AGENDA ITEM SUMMARY

DATE: 4/26/2010  DEPARTMENT: Legal  DEPT. HEAD SIGNATURE:

SUBJECT:
Idaho Power Franchise Ordinance

AUTHORITY: ☐ ID Code  ☐ IAR  ☐ City Ordinance/Code
(IFAPPL/CABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am enclosing a proposed franchise ordinance for Idaho Power. The existing franchise ordinance will expire June 30, 2010. Under Idaho law, Hailey has to publish a proposed franchise ordinance and then hold a public hearing 30 days after the introduction of the ordinance. Thereafter, changes can be made to the ordinance only if the changes are more favorable to the city. Idaho Power forwarded a proposed ordinance to Hailey, which I compared to our existing ordinance. I made changes to the Idaho Power proposed ordinance by adding language from our present ordinance which I felt was beneficial. Just before the Council’s last meeting, Idaho Power asked for some more time to review my changes. I asked and the Council agreed to continue this matter to this meeting so Idaho Power could review. For the most part, Idaho Power agreed with my revisions and asked for some minor revisions which I find to be acceptable. At the moment, there is only one remaining issue. The Planning and Zoning Office has asked for some language addressing the replacement of non-conforming lights. Idaho Power has asked for a meeting to address their concerns about the lighting. I believe we can add any language about the lights before our next meeting because the changes would be more favorable to the City.

Please note that the franchise fee percent and the term have been left blank. The present ordinance provides for a 1% franchise fee which presently generates about $45,000 per year. Idaho law was revised recently revised to allow a franchise fee up to 3% upon a vote or with the consent of the franchisee. In speaking to Dan Olmsted of Idaho Power, Idaho Power will agree to a franchise fee of 3%, but in such an event, Idaho Power would like a longer franchise term. I would encourage a discussion of the franchise fee and the term.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

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ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IFAPPLICABLE)

| City Attorney | Clerk / Finance Director | Engineer | Building |
| Library | Planning | Fire Dept. |
| Safety Committee | P & Z Commission | Police |
| Streets | Public Works, Parks | Mayor |

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss the proposed ordinance, particularly the franchise fee and term, and make a motion to publish the ordinance with a certain franchise fee and term and any other appropriate revisions.
HAILEY ORDINANCE NO. _________

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 _______ 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 _______ (____) 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 ________ percent
(____%) 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 assume the cost of publication of this franchise as such publication is required by law.
SECTION 20. 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 21. 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 22. All Ordinances, including Hailey Ordinance No. 753, or parts thereof in conflict herewith are hereby repealed and rescinded.

SECTION 23. 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 ___ day of ________________, 2010.

ATTEST

________________________________________
Richard L. Davis, Mayor
City of Hailey

Mary Cone, 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 ___ day of ____________________, 2010.

IDAHO POWER COMPANY

ATTEST

________________________________________
By

Dan Minor
Executive Vice President – Operations

Secretary

(Seal)
AGENDA ITEM SUMMARY

DATE: 05/26/2010  DEPARTMENT: Finance & Records  DEPT. HEAD SIGNATURE: M. Cone

SUBJECT

Discussion and motion to set a date for Canvassing the May 25, 2010 special bond election.

AUTHORITY: □ ID Code  □ IAR  □ City Ordinance/Code

Idaho Code requires that a governing body shall canvass the election returns submitted by the city clerk. Election returns are forwarded to the city clerk by the election judge.

BACKGROUND:

May 31st is a holiday (Memorial Day) and no council meeting is planned. Idaho Code 50-467 states that a canvass of any election must be held within 6 days. The election results shall be entered into the minutes of the proceedings and proclaimed as final.

Results attached.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:
Budget Line Item #  YTD Line Item Balance $

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:

___ City Attorney  ___ Clerk / Finance Director  ___ Engineer  ___ Mayor
___ P & Z Commission  ___ Parks & Lands Board  ___ Public Works  ___ Other

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discussion and selection of a date to hold special meeting to Canvass election.

Make a motion to set the special meeting date and time – either May 26, May 27 or May 28.

FOLLOW UP NOTES: