

HAILEY ORDINANCE NO. 753

"AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, GRANTING TO IDAHO POWER COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, IN ACCORDANCE WITH IDAHO CODE §§50-328, 50-329 AND 50-329A, A TEN (10) YEAR NON-EXCLUSIVE FRANCHISE, TO CONSTRUCT, MAINTAIN AND OPERATE IN AND UPON THE PRESENT AND FUTURE STREETS, HIGHWAYS AND OTHER PUBLIC PLACES WITHIN THE CORPORATE LIMITS OF THE CITY OF HAILEY, IDAHO, ELECTRIC UTILITY PROPERTY AND FACILITIES FOR SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY, THE INHABITANTS THEREOF, AND OTHERS, INCLUDING THE NONEXCLUSIVE RIGHT TO PHYSICALLY LOCATE AND MAINTAIN TELEPHONE, CABLE, FIBER OPTICS OR OTHER COMMUNICATIONS FACILITIES SUBJECTING SUCH ELECTRIC SERVICE TO REGULATION BY PUBLIC AUTHORITY; PROVIDING FOR THE PAYMENT OF FRANCHISE FEES; SETTING FORTH AN AGREEMENT NOT TO COMPETE, RESERVING POWER OF EMINENT DOMAIN; AND SPECIFYING OTHER LIMITATIONS, TERMS AND CONDITIONS GOVERNING THE EXERCISE OF SAID FRANCHISE AND PROVIDING AN EFFECTIVE DATE."

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HAILEY, IDAHO THAT;

SECTION 1. The City of Hailey, Idaho (hereinafter called the "City") hereby grants to IDAHO POWER COMPANY, a corporation, and to its successors and assigns (hereinafter called the "Grantee") the nonexclusive right, (subject to the rights of the City set forth in Section 22 hereof), privilege and franchise for a period of ten (10) years from and after July 1, 2000, however, with the right to amend by mutual agreement in accordance with Section 23, to construct, maintain and operate in and upon the present and future streets, alleys, highways and other public places within the corporate limits of the City, electric utility property and facilities for supplying electricity to the City, and the inhabitants thereof, and to persons and corporations beyond the limits of the City, including the nonexclusive right to physically locate and maintain telephone, cable, fiber optics or other communications facilities of the Grantee or other parties, (provided, that Grantee shall comply with the City's requirements for cable system franchises) all subject to the terms and conditions hereinafter specified. In the case of annexation of property to the corporate limit, such area will be considered under this agreement, upon effective date of the annexation, subject to Section 17 hereof. All such electric utility property and facilities now maintained by the Grantee within the streets, alleys, highways and other public places within the corporate limits of the City shall be deemed covered by this ordinance as provided herein.

SECTION 2. All of the Grantee's **present** electric property and facilities in and upon the streets, alleys, highways and other public places within the corporate limits of the City shall at all times be maintained in good order and condition and in accordance with standard engineering practices and all applicable safety codes and lawful governmental regulations, including all construction standards presently in effect in the City of Hailey or adopted by the City during the ten (10) year term granted herein, subject to the requirements of any state or federal laws, rules and regulations and the jurisdiction of the Idaho Public Utilities Commission (the "Commission"). The City shall have authority at all times, in furtherance of the safety, convenience, and welfare of the public, to control by appropriate regulations the location, elevation, and manner of construction and maintenance of the Grantee's electric property, lighting, and facilities on the City streets, alleys, highways and public places, subject to the requirements of any state or federal laws, rules and

regulations and the jurisdiction of the Commission applicable thereto, and the Grantee shall at all times conform to such regulations. The Company agrees to work with the City in good faith to develop mutually acceptable terms for a "night sky" ordinance, which would address modifications to "street lights", and "off street lights" within the City to reduce excessive stray light.

