

ORDINANCE NUMBER 890

AN ORDINANCE OF THE CITY OF KETCHUM, 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, ALLEYS, HIGHWAYS AND OTHER PUBLIC PLACES WITHIN THE CORPORATE LIMITS OF THE CITY OF KETCHUM, 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, WITH CONDITIONS; SUBJECTING SUCH ELECTRIC SERVICE TO REGULATION BY PUBLIC AUTHORITY; PROVIDING FOR THE PAYMENT OF FRANCHISE FEES; RESERVING POWER OF EMINENT DOMAIN; AND SPECIFYING OTHER LIMITATIONS, TERMS AND CONDITIONS GOVERNING THE EXERCISE OF SAID FRANCHISE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Idaho Power's franchise to use the public rights-of-way to supply electricity expired in 1997 and it desires to enter into a new franchise agreement.

WHEREAS, the City of Ketchum desires to set forth procedures for a Master Plan, joint trenching, bidding, approval of upgrades and new services, and a formula for calculating the cost of overhead to underground conversions;

WHEREAS, THE City of Ketchum's long term goal is to relocate all overhead facilities underground;

WHEREAS, Idaho Power desires to set forth procedures for use of the City's right-of-ways and utility easements and assist the City with its long term goal.

NOW THEREFOR, BE IT ORDAINED BY THE MAYOR AND THE COUNCIL OF THE CITY OF KETCHUM, IDAHO, THAT:

SECTION 1. The CITY OF KETCHUM, 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, privilege and franchise for a period of ten (10) years from and after January 7, 2002, however, with the right to amend by mutual agreement in accordance with Section 21, 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, 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 15 herein. All such electric utility property and facilities now maintained by the Grantee within the corporate limits of the City shall be deemed covered by this ordinance.

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 Ketchum or adopted by the City during the ten (10) year term granted herein, subject to the provisions of any state or federal laws, rules, and regulations and the jurisdiction, if any, 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 provisions of any state or federal laws, rules, and regulations and the jurisdiction, if any, of the Commission, applicable thereto.

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 must receive the approval of the City pursuant to the terms of this agreement and 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 Ketchum or adopted by the City during the ten (10) year term granted herein, subject to the provisions of any state or federal laws, rules, and regulations and the jurisdiction, if any, of the Commission,

applicable thereto. The City shall have authority at all times, in furtherance of the safety, convenience, and welfare of the public, to control by appropriate regulations and requests 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, at no cost to the City, subject to the provisions of any state or federal laws, rules, and regulations and the jurisdiction, if any, of the Commission, applicable thereto. All improvements or additions to facilities in the City right of way must first receive City administrative approval. All other improvements, additions or approvals must be in accordance with the provisions of the franchise agreement.

SECTION 4. Within six (6) months from the date of the acceptance and execution of this agreement, the Grantee shall provide a conceptual Master Plan that shall be approved and adopted by the City Council. The underlying purpose of the Master Plan is to have a framework for providing new services and upgrades and to work towards eliminating all overhead facilities, with an organized approach to relocating the facilities underground and at grade. The Master Plan shall set forth preliminary project plans, current facilities, and anticipated improvements during the length of the franchise and shall also include, but not be limited to, a block by block plan to address underground conversions and upgrades. Additionally, the Master Plan shall provide specific detail for the subsequent five (5) year time frame. The Master Pan should be reviewed and updated periodically and shall be updated annually subject to review and approval by the City Council.

SECTION 5. Where Grantee's facilities and property are relocated for all City improvements that require relocation, upgrades, new services, or undergrounding, located on City property or within City rights-of-way or City required utility easements adjacent to City rights-of-way, the costs shall be as follows:

A. All overhead to overhead or underground to underground relocations shall be the responsibility of the Grantee and shall be relocated at no cost to the City. Grantee shall relocate its facilities so as to meet the public health and safety and to conform to the grade or line of such street, alley, sidewalk, or other public place and so as not to interfere with the conduits, sewers, and other mains of the City as constructed or reconstructed. 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.

B. All overhead to underground relocation and improvements shall be the responsibility of the City and the costs shall be as follows:

1. Grantee shall only charge for the actual costs as recorded on Grantee's accounts ("Actual Costs") for such relocation and improvements. In determining such Actual Costs, the City shall receive credit for salvage, Grantee upgrades pursuant to Section 11, and Grantee's cost of relocating the facilities as if they had been relocated overhead to overhead. Actual Costs shall be exclusive of profit allowances of Grantee. Notwithstanding the foregoing, Grantee shall not be required to place facilities underground under this Agreement if such action is not feasible from an engineering, operation or maintenance standpoint.

