

HAILEY ORDINANCE NO. 1057

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO IN ACCORDANCE WITH IDAHO CODE §§ 50-328, 50-329 AND 50-329A GRANTING A FRANCHISE TO IDAHO POWER COMPANY, AN IDAHO CORPORATION, AND TO ITS SUCCESSORS AND ASSIGNS, 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 FOR A TERM OF TEN YEARS, INCLUDING THE NONEXCLUSIVE RIGHT TO PHYSICALLY LOCATE AND MAINTAIN TELEPHONE, CABLE, FIBER OPTICS OR OTHER COMMUNICATIONS FACILITIES; SETTING FORTH AN AGREEMENT NOT TO COMPETE AND RESERVING POWER OF EMINENT DOMAIN; PROVIDING FOR THE PAYMENT OF FRANCHISE FEES; AND SPECIFYING OTHER LIMITATIONS, TERMS AND CONDITIONS GOVERNING THE EXERCISE OF THE FRANCHISE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

SECTION 1. The City of Hailey, Idaho (hereinafter called the "City") hereby grants to IDAHO POWER COMPANY, an Idaho 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 15 hereof), privilege and franchise for a period of ten (10) years from and after July 1, 2010, however, with the right to amend by mutual agreement in accordance with Section 16, 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 10 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 electric property and facilities in and upon the present and future streets, alleys, highways and public places within the corporate limits of the City shall be constructed and at all times maintained in good order and condition and in accordance with standard engineering practices and all applicable safety codes and lawful governmental regulations, including all applicable state and federal regulations and all construction standards

presently in effect by the Idaho Public Utilities Commission or adopted by that Commission during the term of this franchise agreement. 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 laws, rules and regulations.

SECTION 3. Upon request of the City, the Grantee shall relocate its facilities as necessary within the present and future streets, alleys, highways and other public places owned by the City. The City shall have no responsibility for the costs of such relocations. The Grantee shall bear the cost of relocating its facilities at the City's request, unless the facilities are to be relocated for the benefit of a third party, in which case the third party shall pay the costs of relocation. In the event federal, state or other funds are available in whole or in part for utility relocating purposes, the City shall apply for such funds and the Grantee will be reimbursed to the extent any such funds are actually obtained. Whenever the Grantee 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 Grantee.

SECTION 4. 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 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 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 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 5. The City shall have the right and privilege to string and maintain wires for its internal communications for its fire, police, airport and other services upon the poles and other facilities erected and maintained by the Grantee hereunder, subject to the rules and regulations of the Idaho Public Utilities Commission. 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 6. The Grantee shall at all times indemnify, defend and hold the City, its officers, employees and agents, harmless from any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees arising from or by reason of any willful, intentional or negligent act or omission of the Grantee, its agents, assigns, representatives or employees, in the construction, operation or maintenance of any of the Grantee's electric utility property or facilities.

SECTION 7. Upon acceptance of this franchise by Grantee and before Grantee shall have any rights hereunder, the 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 8. 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 (72) 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 9. 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 Idaho Public Utilities 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 Idaho Public Utilities Commission.

SECTION 10. If authorized by formal adoption of city resolution, a s 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. For purposes of this Section, "gross revenues" 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 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 10 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.

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 Idaho Public Utilities Commission for the collection of the franchise fee in the rates charged by Grantee.

All sums which become delinquent shall accumulate interest at the statutory rate provided in Idaho Code § 28-22-104(1), as amended. 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 11. 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 the consent of the Grantee or the 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 12. The Grantee shall keep accurate books of account of the collection of the franchise fees for a period of not to exceed three years 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 9, above.

SECTION 13. 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 14. The Grantee shall have the right and privilege, 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 tree shall be pruned or cut back farther than may be reasonably necessary to prevent such interference and to allow the proper operation and maintenance of 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 15. In consideration of Grantee's undertaking hereunder as evidenced by its acceptance hereof, the City agrees not to engage in the business of providing electrical services during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns. Grantee acknowledges that the City maintains and operates a hydroelectric facility in Indian Creek and may construct and operate solar and wind electrical generators, which Grantee agrees would not constitute a violation of the City's covenant herein, so long as the City does not use such facilities to provide electrical service to Grantee's customers, other than through the sale of wholesale power to Grantee. 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 Idaho Public Utilities Commission, and the City has imposed the same franchise fee on the electric service provider as paid by the Grantee.

SECTION 16. In the event of an amendment to the laws, rules or regulations of the City of Hailey, the State of Idaho or the Public Utilities Commission of Idaho applicable to this franchise, or for the 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 the City or Grantee to reopen the Agreement pursuant to this section.

SECTION 17. Any violation by the Grantee of the provisions of this ordinance, franchise and grant or any material portions thereof or the failure promptly to perform any of the provisions thereof shall be cause for the forfeiture of this franchise and grant and all rights hereunder by the City after sixty (60) days' written notice to the Grantee and the continuance of such violation, failure or default; however, this provision shall not prevent the Grantee from submitting such question of violation or forfeiture to the appropriate forum (which may include the district court having jurisdiction or the Idaho Public Utilities Commission) for determination.

SECTION 18. Sale, assignment or lease of this franchise is prohibited without notification of the City, in which case the successor shall be bound by all the terms and conditions of this franchise.

SECTION 19. The Grantee shall not install any luminaires during the term of this franchise that light the public right of way without first receiving approval for any such application by the Hailey Lighting Administrator. All existing and future lighting owned and operated by the Grantee shall comply with Article VIII B, Outdoor Lighting, of the Hailey Zoning Ordinance No. 532 and as amended. A street lighting master plan approved by the City

Council on June 28, 2010 ("Master Plan") and as amended, provides a maintenance schedule and retrofit plan for all existing lights owned and operated by the Grantee that do not conform to Article VIII B. The Master Plan includes, but is not limited to, 1) a schedule for work done by the Grantee, 2) the replacement by the Grantee of noncompliant luminaires with full cut-off luminaires when a lamp or lighting ballast requires maintenance or replacement, and 3) a list of preferred action plans for the retrofits, to be determined by the Council and reflected in an amended Master Plan upon receipt of more information from the Grantee on cost and fees associated with the preferred actions. All fees associated with the work specified in the Master Plan shall reflect the Idaho Public Utilities Commission's Schedule 41, Street Light Service, and as amended.

SECTION 20. The Grantee shall assume the cost of publication of this franchise as such publication is required by law.

SECTION 21. 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.

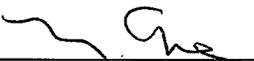
SECTION 22. If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

SECTION 23. All Ordinances, including Hailey Ordinance No. 753, or parts thereof in conflict herewith are hereby repealed and rescinded.

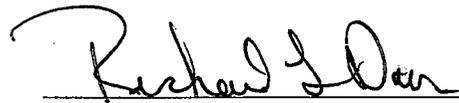
SECTION 24. This Ordinance shall be in full force and effect on July 1, 2010, and after its passage, approval and publication according to law.

PASSED AND ADOPTED by the Council of the City of Hailey this 28th day of June, 2010.

ATTEST



Mary Cone, City Clerk



Richard L. Davis, Mayor
City of Hailey

(Seal)

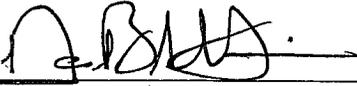


ACCEPTANCE

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~~ July, 2010.
22nd

IDAHO POWER COMPANY

By 

Dan Minor
Executive Vice President – Operations

ATTEST


Secretary

(Seal)