SECTION 3. All of the Grantee's electric property and facilities **hereinafter placed** in and upon the streets, alleys, highways, and other public places within the corporate limits of the City shall at all times be maintained in good order and condition and in accordance with standard engineering practices and all applicable safety codes and lawful governmental regulations, including all construction standards presently in effect in the City of Hailey or adopted by the City during the ten (10) year term granted herein, subject to the requirements of any state or federal laws, rules and regulations and the jurisdiction of the Commission. All future lines shall at all times be maintained in good order and condition and in accordance with standard engineering practices and all applicable safety codes and lawful governmental regulations, including all construction standards presently in effect in the City of Hailey or adopted by the City during the ten (10) year term granted herein, subject to the requirements of any state or federal laws, rules and regulations and the jurisdiction of the Commission. The Company agrees to work with the City in good faith to develop mutually acceptable terms for a "night sky" ordinance, which would address modifications to "street lights", and "off street lights" within the City to reduce excessive stray light.

SECTION 4. Where Company facility relocations are required (overhead to overhead or underground to underground) because improvements sponsored or funded by the City are being undertaken within the public rights-of-way, the following terms shall apply:

(1) Relocation Cost Responsibility. The responsibility for costs associated with the relocation of Company facilities shall be assigned as follows:

- a. Should the City require that any Company facility be relocated from its existing location to a new location within the City's public right-of-way, all relocation costs shall be the responsibility of the Company.
- b. If the Company has facilities located on private property, with a right of occupancy other than its right to locate in a public right-of-way, and the City requires that any facility so located be relocated, the actual costs for such relocation shall be the responsibility of the City. Such costs shall be exclusive of profit allowances. The provisions of this Section 4(1)(b) will also apply to Company facilities which (a) were formerly located on private property, with a right of occupancy other than the right to locate in a public right-of-way, and (b) were subsequently relocated to a public right-of-way or other location at the request of the City

(2) Operational Procedure.

- a. Preliminary Notification: The City will provide written notification of potential Company relocation requirements at the conceptual stage of project development. Any plans provided at this stage shall be noted as preliminary. Where practical, the City shall provide such notification one year in advance of the commencement of right-of-way improvement work. The City shall provide the Company with a tentative schedule of its work for the ensuing fiscal year at the time of budget approval by the City Council;

- b. Preliminary Review: As soon as possible and no later than forty-five calendar days after receipt of the notification indicating the need for facility relocations, the Company shall provide the City with a preliminary engineering plan. That plan shall include the time frame requirements for material acquisition scheduling.
- c. Revisions: If revisions are made in the City's preliminary plan which alter the initial Company relocation requirements, the City will provide the Company with revised plans. The Company shall, as soon as reasonably possible and no later than thirty calendar days after the delivery of the revised plans, provide to the City any revisions in the Company's preliminary engineering plan or schedule.
- d. Final Notification: The City will provide the Company with final notification of its intent to proceed with right-of-way improvements and include the anticipated date work will commence thereon. This notification shall indicate that the work to be performed will either be accomplished pursuant to the preliminary plan or will be accomplished pursuant to a revised plan.
- e. Relocation Activity: Unless otherwise agreed upon, all Company relocations shall be completed prior to the anticipated date of commencement of work on the right-of-way improvements by the City. A project construction control line will be established in the field by the City. The location of this control line will be established after review with the Company.
- f. Roadway Restoration: Whenever possible, City and Company construction personnel shall coordinate their activities in an attempt to eliminate duplication of roadway restoration work.

SECTION 5. Where Company facility relocations are required (overhead to overhead or underground to underground) because of right-of-way improvements partially funded by the city of Hailey, the following terms shall apply:

- (1) Relocation Cost Responsibility. The responsibility for costs associated with the relocation of Company facilities shall be assigned as follows:
 - a. Where the City requires that any Company facility be relocated from its existing location to a new location within the public right-of-way, the Company shall be responsible for that portion of the relocation costs that equals the percentage of the City's participation in the right-of-way improvement costs. The remaining Company relocation costs shall be the responsibility of the individual, firm or entity that provides funds for the balance of the right-of-way improvement costs.
 - b. If the Company has facilities located on private property, with a right-of-way occupancy other than its right to locate in a public right-of-way, and the City requires any facility so located to be relocated, the actual costs for such relocation shall be the responsibility of the City and the individual, firm or entity providing funds to accomplish the improvements within the public right-of-way. Such costs shall be exclusive of profit allowances. The provisions of this Section 5(1)(b) will also apply to Company facilities which (a) were formerly located on private property, with a right of occupancy other than the right to locate in a public right-of-

way, and (b) were subsequently relocated to a public right-of-way or other location at the request of the City.

