. Renewal. Application for extension or renewal of the term of this franchise shall be made no later than one hundred and eighty (180) days prior to the expiration thereof. In

the event the time period granted by this franchise expires without being renewed by the County, the terms and conditions hereof shall continue in effect until this franchise is either renewed or terminated by the County.

Section 37. Notice. Any notice or information required or permitted to be given by or to the parties under this franchise may be sent to the following addresses unless otherwise specified, in writing:

The County:

Grantee: Avista Corporation
Attn: Steve Trabun
Regional Business Manager - Spokane
1411 East Mission Ave., MSC 68
Spokane, WA 99202
Phone: (509) 495-2829

Section 38. Choice of Law. Any litigation between the County and Grantee arising under or regarding this franchise shall occur, if in the state courts, in the Spokane County Superior Court, and if in the federal courts, in the United States District Court for the Eastern District of Washington.

Section 39. Non-Waiver. The County shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this franchise in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this franchise by reason of any failure of the County to enforce prompt compliance, nor does the County waive or limit any of its rights under this franchise by reason of such failure or neglect.

Section 40. Entire Agreement. This franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof. This franchise shall also supersede and cancel any previous right or claim of Grantee to occupy the County roads as herein described.

Section 41. Effective Date. This Agreement shall be in full force and effective once both parties have signed this Franchise.

PASSED AND ADOPTED this 23rd day of May, 2017

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON



ATTEST:

GINNA VASQUEZ
Ginna Vasquez, Clerk of the Board

AL FRENCH
AL FRENCH, CHAIR

JOSH KERNS
JOSH KERNS, VICE-CHAIR

SHELLY O'QUINN
SHELLY O'QUINN, COMMISSIONER

Accepted by Avista Corporation:
By: [Signature]

The Grantee, Avista Corporation, for itself, and for its successors and assigns, does accept all of the terms and conditions of the foregoing franchise.

IN WITNESS WHEREOF, Dennis Vermillion has signed this 13th
day of June, 2017. Subscribed and sworn before me this 13th day of June
2017.



Lois D. McCain Lois D. McCain
Notary Public in and for the State of Washington
residing in Spokane
My commission expires 2/2/2021



Exhibit “A”

Spokane County’s road’s, highway’s and alley’s right of way located within the following Sections, Townships and Ranges less all the incorporated areas within Spokane County, more particularly described as follows:

Sections 1-6, Township 22 North; Range 40 East W.M.

Sections 5-6, Township 22 North; Range 41 East W.M.

Sections 3-5, 8-11, 14, 23-24, Township 22 North; Range 43 East W.M.

Sections 1-2, 11-14, 23-26, Township 22 North; Range 44 East W.M.

Sections 4-9, 16-21, 28-30, Township 22 North; Range 45 East W.M.

Sections 1-36, Township 23 North; Range 40 East W.M.

Sections 1-24, 28-33, Township 23 North; Range 41 East W.M.

Sections 6-7, 18-19, Township 23 North; Range 42 East W.M.

Sections 32-34, Township 23 North; Range 43 East W.M.

Sections 1-14, 23-26, 35-36, Township 23 North; Range 44 East W.M.

Sections 4-9, 16-21, 28-33; Township 23 North; Range 45 East W.M.

Sections 1-6, 11-14, 23-26, 35-36; Township 24 North; Range 40 East W.M.

Sections 1-36; Township 24 North; Range 41 East W.M.

Sections 1-31; Township 24 North; Range 42 East W.M.

Sections 1-33; Township 24 North; Range 43 East W.M.

Sections 1-36; Township 24 North; Range 44 East W.M.

Sections 1-36; Township 24 North; Range 45 East W.M.

Sections 6-7, 18-19, 30; Township 24 North; Range 46 East W.M.

Sections 13-36; Township 25 North; Range 40 East W.M.

Sections 1-34; Township 25 North; Range 41 East W.M.

Sections 2-10, 14-23, 26-28, 33-35; Township 25 North; Range 42 East W.M.

Sections 1-2, 11, 14, 23-26, 35-36; Township 25 North; Range 43 East W.M.

Sections 3-6, 19-20, 25-26, 29-32, 34-36; Township 25 North; Range 44 East W.M.

Sections 1-13, 17, 19-36; Township 25 North; Range 45 East W.M.

Section 6-7, 18-19, 30-31; Township 25 North; Range 46 East W.M.

Sections 1-36; Township 26 North; Range 41 East W.M.

Sections 1-21, 23-25, 28-34; Township 26 North; Range 42 East W.M.

Sections 1-28, 30, 35-36; Township 26 North; Range 43 East W.M.

Sections 2-36; Township 26 North; Range 44 East W.M.

Sections 1-36; Township 26 North; Range 45 East W.M.

Sections 7, 18-19, 30-31; Township 26 North; Range 46 East W.M.

Sections 20-22, 27-28, 34-36; Township 27 North; Range 41 East W.M.

