

ORDINANCE NO. 1246

AN ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, IN ACCORDANCE WITH IDAHO CODE 50-328, 50-329 AND 50-329A, GRANTING A FRANCHISE TO IDAHO POWER COMPANY, A 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 KETCHUM, 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 (10) 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, RESERVING POWER OF EMINENT DOMAIN; PROVIDING FOR THE PAYMENT OF FRANCHISE FEES; 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 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 right (subject to the rights of the City set forth in Section 18 hereof), privilege and franchise for a period of Ten (10) years from and after April 3, 2023, however, with the right to amend by mutual agreement in accordance with Section 19, 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 14 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. Grantee's electric property and facilities will comply with all

present and future ordinances, regulations and policies of the City providing for construction of facilities, buildings and structures utilizing green or sustainable building and construction standards, provided such ordinances, regulations and policies are not in conflict with applicable regulations and standards of the Idaho Public Utilities Commission and Idaho Power Company construction standards.

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. Relocation costs shall be as follows:

- A. Except as specified in Section 3C, 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.
- B. Except as specified in Section 3C, all overhead to underground relocation and improvements shall be the responsibility of the City, and the Grantee shall only charge for the actual costs as recorded on the Grantee's accounts ("Actual Costs"). In determining Actual Costs, the City shall receive credit for salvage and for road widening projects, for 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. 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.
- C. If either the City or a third party requests Grantee's facilities be relocated for the benefit of the third party, then the third party shall pay for all costs of the relocation. For all private development where the City requires the private developer to provide for upgrades, new services, or undergrounding of Grantee's facilities, the costs shall be borne by the private development, except that the City may require the Grantee to relocate Grantee's facilities located in the City right-of-way at the Grantee's cost where the primary driver of the relocation is to benefit public pedestrian and vehicle travel over the City right-of-way, even though the relocation may also benefit a third-party development. 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.

SECTION 4. Grantee shall be authorized to make all needful or convenient excavations and/or installations in any of the present and future public 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, transformers 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. Grantor and Grantee will enter into a Memorandum of Understanding (“MOU”) setting forth the process the parties will follow for Grantee to install new facilities within the City rights-of-way under this Agreement. The MOU will reflect Grantee’s right to install facilities within the City’s rights-of-way under this Agreement, while also recognizing the City’s right to assure that the installations comply with the standards set forth in Section 2 above. Until such time as the MOU is adopted by both the City and Grantee, Grantee agrees to comply with the provisions of the Ketchum Municipal Code for its encroachments and use of the City’s public right of way and public property, provided that such compliance will not waive any of Grantee’s rights under this Agreement.

When the Grantee, or any persons or corporation under the authority of this franchise, shall disturb any of said streets, alleys, highways or other public places for the purposes of excavation or installation of equipment, he, it, or they, shall restore the same to good order and condition as soon as practicable and without unnecessary delay. Failing to do so after five days’ notice from the City or its duly authorized officer or officers, the City may place said street, alley, highway, or public place in such a 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 application 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.

- A. In consideration of Ketchum allowing Grantee to maintain the Grantee’s facilities in the public right-of-way, Grantee agrees to indemnify and hold harmless Ketchum from and against any and all claims of liability for any injury or damage to any person or property arising from Grantee’s facilities constructed, installed and maintained in the public right-of-way, except to the extent such claims result from the negligence of the City. Grantee shall further indemnify and hold Ketchum harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Grantee’s part to be performed under this Agreement, or arising from any negligence of Grantee or Grantee’s agents, contractors or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such action or proceeding brought thereon. In the event any action or proceeding is brought against Ketchum by reason of such claim, Grantee, upon notice from Ketchum, shall defend Ketchum at Grantee’s expense. As a material part of the consideration to the City, Grantee hereby waives all claims against the City for damages to Grantee’s facilities located within the City’s public right-of-way or property under this Agreement, except to the extent such claims result from the negligence of the City.

- B. Grantee understands and agrees that by maintaining Grantee's facilities in the public right-of-way pursuant to this Agreement, Grantee obtains no claim or interest in said public right-of-way which is adverse to that of Ketchum and that Grantee obtains no exclusive right to said public right-of-way nor any other right to use the public right-of-way not specifically described herein.

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 5. Where the City has planning and zoning rules that require property owners to obtain City approval for the location and screening of Grantee's transformers and other above-ground equipment on private property within the City, Grantee and City shall confer and mutually agree upon the location of the equipment. Such equipment shall be screened from public view in a manner mutually agreeable to the City and Grantee.

