

**CITY OF LIBERTY LAKE
SPOKANE COUNTY, WASHINGTON
ORDINANCE NO. 114**

**AN ORDINANCE OF THE CITY OF LIBERTY LAKE, WASHINGTON, GRANTING
THE RIGHT OF FRANCHISE TO AVISTA UTILITIES FOR OPERATION OF A
PUBLIC SERVICE BUSINESS IN THE CITY OF LIBERTY LAKE.**

WHEREAS, the City of Liberty Lake incorporated on August 31, 2001;

WHEREAS, RCW 35.02.160 provides that any franchise or permit heretofore granted to any person, firm or corporation by the state or county, authorizing or otherwise permitting the operation of a public service business or facility is automatically cancelled upon incorporation, but that upon incorporation the City must grant such business a franchise or permit to continue such business within the City for a term of not less than the remaining term of the original franchise or permit, or seven years, whichever is the shorter;

WHEREAS, a franchise has been granted by Spokane County to Washington Water Power Company now doing business as Avista Utilities as set forth herein, and

WHEREAS, the City of Liberty Lake intends to allow Avista Utilities to continue operation under the same terms and conditions as the pre-existing franchise with Spokane County for the remaining term of the original franchise or seven years, whichever is the shorter period;

NOW, THEREFORE, the City Council of the City of Liberty Lake, Washington, do ordain as follows:

Section 1. **Grant.** The City of Liberty Lake hereby grants unto Avista Utilities a Franchise under the same terms and conditions as set forth in Spokane County Franchise No. 88 0548. This Franchise shall expire August 31, 2008. Unless the context requires otherwise, references to Spokane County shall be construed as references to the City of Liberty Lake and references to the Board of County Commissioners shall refer to the Liberty Lake City Council. Further, all work done in the public right of way shall be pursuant to Spokane County standards unless there is a superseding City of Liberty Lake standard.

Section 2. **Attachment.** A true and correct copy of this Franchise is attached hereto and identified as Exhibit "A".

Section 3. **Official Bonds.** The Franchisee shall take all necessary steps to transfer any bonds, certificates of insurance or other security currently held by Spokane County to the City of Liberty Lake with the franchise rights granted herein not effective until such transfers are made.

Section 4. **Severability.** If any section, sentence, clause or phrase of this ordinance shall 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 ordinance.

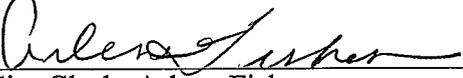
Section 5. Effective Date. This Ordinance shall be in full force and effect five (5) days after the date of publication of this Ordinance or a summary thereof in the official newspaper of the City.

PASSED by the City Council this 20th day of May, 2003.



Mayor Steve Peterson

ATTEST:



City Clerk, Arlene Fisher

APPROVED AS TO FORM:



City Attorney, Stanley M. Schwartz
Date of Publication: 5/5/03
Effective Date: Date of Incorporation

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
SPOKANE COUNTY, WASHINGTON

In the Matter of the application of)
WASHINGTON WATER POWER COMPANY 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)

FRANCHISE

Franchise No. **88 0548**

Application of WASHINGTON WATER POWER COMPANY, 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 County Commissioners of Spokane County, Washington, on the 7th day of June, 1988, under the provisions of Chapter 187, State Sessions Laws of 1937, 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 WASHINGTON WATER POWER COMPANY, 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 described in Exhibit A, which is attached hereto and incorporated by reference herein.

EXHIBIT "A"

This franchise is granted upon the following express terms and conditions, to-wit:

I.

WASHINGTON WATER POWER COMPANY, its successors and assigns (hereinafter designated as the "Grantee") shall have the right and authority to enter upon the County roads, highways and rights-of-way as herein described for the purpose of constructing and installing its natural gas transmission and distribution system and all necessary facilities connected therewith (hereinafter referred to as the "system") and for repairing, operating, maintaining, removing and replacing all or any portion of its system.

II.

All construction and installation work where crossing County roads or rights-of-way outside of the corporate limits of any incorporated town shall comply with all applicable federal, state, or local laws, ordinances and regulations, including applicable permitting requirements pertaining to street obstruction, and, where required, shall be subject to the approval of and pass the inspection of the County Engineer.

III.

