

ORDINANCE NO. 1005

AN ORDINANCE OF THE CITY OF POST FALLS, KOOTENAI COUNTY, IDAHO, GRANTING TO KOOTENAI ELECTRIC COOPERATIVE A FRANCHISE TO LOCATE, CONSTRUCT, OPERATE AND MAINTAIN ELECTRIC FACILITIES AND APPURTENANCES WITHIN PUBLIC RIGHTS OF WAY IN THE CITY OF POST FALLS; PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE; PROVIDING FOR A FRANCHISE FEE; AND PROVIDING AN EFFECTIVE DATE THEREOF

WHEREAS, Kootenai Electric Cooperative, Inc., a corporation organized under the laws of the state of Idaho (hereinafter referred to as "Grantee"), desires to locate, construct, operate and maintain poles, wires, underground cables and appurtenances over, under, along and across all of public rights of way in the city of Post Falls, Idaho; and

WHEREAS, the city of Post Falls (hereinafter referred to as "Grantor") duly fixed the time and place for hearing said Franchise and due and timely notice of said hearing on such franchise was given pursuant to statute, and hearing on said Franchise having been held as prescribed by law, and the Grantor having been fully advised in the premises and having determined that it is in the public interest to grant such Franchise in the manner herein set forth; and

WHEREAS, Grantee is engaged in the business of providing utility services to customers consistent with applicable laws and regulations, and Grantor has determined it is in the interest of persons and businesses in this jurisdiction to have access to Grantee's services;

NOW, THEREFORE, BE IT ORDAINED by the mayor and city council of the city of Post Falls that Kootenai Electric Cooperative, Inc., its successors and assigns, is hereby granted a Franchise for the purposes identified below and subject to the following terms and conditions:

I. GRANT

Grantor hereby grants to Grantee, its successors and assigns, the right, power, privilege and authority to enter upon all roads, rights of way, streets, or alleys lying within the boundaries of Grantor and owned or maintained by Grantor, to locate, construct, operate and maintain poles, wires, underground cables and all necessary or desirable appurtenances for the purpose of transmitting and distributing electricity. This Franchise shall allow for the placement of such facilities as may be necessary to provide service within the City and surrounding areas.

II. TERM

The rights, privileges and franchise hereby granted to, and conferred upon the Grantee shall, unless this Franchise be sooner terminated as herein provided, extend for a term of 25 years from the date of written acceptance hereof by the Grantee.

III. TRIMMING/REMOVAL OF TREES

The right of Grantee to maintain its lines, facilities and appurtenances shall include the right, as exercised in Grantee's sole discretion, to utilize an integrated vegetation management system, including the right to cut, trim or remove any and all trees, brush or shrubs growing in, on, or hanging over any City roads, rights of way, streets, alleys or City property that interfere with or may interfere with Grantee's facilities, including wires, poles, conduits or other apparatus of Grantee, its successors and assigns. All work performed by Grantee under this section relating to vegetation shall be done under the direction of a certified arborist.

IV. RIGHT OF EXCAVATION

For the purpose of carrying into effect the privileges granted hereunder, Grantee is authorized at any time to make all necessary excavations in the streets, alleys, roads, rights of way and public grounds within the franchised area, but such excavation shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the rights of the public as may be feasible. Prior to any such excavation Grantee shall obtain a permit from the City in order for the City to be aware of the time and location of the excavation. Grantor reserves the right to require that the Grantee bore under the road rather than cut the road when the Grantor determines that it is in the best interest of the City. Grantee shall install barricades and provide any necessary flaggers during excavation in order protect the safety of the public as determined by the Grantee or as required by any federal, state or local laws or regulations. Grantee shall restore all streets, alleys, roads, rights of way and public grounds to a standard as good or better than prior to the excavation or to such other condition agreed upon by the parties for conditions of safety and use after excavation. In case any obstruction caused by Grantee shall remain longer than seven (7) days after notice to remove it, or in case of neglect by Grantee to safeguard any dangerous places, Grantor may remove such obstruction or safeguard such dangerous places at the expense of the Grantee.