(2) Operational Procedure.

- a. Plan Review. The City will schedule a plan review conference to which representatives of all funding participants and the Company will be asked to attend. Within forty-five calendar days after the date of the plan review conference, the Company shall provide the City with a project review statement outlining the facility relocation work required, the estimated cost thereof and the time required therefore. This statement should include the date on which field relocation work would commence and any other special construction considerations that may affect scheduling.
- b. Revisions. If revisions are made in the preliminary plans that alter the initial Company relocation requirements, the City will provide the Company with revised plans. The Company shall, as soon as reasonably possible and no later than forty-five calendar days after delivery of the revised plans by the City, provide the City with any revision to the initial project review statement.
- c. Final Notification. The City will provide the Company with final notification of its intent to proceed with rights-of-way improvements and include the anticipated date that work to be performed will either be accomplished pursuant to the preliminary plan or will be accomplished pursuant to a revised plan.
- d. Relocation Activity. Unless otherwise agreed upon, all Company relocations shall be completed prior to the anticipated date of commencement of work on the right-of-way improvements.
- e. Roadway Restoration. Whenever possible, City and Company construction personnel shall coordinate their activities in an attempt to eliminate duplication of roadway restoration work.

SECTION 6. Where Company facility relocations are required (overhead to overhead or underground to underground) as a result of improvements not funded by the City of Hailey.

(1) Relocation Cost Responsibility. The responsibility for costs associated with the relocation of Company facilities shall be assigned as follows:

- a. When Company facility relocations are required as a result of improvements being made by a developer within the public rights-of-way which were scheduled to have otherwise been made by the City within three years of the date said improvements are actually commenced, then the responsibility for the costs of the Company relocations shall be in conformance with Section 4.
- b. When Company facility relocations are required as a result of improvements being made by a developer within the public rights-of-way which were not scheduled to have otherwise been made by the City within three years of the date said improvements are actually commenced, then the responsibility for the costs of the

Company relocations shall be that of the developer.

- c. Roadway Restoration. Whenever possible, City and Company construction personnel shall coordinate their activities in an attempt to eliminate duplication for roadway restoration work.

B. Operational Procedure.

- (1) Plan Review. The developer shall provide the City and Company with preliminary project plans and schedule a plan review conference to be held at the City offices. The Company shall provide the developer and the City with a letter of review indicating the magnitude of and time required for relocation of its facilities. Said letter of review is to be provided within forty-five calendar days after the date of the plan review conference.
- (2) Revisions. If revisions are made in the preliminary plans which modify the Company relocation requirements, the Company shall be provided with such revised plans and have forty-five calendar days after receipt thereof to review and comment thereon.
- (3) Final Notification. The developer will provide the City and Company with final notification of its intent to proceed with the right-of-way improvements and include the anticipated date work will commence thereon. This notification shall indicate that the work to be performed will either be accomplished pursuant to the preliminary plan or will be accomplished pursuant to a revised plan.
- (4) Relocation Activity. Unless otherwise agreed upon, all Company facility relocations shall be completed within the times established during the plan review process.

SECTION 7. Signalized Intersections. Should any Company relocation activity be in close proximity of an intersection with signalization or intersection turning movements, the developer and the Company shall meet with the City to determine the responsible cost allocation for signalization or turning movement modifications.

SECTION 8. Trust Fund Deposits. In those cases where a developer elects or is required to make a deposit with the City to provide for future improvements within the public rights-of-way in lieu of the immediate construction thereof, the developer will be required to include in the deposit an amount equal to 110% of the Company's estimated cost to accomplish its required relocation work in connection with such future improvements. Said amounts will be payable to the Company by the City at the time the Company performs its relocation work.

