

PERMIT AGREEMENT

This agreement is entered into this 21st day of April, 2017 between Avista Corporation dba Avista Utilities ("Avista"), a Washington Corporation, and the City of Stevenson, State of Washington (the "City") for an agreement memorializing the terms of its Type D permit as set forth in Stevenson Municipal Code ("SMC") 12.02.060(D) 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 PARTIES AGREE AS FOLLOWS:

SECTION 1.0 DEFINITIONS

Where the following definitions conflict with the definitions set forth in SMC 12.02.020, the ordinance shall control. For the purposes of this Permit 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 Stevenson, a municipal corporation of the State of Washington, and its respective successors and assigns.

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.

Days: means business days.

Effective Date: means the date of legal publication of this Agreement, upon which the rights, duties and obligations of this Permit shall come into effect, and the date from which the time requirement for any notice 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 Permit Area, including but not limited to, Gas plants, 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, storage and sale of Gas.

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.

Ordinance: Shall mean a provision set forth in the Stevenson Municipal Code ("SMC").

Parties: means City and Avista collectively.

Party: means either City or Avista individually.

Permit: means the grant by the City of rights, privileges and authority embodied in SMC Ch. 12.02 as set forth in this Agreement.

Permit Area: means the surface and space above and below all rights-of-way for: public roads, streets, avenues, alleys, bridges, tunnels, City-owned easements, and highways of the City, as laid out, platted, dedicated, acquired or improved within the present corporate limits of the City;

- public roads, streets, avenues, alleys, bridges, tunnels, City-owned easements, and highways that may hereafter be laid out, platted, dedicated, acquired or improved within the present corporate limits of the City and as such limits may be extended by annexation or otherwise during the term of this Permit; 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 Permit within the area covered by the easement.

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 Washington.

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 Permit.

SECTION 2.0 GRANT OF PERMIT

2.1 Grant

City hereby grants to Avista a Type D Right-of-Way permit to enter upon all roads, rights-of-way, streets, alleys, highways, public places or structures, lying within the Permit 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 to customers within the Permit Area.

2.2 Effective Date

This Agreement will be effective as of the date of approval, passage and publication as required by law.

2.3 Term

The rights, privileges and Permit granted to Avista will extend for a term of 25 years from the Effective Date, and shall continue year-to-year thereafter, until it is otherwise renewed by action of the City Council for another 25-year term prior to its expiration. SMC 12.02.120 prohibits automatic permit renewals.

2.4 Non-Exclusive Permit

This Permit is not an exclusive Permit. This Permit shall not prohibit the City from granting other Permits within the Permit Area that do not interfere with Avista's rights under this Permit. City may not, however, award a Gas Permit to another party under more favorable or less onerous terms

than those of this Permit without this Permit 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 Permit, the City agrees that in the event the City intends to engage in the business of providing Gas service during the life of this Permit or any extension of this Permit, in competition with Avista, the City will provide Avista with six (6) months notice of such action.

2.6 Assignment of Permit

Avista shall have the right to assign its rights, benefits and privileges under this Permit. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Permit. 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 Permit as security for indebtedness.

2.7 Recovery of Permit Cost

2.7.1 Authority

So long as provided by RCW 35.21.860, the City may not impose a Permit fee or any other fee or charge of whatever nature or description upon Avista, except a fee as provided in RCW 35.21.860 that recovers from Avista actual administrative expenses incurred by the City that are directly related to:

- i. receiving and approving a permit, license or this Permit;
- ii. preparing a detailed statement pursuant to Chapter 43.21C RCW, as the same exists now or may hereafter be amended.

2.7.2 Fee

The Parties understand that the restrictions of RCW 35.21.860 forbid the imposition of a Permit fee. If, at some time, the restrictions of this statute should be removed, Avista and the City shall negotiate a fair and reasonable Permit fee.

2.8 Utility Tax

Avista acknowledges that the City is authorized under the laws of the State of Washington to impose certain taxes upon Avista. Nothing in this Section shall exempt (nor shall be construed to exempt) Avista from payment of any and all such taxes lawfully imposed by the City Municipal Code, City Agreement, or City Resolution, as any may hereafter be lawfully amended, adopted, or superseded, and due from Avista; provided, nothing in this Section shall be construed in any way as a waiver of Avista's rights to contest the validity of any such tax or the amount of any tax due

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 Permit, Avista shall meet accepted industry standards and codes and shall comply with Stevenson Municipal Code (SMC) Ch. 12.02, all applicable laws, regulations and Agreements of any governmental entity with jurisdiction over Avista's Facilities in the Permit Area. This includes all applicable, laws, regulations and Agreements existing as of the Effective Date or may be subsequently enacted by any governmental entity with jurisdiction over Avista's operations within the Permit 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 Permit Area. Prior to the adoption of any new rule, procedure or policy, Avista shall be provided a written draft document for comment with a response period of not less than thirty days. 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 within the Permit Area, subject to the following non-interference requirements. All construction, installation, repair or relocation of Avista's Facilities performed by Avista in the Permit 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 Permit 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 Permit 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 Permit Area undertaken by or on behalf of Avista or the City, nothing stated in this Permit 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 the growth of vegetation which encroaches upon its Gas transmission and distribution corridors within the Permit Area.

3.5 Right of Excavation

For the purpose of implementing the privileges granted under this Permit, and after any required notification is made to the City, Avista is authorized to make any necessary excavations in, under and across the streets, alleys, roads, rights-of-way and public grounds within the Permit 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.

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 Permit 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 Permit, does not waive any rights which it may not have under SMC Ch. 12.02 or may subsequently acquire with respect to road rights-of-way or other property of City under this Permit, and this Permit 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 Permit. Nothing in the terms of this Permit 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 this State.