V. NON-INTERFERENCE WITH EXISTING FACILITIES

All construction, installation, repair or relocation of lines and appurtenances performed by Grantee along or under the roads, rights of way or properties subject to this Franchise shall be done in such a manner as not to interfere with the construction and maintenance of other utilities, public or private, drains, drainage ditches and structures, irrigation ditches and structures located therein, nor with the grading or improvement of such roads or other public rights of way subject to this Franchise.

VI. NECESSARY CONSTRUCTION/MAINTENANCE BY GRANTOR

The laying, construction, operation and maintenance of Grantee's lines and appurtenances authorized by this Franchise shall not preclude the Grantor, its agents or its contractors, from blasting, grading, excavating, or doing other necessary road work contiguous to the said lines and facilities of Grantee, provided that Grantee shall be given not less than five (5) days' notice of said blasting or other work, and provided further that the Grantor, its agents and contractors shall be liable for any damages, including any consequential damages to third parties, caused by said work to any installations belonging to Grantee.

VII. CONDUCT OF GRANTEE'S BUSINESS

The Grantor shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of the Grantee's business as allowed by law. Service shall be supplied to the Grantor and its inhabitants in accordance with the Grantee's rules and regulations as approved by Grantee's Board of Directors and the system within the Grantor's right-of-way shall be constructed in conformance with the National Electrical Safety Code and/or any other applicable national codes.

VIII. VACATION OF PROPERTIES BY GRANTOR

If, at any time, the Grantor shall vacate any road or other public right of way which is subject to rights granted by this Franchise, in accordance with Idaho Code 50-311, to the extent permitted by law, such vacation shall be subject to the reservation of a perpetual easement in favor of Grantee for the purpose of operating and maintaining overhead and underground electric transmission and distribution lines and installations.

IX. RELOCATION OF FACILITIES

Grantor shall notify Grantee of any intended or expected requirement or request to relocate Grantee's facilities. Grantor will make an effort to provide such notice 90 days prior to such relocation, but in any case such notice will be given as soon as practicable. Grantor shall endeavor to cause any such relocation to be consistent with any applicable long term development plan or projection of Grantor or approved by Grantor. If, at any time, the Grantor shall cause or require the alteration or the improvement (the "Improvement") of any road, highway or right-of-way wherein Grantee maintains facilities subject to this franchise by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same or by constructing drainage or sanitary sewer facilities, the Grantee upon written notice from the Grantor shall, with all convenient speed, change the location or readjust the elevation of its system and other facilities so that the same shall not interfere with such work and so that such equipment and facilities shall conform to such new grades or routes as may be established. The relocation of Grantee's facilities shall be at the sole expense of Grantee. In the event the required move forces Grantee off public right-of-way, Grantor will provide for proper easement or right-of-way to accommodate said relocation.

X. PRESERVATION OF GRANTOR'S RIGHTS TO CONTROL

The Grantor, in granting this Franchise, does not waive any rights which it may now have or may hereafter acquire with respect to road rights of way or other rights of way of Grantor under this Franchise, and this Franchise shall not be construed to deprive the Grantor of any such powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the Grantor's roads, rights of way and other public property covered by this Franchise.

XI. EMERGENCY REMOVAL BY GRANTOR

The Grantor reserves the right to remove any such wires, poles, or apparatus ("Grantee's facilities") herein provided for in case of general conflagration or in other cases of extreme emergency where there is neither the time nor the opportunity for Grantee to perform such work. Grantor shall use reasonable care in the exercise of such emergency powers. Grantor shall indemnify and hold harmless the Grantee, its successors and assigns, against any and all property damage, personal injury, death, or other liability to third parties sustained as a result of the negligent exercise of such reserved emergency powers, and shall, at its expense, restore Grantee's facilities removed as a result of such exercise.