SECTION 9. Whenever the Company upgrades or modifies its facilities located within the public rights-of-way for its own purposes, all costs of the work associated therewith shall be the sole responsibility of the Company.

SECTION 10. The Company and the City agree to meet annually or at such other time as the parties may designate to review their respective plans for work within the City's rights-of-way and to coordinate such work for the mutual benefit of the parties.

SECTION 11. It shall be lawful for the Grantee to make all needful or convenient excavations and/or installations in any of the present and future streets, alleys, highways and other public places within the corporate limits of the City for the purpose of erecting and maintaining the posts, poles, towers, or other supports for its wires or for the purpose of laying, maintaining and operating conduits, vaults and wires and other conductors underground for the purpose aforesaid, or to repair and improve such electric power and light system and to extend the same; provided that when the Grantee or any person or corporation under the authority of this franchise, shall disturb any of said streets, alleys, highways or other public places for the purposes aforesaid, he, it or they shall comply with the existing and future ordinances of the City applicable thereto, and shall restore the same to good order and condition as soon as practicable and without unnecessary delay and failing to do so after five days' notice from the City, or its duly authorized officer or officers, then the City may place said street, alley, highway boulevard, thoroughfare or public place in such condition at the cost and expense of the Grantee, and said Grantee will forthwith pay the full cost and expense thereof upon demand of the City. All facilities constructed under this ordinance shall be placed and maintained at such places and positions in or upon such public ways and public places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to all applicable laws, rules and regulations. Grantee shall secure a permit for any opening it shall make in the streets, alleys, and public places in the city (except in cases of emergencies), and shall be subject to all applicable ordinances, subject to the requirements of any state or federal laws, rules and regulations, and the jurisdiction of the Commission.

SECTION 12. The City shall have the right and privilege to string and maintain wires for its fire, police, airport and other municipal services upon the poles and other facilities erected and maintained by the Grantee hereunder. The City shall string, maintain and operate such wires at its own expense, risk and responsibility, and in accordance with all legal requirements and good engineering practices and in such manner as not to impose any additional expense upon Grantee of its said poles and facilities. Any such wires of the City shall be subject to interference by the Grantee only when necessary in the maintenance, operation or repair of the Grantee's own fixtures, wires, facilities and appurtenances.

SECTION 13. The Grantee shall at all times indemnify and hold the City, its officers, employees and agents, harmless from any and all claims, causes of action, expenses or liability arising out of or in any way in connection with the construction, operation or maintenance of any of the Grantee's electric utility property or facilities by Grantee and/or Grantee's agents, employees or representatives.

SECTION 14. Upon acceptance of this franchise by Grantee and before Grantee shall have any rights hereunder, Grantee shall file with the City Clerk a Certificate of Insurance evidencing General Liability Insurance which covers claims for Bodily Injury, Property Damage and Personal Injury. Such insurance shall have minimum limits of \$1,000,000 per occurrence. The City of Hailey shall be named as an "Additional Named Insured" under Grantee's insurance policy. Should the minimum limits of insurance as set forth herein be increased above \$1,000,000, pursuant to the Idaho Tort Claims Act (Idaho Code Section 6-901 et. seq.) or any similar legislation, the Grantee shall be required to provide the City with a new Certificate of Insurance evidencing the higher limits upon the City's request.

SECTION 15. When necessary, in order to permit any duly authorized person or move any building or other structure across or along any street, alley, avenue, boulevard, or public place within the City, the Grantee shall temporarily raise or remove its wires, fixtures and appurtenances

upon such street, alley, avenue, boulevard, thoroughfare or public place, upon seventy-two hours written notice in advance from such person, such notice to bear the approval of such official as the City may designate, as such time and in such manner as may be necessary reasonably to accommodate such moving, consistently with the maintenance of proper service to the Grantee's customers; provided, however, that the cost to the Grantee of such temporary raising or removal, and of any interruption of the Grantee's service to its customers caused thereby, shall first be paid or satisfactorily secured to the Grantee by the owner or mover of such building or other structure.