In any work which requires breaking of the surface of the County roads and rights-of-way subject to this franchise for the purpose of laying, relaying, connecting, disconnecting and repairing the said system, and making connections between the same to structures and buildings of consumers or making connections to other facilities of the grantee now in existence or hereafter constructed, the grantee shall be governed by and conform to the general rules now existing or hereafter adopted by the officers charged with the supervision and care of such County roads and rights-of-way; and the grantee at its own expense and with all convenient speed shall complete the work for which the surface has been broken and forthwith replace the work and make good the County road or right-of-way and leave same in as good condition as before the work commenced. The County upon notice to the grantee may at any time order or have done any and all work that it considers necessary to restore to a safe condition any such County road or right-of-way left by the grantee or its agents in a condition dangerous to life and/or property, and the grantee upon demand shall pay to the County all costs of such work.

IV.

All construction or installation of lines and facilities, service repair, or relocation of the same, performed along or under the County roads, highways and rights-of-way subject to this franchise shall be done in such a manner as not to interfere with the construction and maintenance of other utilities, public or private, drain, drainage ditches and structures, irrigation ditches and structures located therein, nor with the grading or improvement of such County roads, highways and rights-of-way. All utilities, public or private, actually installed in such County roads, highways and rights-of-way prior in time to the installation of the lines and 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 relocation or changing the grade of any such County road or right-of-way.

V.

All work done under this franchise shall be done in a thorough and workmanlike manner. In the laying of lines and the construction of other facilities and the opening of trenches, the tunneling under County roads, highways and rights-of-way, the grantee shall leave the trenches, ditches and tunnels in such a way as to interfere as little as possible with public travel and shall take all due and necessary precautions to guard the same so that damage or injury shall not occur or arise by reason of such work.

VI.

The County in granting this franchise does not waive any right which it now has or may hereafter acquire with respect to County roads, highways and rights-of-way and this franchise shall not be construed to deprive the County of any powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the County roads and rights-of-way covered by this franchise.

VII.

If, at any time, the County shall cause or require the improvement of any County road, highway or right-of-way wherein grantee maintains facilities subject to this franchise by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same or by constructing drainage or sanitary sewer facilities, the grantee upon written notice from the County Engineer shall, with all convenient speed, change the location or readjust the elevation of its system and other facilities so that the same shall not interfere with such County work and so that such lines and facilities shall conform to such new grades or routes as may be established. The relocation of grantee's facilities shall be at the sole expense of grantee where the improvements or changes to the County road, highway or right-of-way benefit the public at large. Where the benefit of such improvements solely inures to adjacent property owners or developers, as determined by the County Engineer, the costs of relocation may be charged, by grantee, to such owners or developers; accordingly, the County shall not authorize any improvement or change until the owner or developer has agreed to pay grantee for the costs of relocation. The County shall in no way be held liable for any damages to said grantee that may occur by reason of any of the County's improvements, changes or works above enumerated, except for damage caused by negligence of the County's employees or agents.

VIII.

The laying, construction, operation and maintenance of the grantee's system authorized by this franchise shall not preclude the County, its agents, or its contractors from blasting, grading, excavating, or doing other necessary roadwork contiguous to the said lines and facilities of the grantee,

providing that the grantee shall be given not less than fifteen (15) days notice of said blasting in order that the grantee may protect its lines and facilities; provided further, that in the event of an emergency as determined by the County Engineer, the grantee shall be given forty-eight (48) hours notice.

IX.

Before any work is performed under this franchise which may affect any existing monuments or markers of any nature relating to subdivision, plats, roads, and all other surveys, the grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as the conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement of approved monuments shall be borne by the grantee. The grantee shall file with the County Engineer a complete set of reference notes to monuments and other marker ties which have been re-established or disturbed.

X.

If, at any time, the County shall vacate any County road or right-of-way which is subject to rights granted by this franchise, and said vacation shall be for the purpose of acquiring the fee or other property interest in said road or right-of-way for the use of the County, either in its proprietary or governmental capacity, then the Board of County Commissioners may at their option, and by giving thirty (30) days written notice to the grantee, terminate this franchise with reference to such County road or right-of-way so vacated and the County shall not be liable for any damage or loss to the grantee by reason of such termination; provided, however, that if the County can provide an alternate route across other County property, roads or rights-of-way, the County shall do so within a reasonable time prior to such termination, it being understood and agreed that the grantee shall pay all costs of changing and rerouting its system.

In other circumstances where the County vacates any County road or right-of-way which is subject to rights granted by this franchise, the County agrees, wherever possible, but without prejudice or expense to the County or to the public interest, to condition said vacation upon the grantee's ability to reasonably negotiate an acceptable easement with the prospective fee owners of the property to be vacated for the purposes of this franchise. The County shall not be responsible for costs of changing and rerouting grantee's facilities.

Whenever a County road covered by this franchise or any portion thereof is vacated, the County may include in the resolution authorizing the vacation a provision that the County retain an easement in respect to the vacated land for the construction, repair, and maintenance of the Grantee's facilities which at the time the resolution is adopted are authorized or are physically located on a portion of the land being vacated; at such time, the County may

authorize the Grantee to make continuing use of the County's easement for purposes set forth in this franchise.

XI.

Grantee agrees to defend, indemnify and hold harmless the County, its appointed and elected officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorneys fees, that the County may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the construction, installation, maintenance, condition or operation of the grantee's equipment or facilities, or appurtenances thereto, connected with this franchise, that now or may hereafter be upon, under, over, in, across or along, the highways, roads, alleys, bridges or other public ways or places of the County; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses, etc. were caused by or result from the negligence of the County.

XII.

This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit the County from granting other franchises of a like nature or franchises for other public or private utilities under, along, across, over and upon any of the County roads, highways and rights-of-way subject to this franchise and shall in no way prevent or prohibit the County from constructing, altering, maintaining or using any of said roads, rights-of-way, structures or facilities for drainage, irrigation, or sewage, or any other County property or affect its jurisdiction over them with full power to make all necessary changes, relocations, repairs, maintenance, etc., the same as the County may deem fit.

XIII.

All provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the grantee, and all privileges as well as all obligations and liabilities of the grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever the grantee is mentioned.

XIV.

The grantee, its successors and assigns, shall not sell, transfer or assign this franchise without first securing the written permission of the Board of County Commissioners for Spokane County.

XV.

Whenever any of the County roads or rights-of-way designated in this franchise by reason of the subsequent incorporation of any city or town, or extension of the limits of any city or town, shall fall within the city or town limits, then this franchise shall terminate in respect to said roads or rights-of-way so included within said limits, six (6) months after such incorporation or extension; but this franchise shall continue in force and

effect as to all County roads or rights-of-way not so included in city or town limits.

XVI.

Any facilities and appurtenances in streets, alleys, and rights-of-way incidental to the franchise system, that have been, or are at any future time acquired, leased, or utilized in any manner by Grantee are thereupon to be deemed authorized by and shall be subject to all provisions of this Franchise.

XVII.

This franchise shall supersede and cancel any previous right or claim of grantee to occupy the County roads as herein described, with the exception of Amending Franchise No. 86-0736, which was granted on the 24th day of November, 1987, which shall remain in full force and effect.

XVIII.

For and in consideration of the rights and privileges set forth herein, the grantee agrees that Spokane County, as may be authorized by law, has the right, during the term of this franchise, by ordinance or resolution, to impose fees for the rights and privilege granted herein. Such fees shall be based upon reasonable costs for the administration of such franchise as well as reasonable costs for the use of County roads or rights-of-way. The Board of County Commissioners of Spokane County agrees to provide not less than 30 days written notice prior to the imposition of such fees in order to negotiate the actual fee to be assessed and payments scheduled.

XIX.

Grantee shall have and maintain in force public liability and property damage insurance, which insurance, however, may contain a self-insured retention in accordance with prudent risk management practices.

XX.

If the grantee shall willfully violate or fail to comply with any of the provisions of this franchise through willful and unreasonable neglect or willful and unreasonable failure to heed or comply with any notice given the grantee under the provisions of this grant, then the said grantee shall forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Board of County Commissioners provided, however, that the Board of County Commissioners shall give thirty (30) days written notice of its intention to revoke or annul the franchise during which period the grantee shall have the opportunity to remedy the situation.

XXI.