Sections 1-17, 20-29, 32-36; Township 27 North; Range 42 East W.M.

Sections 1-36; Township 27 North; Range 43 East W.M.

Sections 2-11, 14, 23, 26-35; Township 27 North; Range 44 East W.M.

Sections 26-28, 33-35; Township 27 North; Range 45 East W.M.

Sections 1-5, 8-17, 20-29, 32-36; Township 28 North; Range 42 East W.M.

Sections 1-36; Township 28 North; Range 43 East W.M.

Sections 1-17, 20-29, 32-35; Township 29 North; Range 42 East W.M.

Sections 1-36; Township 29 North; Range 43 East W.M.

Sections 5-8, 17-18; Township 29 North; Range 44 East W.M.

Avista Gas Franchise

R42E

R43E

R44E


R45E



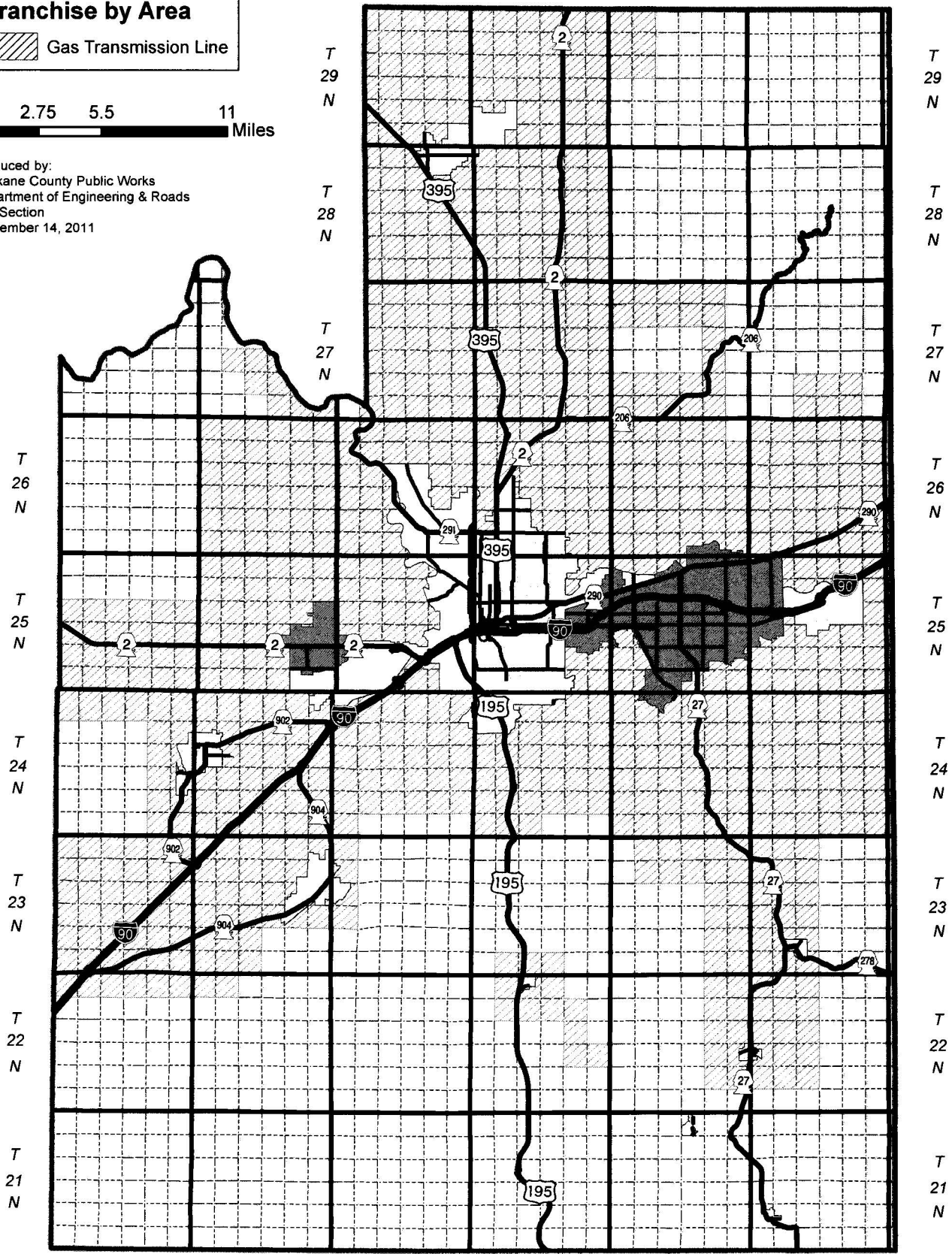
Franchise by Area

 Gas Transmission Line

0 2.75 5.5 11 Miles



Produced by:
Spokane County Public Works
Department of Engineering & Roads
GIS Section
September 14, 2011



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