SECTION 16. The electric service to be furnished to the public hereunder, and all rates and charges therefore, and all regulation of the Grantee hereunder, shall at all times be subject to all rules, regulations and orders that may be lawfully prescribed by the Commission or by any other governmental authority now or hereafter having jurisdiction over such matters. During the term of this franchise, Grantee shall at all times assure that customers within the City have access to customer service from the Grantee as required by the Commission.

SECTION 17. As compensation for the right, privilege and franchise hereby granted, Grantee agrees to pay to the City on or before the 30th day of January, April, July and October, an amount equivalent to one percent (1%) of Grantee's "gross revenues" for the preceding calendar quarter. The term "gross revenues" as used herein shall mean the amount of money billed by the Grantee for the electricity it sells within the corporate limits of the City to customers, less uncollectibles. The Grantee's franchise fee payment obligations hereunder shall commence with the start of the Grantee's first full billing cycle following the effective date of this ordinance; provided, that the Grantee must first receive approval from the Commission for the collection of the franchise fee in the rates charged by Grantee.

The City shall provide appropriate information to the Grantee to allow the Grantee to identify which of its customers are located within the corporate limits of the City for purposes of paying franchise fees. Grantee shall not be responsible for any failure to pay franchise fees which results from deficiencies in such information provided by the City. In the event the City annexes a new area into its corporate limits, the terms of this Section 17 regarding franchise fees shall not apply to the annexed area until sixty (60) days after the City has supplied the Grantee with appropriate information for the identification of the Grantee's customers within the annexed area.

All sums which become delinquent shall accumulate interest at the statutory rate provided in Idaho Code Title 28, Chapter 22, Section 104(1). The accrual of interest is not intended to waive or in any manner restrict the City's ability to elect any procedures or method of collection permissible by law to enforce all the terms and conditions of this ordinance or the franchise agreement. In addition, where the City determines by audit, financial statement or other method, that grantee has underpaid franchise fees and where payment was not received by the City within the quarter owed, the Grantee may be required to pay all fees and interest due on the total amount owed. Such franchise fee shall be listed as a separate item on the customer's utility bill.

SECTION 18. The City shall have the right during the term of this franchise agreement to increase the franchise fee hereunder up to three percent (3%), by obtaining approval of a majority of voters of the City voting on the question at an election held in accordance with chapter 4, title 50, Idaho Code. Any such vote to increase the franchise fee hereunder shall provide that the increased franchise fee will apply to any electric service provider (other than the City) who utilizes the City's streets, alleys or other public places to provide electrical service within the City, during the term of this franchise agreement.

SECTION 19. The Grantee shall keep accurate books of account for the collection of the franchise fees hereunder and the City shall have the right to inspect the same at all times during business hours, and from time to time audit the same for the purpose of determining gross revenues under Section 17 above. Grantee shall provide the City with copies of Grantee's annual financial report and 10-K form.

SECTION 20. The franchise fees paid by the Grantee hereunder will be in lieu of and as payment for any tax or fee imposed by the City on the Grantee by virtue of its status as a public utility including, but not limited to, taxes, fees or charges related to easements, franchises, rights-of-way, utility lines and equipment installation, maintenance and removal during the term of this franchise agreement.

SECTION 21. The Grantee shall have the right and privilege, in consultation with Hailey City Staff and a locally certified arborist, insofar as the City is able to grant the same, in accordance with National Arborist Association standards, of the pruning of all trees which overhang the present and future streets, alleys, highways and other public places within the corporate limits of the City, in such a manner and to such extent as will prevent the branches or limbs or other parts of such trees from touching or interfering with its wires, poles and other fixtures and equipment; provided, however, that no such trees will be pruned or cut back farther than may be reasonably necessary to prevent such interference and to allow the proper operation and maintenance of said line poles and fixtures. However, except in an emergency, no pruning shall be undertaken without giving the occupant of the adjacent property written or oral notice that such pruning will be performed.