SECTION 6. All private development where the City requires the private developer to provide for upgrades, new services, or undergrounding of Grantee's facilities shall receive design review approval from the City Planning and Zoning Commission if so required by City Ordinances. Costs for said upgrades, new services, and undergrounding shall be born by the private development. Provided, however, whenever such undergrounding is required by the City and requested from Idaho Power by the City, the cost assessed for undergrounding shall be the same as that set forth in Section 5(B)(1).

SECTION 7. The City shall have the right and privilege to obtain bids from and/or use entities other than the Grantee for the non electrical and engineering work related to the extension of distribution or transmission facilities or the conversion of existing overhead electric and communication facilities to underground locations as well as the construction, reconstruction, or relocation of any other electric or communication facilities which may be incidental thereto. Said right and privilege shall include, but not be limited to, trenching, backfilling, grading, cutting and providing materials. Said right and privilege shall not include any electrical and engineering components which shall be the sole responsibility of Idaho Power or its contractors or sub-contractors. Provided, that for projects not covered by prior long term bid agreements, Grantee agrees to obtain two (2) bids for the electrical components of a project that is contracted out by Grantee. At the request of the City, Grantee shall allow the City to review the bids.

SECTION 8. No streetlights or private security lights shall be placed within the city limits without the customer first receiving prior approval of the City. All street lights and

private security lights shall comply with the provisions of the City's Dark Sky Ordinance, codified as Chapter 17.132 of Title 17, Ketchum Zoning Code, as the same may be amended from time to time. At the request of a customer, or upon the request of a customer based on the requirements or ordinances of the City, Grantee shall remove any streetlights or private security lights that are not identified and approved in the Master Plan, or its subsequent amendments, at no cost to the City.

SECTION 9. The City shall have the right and privilege to string or bury and maintain wires for its fire, police, airport and other municipal services upon the poles or in ditches and conduits, as well as other facilities erected and maintained by the Grantee hereunder. The City shall string, lay, maintain and operate such wires at its own expense, risk and responsibility, and in accordance with all legal requirements, code 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 10. It shall be lawful for the Grantee to make all needful or convenient excavations or installations in any of the present or future streets, alleys, highways, boulevards, and thoroughfares of the City for the purpose of erecting and maintaining the posts, poles, tower, or other supports for its wires or for the purpose of laying, maintaining or 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 as the growth of said City or the needs of the inhabitants thereof may require; provided that when the Grantee, or any person or corporation under the authority of this franchise, shall disturb any of said streets, alleys, avenues, highways, boulevards, thoroughfares, or 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 provided, that if the Grantee fails to do so after five (5) days notice from the City, or its duly authorized officer or officers, then the City may place said street, alley, avenue, 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 and shall be subject to all applicable ordinances, except in cases of emergency.

In those areas where other utilities are locating facilities underground or where underground facilities are required, the Grantee agrees to utilize the same trenches where feasible, as other utility companies, such as City utilities, telephone, or electric utilities and to allow others to utilize the Grantee's trenches, where feasible, and on a prorated basis. Grantee agrees not to charge the City for its use of said trenches.

SECTION 11. Whenever the Grantee upgrades or modifies its facilities located within the public rights-of-way for its own purposes, all costs for the work associated therewith shall be the sole responsibility of the Grantee.

SECTION 12. In those cases where a developer is required to make a deposit with the City to provide for future improvements within the public rights-of-way or city required utility easements in lieu of the immediate construction thereof, the developer will be required to include in the deposit and amount equal to 110% of the Grantee's estimated cost to accomplish its required relocation work in connection with such future improvements. Said amounts shall be determined according to paragraph 5(B) and shall be payable to the Grantee by the City at the time the Grantee performs its relocation work.

SECTION 13. Notwithstanding any other provision of this Agreement, if Idaho Power is required to construct, install or relocate facilities under this Agreement in a manner which exceeds Idaho Power's construction standards, which are consistent with the requirements of the Commission and the National Electric Safety Code (the "Idaho Power Standards"), the City will be responsible for providing the additional funding necessary to cover the additional cost, if any, of the construction, installation and relocation work performed under this Agreement, as compared with the cost of said work if performed under the Idaho Power Standards.

SECTION 14. 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, expense or liability arising out of, or in any way connected 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 15. 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 \$1,000,000.00 per occurrence, with \$5,000,000.00 aggregate. The City of Ketchum shall be named as an additional insured under Grantee's insurance policy. Should the minimum limits of insurance as set forth herein be increased above \$1,000,000.00, 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 16. The electric service to be furnished to the public hereunder, and all rates and charges therefor, and all regulation of the Grantee applicable thereto, shall at all times be subject to all rules, regulation and orders that may be lawfully prescribed by the Public Utilities Commission of the State of Idaho or by any other governmental authority now or hereafter having jurisdiction over such matters.