The full acceptance of this franchise and all of its terms and conditions within thirty (30) days from June 7, 1988, by the WASHINGTON WATER POWER COMPANY, of Spokane, Washington, in writing, is to be filed with the Clerk of the Board of County Commissioners of Spokane County and shall be a

condition precedent to its taking effect, and unless the franchise is accepted within such time, this grant shall be null and void.

DATED at SPOKANE, WASHINGTON, this 7th day of June, 1988.

ATTEST: William E. Donahue
Clerk of the Board

By *Sharon R. [Signature]* *Patricia A. Munnery*
Deputy Clerk

[Signature] *[Signature]*
County Engineer Board of County Commissioners of
Spokane County, Washington

The grantee, WASHINGTON WATER POWER COMPANY, a corporation, hereinbefore referred to, for itself, and for its successors and assigns, does accept all of the terms and conditions of the foregoing franchise.

R. D. Fukai
Name: ROBERT D. FUKAI

Title: Vice President - Operations

IN WITNESS WHEREOF, it has caused these presents to be signed by R. D. Fukai this 15 day of June, 1988.

Signed and sworn to before me this 15 day of June, 1988.

Lori Lu Batten
NOTARY PUBLIC in and for the State
of Washington, residing in Spokane
My Commission Expires 5/27/92

WWP48/15

Exhibit A

Franchise No. ~~88-0548~~ covers all County roads, highways and rights of way, located within the following Townships, Ranges and Sections (see also, attached map, with dashed line representing the perimeter of the franchised area):

TOWNSHIP	RANGE	SECTION
22N	40EWM	1 - 6
22N	41EWM	5, 6
22N	43EWM	3 - 5, 8 - 11, 14, 23, 24
22N	44EWM	1, 2, 11 - 14, 23 - 26
22N	45EWM	4 - 9, 16 - 21, 28, 29, 30
23N	40EWM	1 - 36
23N	41EWM	1 - 24, 28 - 33
23N	42EWM	6, 7, 18, 19
23N	43EWM	32 - 34
23N	44EWM	1 - 5, 8 - 14, 23 - 26, 35, 36
23N	45EWM	4 - 9, 16 - 21, 28 - 33
24N	40EWM	1 - 6, 11 - 14, 23 - 26, 35, 36
24N	41EWM	1 - 36
24N	42EWM	1 - 31
24N	43EWM	1 - 30
24N	44EWM	1 - 30, 32 - 36
24N	45EWM	1 - 30, 31 - 33
24N	46EWM	6, 7, 18, 19, 30
25N	40EWM	13 - 36
25N	41EWM	1 - 36
25N	42EWM	1 - 36
25N	43EWM	1 - 36
25N	44EWM	1 - 36
25N	45EWM	1 - 36
25N	46EWM	6, 7, 18, 19, 30, 31
26N	41EWM	1, 2, 7 - 36
26N	42EWM	1 - 36
26N	43EWM	1 - 36
26N	44EWM	2 - 36
26N	45EWM	2, 3, 4, 7 - 36
26N	46EWM	7, 18, 19, 30, 31
27N	41EWM	20 - 22, 27, 28, 34 - 36
27N	42EWM	1 - 5, 8 - 17, 20 - 29, 32 - 36
27N	43EWM	1 - 36
27N	44EWM	2 - 11, 14, 23, 26 - 35
27N	45EWM	26 - 28, 33 - 35
28N	42EWM	1 - 5, 8 - 17, 20 - 29, 32 - 36
28N	43EWM	1 - 36
29N	42EWM	1 - 5, 8 - 17, 20 - 29, 32 - 36
29N	43EWM	1 - 36
29N	44EWM	5 - 8, 17, 18



Real Estate Department

Fax #: 509-495-8734

Date: April 24, 2003

of Pages: 9

TO: Lewis Griffin

Company: City of Liberty Lake

Phone #: 755-6702

Fax #: 755-6713

FROM: Teri Patton, Records Technician

Phone #: (509) 495-4663; 800-727-9170, ext. 4663

FYI: **Immediate Reply Requested:**

Copies to:

Remarks: Mr. Griffin:

As per our conversation, here is a copy of the Spokane County Gas franchise executed with Avista Corporation.

Please let me know if I can provide you with any additional information or answer any questions.

Thank you for your assistance.

Teri