SECTION 22. In consideration of Grantee's undertaking hereunder as evidenced by its acceptance hereof, the City agrees not to engage in the business of providing electric service during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns; but nothing herein contained shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain granted to it under the laws of the State of Idaho. The City shall not grant a franchise to another electric service provider during the term of this franchise agreement unless the electric service provider has received approval to provide electrical service within the City from the Commission, and the City has imposed the same franchise fee on the electric service provider as paid by the Grantee.

SECTION 23. In the event of an amendment to the laws, rules or regulations of the City of Hailey, the State of Idaho or the Commission applicable to this franchise, or for periodic review of any section of this agreement, the terms of this franchise and the rights and privileges hereby conferred may be changed, altered, amended or modified upon mutual agreement between the City and the Grantee. In all cases, 60 days notice shall be required on the part of City or Grantee to reopen the agreement pursuant to this section.

SECTION 24. If the Grantee willfully violates or fails to comply with any of the provisions of this franchise, the City shall give written notice to the Grantee of the alleged non-compliance with its franchise. The Grantee shall have forty-five (45) days from the date of notice of non-compliance to cure such alleged default or, if such default cannot be cured in forty-five (45) days, to present to the City a plan of action whereby such default can be promptly cured. If such default continues beyond the applicable dates agreed to for such cure, the City shall give the Grantee written notice that all rights conferred under this Ordinance and its franchise may be revoked or terminated by the Council after a public hearing. The Grantee shall be entitled to not less than

thirty (30) days prior notice of the date, time and place of the public hearing. The City 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 district court having jurisdiction compelling Grantee to comply with the provisions of the franchise and recover damages and costs incurred by the City by reason of the Grantee's failure to comply. Grantee shall have the right to submit such questions of violation or noncompliance to the appropriate forum (which may include the district court having jurisdiction or the Commission) for determination.

SECTION 25. Sale, assignment or lease of this franchise is prohibited without notification to the City, in which case the successor shall be bound by all the terms and conditions of the franchise.

SECTION 26. The Grantee shall assume the cost of publication of this franchise as such publication is required by law.

SECTION 27. The Grantee shall within thirty (30) days after final passage of this ordinance, file with the City Clerk its acceptance of this franchise in writing signed by its proper officers and attested by its corporate seal.

SECTION 28. City of Hailey Ordinance Number 3-A, adopted September 2, 1947, granting an electric franchise to Idaho Power Company, together with all amendments shall be, and the same are hereby repealed.

SECTION 29. Inasmuch as the Grantee has constructed and now is maintaining and operating the electric utility property and facilities in and upon the streets, alleys, avenues, highways, boulevards, thoroughfares and public places in the City, it is hereby adjudged and declared that this ordinance is necessary for the preservation of the public peace, health and safety, and therefore this ordinance shall be in full force and effect from and after its passage, approval and due publication according to law.

PASSED AND ADOPTED by the Hailey City Council and APPROVED by the Mayor this 12th day of June, 2000.

APPROVED by the Mayor this 12th day of June, 2000.

CITY OF HAILEY

By: 

Brad Stemer, Mayor, City of Hailey

ATTEST:


Heather Dawson, City Clerk

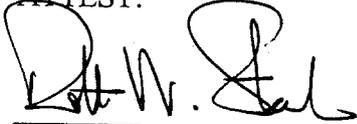
(Seal)

ACCEPTANCE

IDAHO POWER COMPANY, as the franchisee, accepts the franchise set forth in the above Ordinance and agrees to abide by the terms and conditions thereof.

DATED this 28th day of June, 2000.

ATTEST:

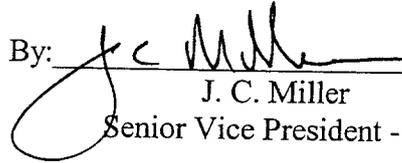


Secretary

(Seal)

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By:



J. C. Miller

Senior Vice President - Delivery