4.2 Necessary Construction/Maintenance by City

The construction, operation and maintenance of Avista's Facilities authorized by this Permit 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 business days' notice of said 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.

4.3 Expansion of Avista's Facilities

Facilities in the City's Permit Area that are incidental to the Permit 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 Permit.

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 Permit 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.

4.5 Removal of Abandoned Facilities

During the Term of this Permit, or upon a revocation or non-renewal of this Permit, the City may direct Avista to remove designated abandoned Facilities from the Permit 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 Permittee, 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 Permit, such vacation shall be subject to the reservation of a perpetual easement to Avista for the purpose of operating and maintaining 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 Permit Area as specifically designated by the City for such purpose. The City shall provide Avista reasonable notice of any intended or expected requirement or request to relocate Avista's Facilities, but not less than ninety (90) calendar days prior to any such relocation except in cases of emergency or not otherwise reasonably foreseeable by the City. 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 make a reasonable effort to accommodate said relocation on alternative Right(s) of Way. If the City requires the subsequent relocation of any of Avista's Facilities within three (3) years from the date of relocation of such Facilities or installation of new Facilities, 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 Permittee. Such relocation of these types of facilities shall be accordance with Section 5.2 below.

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 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, and shall not be held liable for failing to obtain funds as requested by this section.

SECTION 6.0 INDEMNITY

6.1 Indemnification of City

As provided in SMC 12.02.150, 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 attorneys 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 Permit; 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.

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 attorneys 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 Permit; 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.

6.3 Assurance

Pursuant to SMC 12.02.140, the City Public Works director may require assurance/insurance documentation prior to commencement of planned work or improvements as provided in that section.

SECTION 7.0 PERMIT DISPUTE RESOLUTION

7.1 Non-waiver

Failure of a Party to declare any breach or default of this Permit 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 Permit.

7.2 Dispute Resolution by the Parties

Disputes regarding the interpretation or execution of the terms of this Permit 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 Permit shall be deemed to bar the right of the City or Avista to seek judicial relief from a violation of any provision of the Permit to recover monetary damages for such violations by the other party or to seek enforcement of the other Party's obligations under this Permit 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 Permit 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 Eastern District of Washington.

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 Permit.

SECTION 8.0 GENERAL PROVISIONS

8.1 Permit as Contract, No Third Party Beneficiaries

This Permit is a contract between the Parties and binds and benefits the Parties and their respective successors and assigns. This Permit 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 that Avista is delayed in or prevented from the performance of any of its obligations under the Permit by circumstances beyond Avista'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 Avista's performance shall be excused during the period of the Force Majeure occurrence. Avista will use all commercially reasonable efforts to minimize the period of the disability due to the occurrence. Upon removal or termination of the occurrence Avista will promptly resume performance of the affected Permit obligations in an orderly and expeditious manner.

8.3 Prior Permits Superseded

As of the Effective Date this Permit shall supersede all prior gas Franchises or Permits for the Permit 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 Permit. Termination of the prior Franchise or Permit shall not, however, relieve the Parties from any obligations which accrued under said Franchise or Permit prior to its termination, including but not limited to, any outstanding indemnity, reimbursement or administrative fee payment obligations.

8.4 Severability

The Permit is granted pursuant to the City Ordinances and the laws of the State of Washington relating to the granting of such rights and privileges by City. If any article, section, sentence, clause, or phrase of this Permit is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the Permit or any of the remaining portions. The invalidity of any portion of this Permit shall not abate, reduce, or otherwise affect any obligation required of Avista.

8.5 Changes or Amendments

Changes or amendments to this Permit shall not be effective until lawfully adopted by the City and agreed to by Avista. In the event of any changes to the City's right-of-way ordinance having an adverse substantive effect on the terms of this agreement to Avista, Avista may unilaterally terminate this agreement with thirty (30) days prior notice to City.

8.6 Supremacy and Governing Law

This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the City of Stevenson and the State of Washington. In the event of any conflict between this Permit and any City Ordinance, the Ordinance and this Permit shall be construed to avoid a conflict between them, with the understanding that this Permit is entered into for the purpose of clarifying and supplementing the ordinance without invalidating it as intended by SMC 12.02.060(D)(1). In the event of a conflict between the provisions of this Permit and Avista's applicable Tariff on file with the Commission, the Tariff shall control.

8.7 Headings

The headings or titles in this Permit are for the purpose of reference only and shall not in any way affect the interpretation or construction of this Permit.

8.8 Abandonment or Suspension of Permit 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 Permit and Avista's Tariff with the Commission that cannot be resolved, Avista may suspend or abandon the rights and obligations of this Permit upon reasonable notice to the City.

8.9 Permit Effective Date

The Effective Date of this Permit shall be April 21, 2017.

Wherefore, the parties acknowledge authority to agree to all terms set forth above by the signature of its officer below:

CITY of Stevenson, a Washington Municipal Corporation

By: _____
Frank Cox, Mayor, City of Stevenson

ATTEST:

City Clerk, City of Stevenson

Approved as to form:

Office of the City Attorney

Avista Corporation dba Avista Utilities

By: _____
Dennis Vermillion
President, Avista Utilities

Letter of Acceptance by Avista

HONORABLE MAYOR AND CITY COUNCIL
CITY OF STEVENSON, COUNTY OF SKAMANIA, WASHINGTON

IN RE: City of Stevenson Agreement No. _____

**“Granting a Permit 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 ac-
cepts the terms and conditions of the Permit Agreement contained in the subject Agree-
ment and files this written acceptance with the City of Stevenson. This acceptance is
executed on _____, 20_____.

Copy Received for the City of Stevenson

On: _____

By: _____

City Representative - Name