SECTION 6. Grantee and City acknowledge they are currently operating under a Master Plan approved and adopted by the City pursuant to Ordinance No. 890, adopted by the City on January 7, 2002, which provides a framework for providing new services and upgrades, including working towards eliminating all overhead facilities and relocating such facilities underground and at grade. In connection with the Master Plan, in the month of April of each calendar year during the term of this agreement, the Grantee and the City of Ketchum will hold a "Pre-Construction/Review" meeting to review upcoming Idaho Power or City generated projects.

SECTION 7. The Grantee shall work in good faith to cooperate and collaborate with the City as the City works toward its clean energy and climate goals. Therefore, the City and Grantee have entered into a Joint Clean Energy and Climate Protection Cooperation Agreement.

SECTION 8. The City and Grantee shall work together to develop a management plan of existing Grantee-owned streetlights within the City of Ketchum, including but not limited to mapped locations of Grantee-owned streetlights; documentation of lumen level and dark sky compliance; citizens may petition for a light removal, shielding options, and/or light distribution patterns. Upon the City's request, Idaho Power and the City will update the streetlight management plan on an annual basis. All fees associated with Grantee's streetlight work under the master plan shall reflect the Idaho Public Utilities Commission's Schedule 41, Street Light Service, as amended.

SECTION 9. On an annual basis, the Grantee shall provide to the City a quarterly energy use summary of the residential, commercial and irrigation power consumption within the city limits; provided however, that the Grantee shall have sole discretion to aggregate the data as Grantee deems necessary to protect the confidential and proprietary nature of the information. In addition, on an annual basis, the Grantee shall provide monthly power data to the City for its owned-and-occupied facilities, and by special request as needed for analysis for City projects; provided that the data is available to Grantee in its systems in the format requested.

SECTION 10. 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 overhead or underground 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 11. The Grantee shall at all times indemnify and hold the City, its officers, employees and agents harmless from any and all expenses or liability arising from and against, or by reason of any negligent act or omission of the Grantee, its representatives or employees, in the construction, operation or maintenance of any of the Grantee's electric utility property or facilities. Grantee shall maintain its electric utility property and/or facilities free of noxious weeds and in an orderly condition as required by the Ordinances of the City. Grantee shall abate any such noxious weeds immediately upon receipt of written notice from the City.

SECTION 12. 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 Ketchum 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 §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 13. 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 14. 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 Three Percent (3%) 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 9 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.

SECTION 15. The Grantee shall keep accurate books of account for the collection of the franchise fees for a period 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 14 above.

SECTION 16. 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 17. The Grantee shall have the right and privilege, insofar as the City is able to grant the same, in accordance with American National Standards Institute (ANSI) A300, Standard Practices for Trees, Shrubs, and Other Woody Plant Maintenance, 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. Pruning shall be conducted under the supervision of an International Society of Arboriculture (ISA) certified arborist or by an ISA certified tree worker on a regular basis; provided that in some instances, the Grantee's certified arborist may not be present at the pruning site, but in all instances the pruning shall be conducted by individuals with expertise in utility vegetation management. 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. Grantee agrees to meet and consult with the City's Forester, from time to time, on matters related to tree preservation goals and vegetation management.

SECTION 18. Nothing herein shall prohibit the City from producing renewable electric energy using any technology recognized as renewable under §67-8903, Idaho Statutes for internal use by the City. In addition, the City and Grantee agree to work cooperatively to explore and possibly develop geothermal or other renewable energy resources within the City for providing power to customers within the City.

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 Idaho Public Utilities Commission, and the City has imposed the same franchise fee on the electric service provider as paid by the Grantee.

SECTION 19. 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' written notice shall be required on the part of City or Grantee to reopen the agreement pursuant to this section.

SECTION 20. 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 21. Sale, assignment or lease of this franchise is prohibited without written notification to the City.

SECTION 22. The Grantee shall assume the cost of publication of this franchise as such publication is required by law.

SECTION 23 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 24. The existing franchise agreement between the City and Grantee set forth in Ordinance 890, dated January 7, 2002, shall terminate upon the adoption and acceptance of this ordinance.

SECTION 25. Inasmuch as the Grantee has constructed and now is maintaining and operating the electric utility property and facilities in and upon the streets, alleys, highways, 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 take effect on April 3, 2023.

PASSED AND ADOPTED by the Council of the City of Ketchum on April 3, 2023.

APPROVED by the Mayor on April 3, 2023



Mayor

ATTEST:



Trent Donat
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 14th day of April, 2023.

By: 
Adam Richins
SVP & Chief Operating Officer

ATTEST:


Secretary

(Seal)