SECTION 17. When necessary, in order to permit any duly authorized person to 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, at such time and in such manner as may be reasonably necessary 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 18. As compensation for the right, privilege, and franchise hereby granted, the Grantee shall 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 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 proceeds that the City receives based upon this one percent (1%) franchise fee shall be designated for the purpose of undergrounding overhead electric facilities. 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 this agreement has been accepted for filing by the PUC Commission. Notwithstanding the forgoing, the City does not intend to grant any jurisdiction to the PUC that does not currently exist.

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 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 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 procedure 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.

The City shall have the right during the term of this franchise agreement to increase the franchise fee upon 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, as provided in Section 50-329A, Idaho Code. Any such vote to increase the franchise fee hereunder up to three percent (3%), 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 with 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 such gross revenues under Section 14 above. Grantee shall provide the City with copies of Grantee's annual financial report and 10K 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, after consultation with the City staff and a locally certified arborist, insofar as the City is able to grant the same, to trim and prune all trees which overhang the present and future streets, alleys, highways, or other public places 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, or other fixtures and equipment, in accordance

with National Arborist Association standards; providing, however, that no such trees will be trimmed or cut back farther than may be necessary to prevent such interference and to allow the proper operation and maintenance of said line poles and fixtures. Provided further, that at the option of the City, such trimming may be done by the City or its designee, or under the City's supervision and direction, subject to the safety requirements of the Grantee. However, except in an emergency, no trimming shall be undertaken without giving the adjacent property owner written notice that such trimming will be performed. At the option of the private property owner, such trimming may be performed by the property owner or his designee, subject to the scheduling requirements of the Grantee, the requirements of this section and any and all safety requirements of the Grantee. Grantee shall be responsible for replacing any tree that as a result of the trimming performed by Grantee results in the death or substantial destruction of the tree, to be determined by a certified arborist.

SECTION 22. The Grantee shall maintain and operate a system for the distribution of electricity in the City so as to furnish what shall be known as a twenty-four hour service, but the Grantee does not guarantee continuous and uninterrupted service under the terms hereof and under no circumstances shall the Grantee be held liable to or responsible by the City on account of interruption or failure of service caused by storms, washouts, accidents, floods, acts of God or the public enemy, war, strikes, damages by the elements or damage to plant or equipment on account of any circumstances beyond the control of the Grantee. However, the Grantee does agree to use due diligence to maintain continuous and uninterrupted service.

SECTION 23. 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 creating its own district with respect to city property or providing electric service through sources of alternative power, or 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, if necessary, received approval to provide electrical service within the City from the Commission or is approved otherwise by law, and the City has imposed the same franchise fee on the electric service provider as paid by the Grantee.

SECTION 24. In the event of an amendment to the laws, rules or regulations of the City of Ketchum, the State of Idaho, or the Public Utilities Commission of Idaho 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, sixty (60) days notice shall be required on the part of City or Grantee to reopen the agreement pursuant to this section.

SECTION 25. 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 of 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.

SECTION 26. Sale, assignment, or lease of this franchise is prohibited without the express written consent of the City, which shall not be unreasonably delayed or withheld. Said reasonableness shall be based upon the ability of the franchisee to perform the duties and obligations provided in this agreement. Upon assignment or lease, the successor shall be bound by all of the terms and conditions of the franchise.

SECTION 27. The Grantee shall assume the cost of publication of this franchise as such publication is required by law.

SECTION 28. 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 29. City of Ketchum 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.

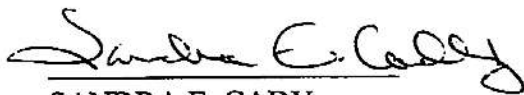
SECTION 30. Inasmuch as the Grantee has constructed and now is maintaining and operating electric utility property and facilities in and upon the streets, alleys, avenues, highways, boulevards, thoroughfares and public places in the City, it is hereby adjudged and declared that this ordinance is necessary 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 Ketchum City Council and APPROVED by the Mayor
this 7th day of January, 2002.

CITY OF KETCHUM, IDAHO

By: 
DAVID C. HUTCHINSON, Mayor

ATTEST:

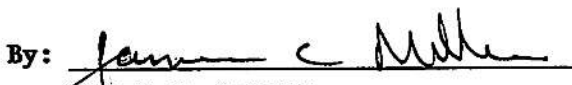

SANDRA E. CADY
City Clerk

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 20th day of JAN, 2002.


IDAHO POWER COMPANY

By: 
JAMES C. MILLER,
Senior Vice President - Delivery

CITY OF KETCHUM, IDAHO

By: 
DAVID C. HUTCHINSON, Mayor

ATTEST:


SANDRA E. CADY
City Clerk

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 _____, 2002.

Publish: Idaho Mountain Express
December 26, 2001
January 16, 2002