XII. NON-EXCLUSIVE FRANCHISE

This Franchise shall not be deemed to be an exclusive Franchise. It shall in no manner prohibit the Grantor from granting other franchises of a like nature or franchises to other public or private utilities under, along, across, over and upon any of Grantor's roads or other public rights of way of Grantor subject to this Franchise and shall in no way prevent or prohibit the Grantor from constructing, altering, maintaining or using any of said roads, rights of way, drainage structures or facilities, irrigation structures or facilities, or any other property of Grantor or affect its jurisdiction over such property to make all necessary changes, relocations, repairs, maintenance, etc., insofar as the Grantor may deem fit. In the event that Grantor grants other franchises to public or private utilities similarly situated which are less restrictive, Grantee shall have the right to have this Franchise be amended to contain consistent terms.

XIII. FORFEITURE

If Grantee shall willfully violate or fail to comply with any of the provisions of this Franchise through willful and unreasonable neglect or willful and unreasonable failure to heed or comply with any notice given Grantee under the provisions of this grant, then Grantee shall forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Grantor; provided, however, the Grantor shall give ninety (90) days written notice of its intention to revoke or annul the Franchise during which period Grantee shall have the opportunity to remedy any breach.

XIV. EXPANSION OF GRANTEE'S FACILITIES

Any facilities and appurtenances in streets, alleys, rights of way and public places, incidental to the franchise system, that have been, or are at any future time acquired, leased, or utilized in any manner by Grantee are thereupon to be deemed authorized by and shall be subject to all provisions of this Franchise.

XV. CHANGE OF BOUNDARIES OF GRANTOR

Any subsequent additions or modifications of the boundaries of the Grantor, whether by annexation, consolidation or otherwise, shall be subject to the provisions of this Franchise as to all such areas. Grantor shall notify Grantee of the precise scope of any change of boundaries as soon as possible after such change becoming effective.

XVI. PRIOR FRANCHISES SUPERSEDED

This Franchise shall update and supersede all prior franchises heretofore granted to Kootenai Electric Cooperative, Inc. or its predecessors, by Grantor, or its predecessors, and shall affirm, authorize and ratify all prior installations authorized by permits or other action not previously covered by this Franchise.

XVII. ASSIGNMENT OF FRANCHISE

Grantee, its successors and assigns, shall have the right to sell, transfer or assign this Franchise. All provisions, conditions, regulations and requirements herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

XVIII. EFFECT OF INVALIDITY

The Franchise is granted pursuant to the laws of the state of Grantor relating to the granting of such rights and privileges by Grantor. If any article, section, sentence, clause, or phrase of this Franchise is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the Franchise or any of the remaining portions. The invalidity of any portion of this Franchise shall not abate, reduce, or otherwise affect any obligation required of Grantee.

XIX. FRANCHISE AS CONTRACT

This Franchise shall have the effect of and shall be a contract between Grantor and Grantee and shall be the measure of the rights and liabilities of the Grantor as well as of Grantee.

XX. EQUALITY OF FRANCHISE FEES AND COSTS

In the event that Grantor charges or imposes upon Grantee any fees, taxes or other costs in connection with the issuance, maintenance, existence, continuation, or use of the franchise, or the public rights-of-way governed hereby, granted pursuant to this document, then Grantor shall impose equivalent charges, fees, taxes or costs upon any other franchisee in the same business or competing with Grantee.

XXI. INDEMNITY

Grantee agrees to defend, indemnify and hold harmless the Grantor, its appointed and elected officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorneys fees, that the Grantor may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the construction, installation, maintenance, condition or operation of the Grantee's equipment or facilities, or appurtenances thereto, connected with this franchise, that now or may hereafter be upon, under, over, in, across or along, the highways, roads, alleys, bridges or other public ways or places of the Grantor; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of the Grantor.

Grantor agrees, to the extent allowed by law, to defend, indemnify and hold harmless the Grantee, its officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorneys fees, that the Grantee may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of the Grantor, its officers, employees or agents; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of the Grantee.

XXII. FRANCHISE FEES

For and in consideration of the rights and privileges set forth herein, Grantee, as consideration therefore, in lieu of other City fees and as compensation for the use herein granted streets, alleys and other public ways, shall pay to the Grantor a sum equal to 1% of its gross operating revenues which are hereby defined to mean all amounts of money which the Grantee

billed for the sale, transmission and/or distribution, less uncollectables, of electrical power within the City. Grantee shall pay the Grantor, quarterly, a sum equal to 1% of its previous quarter's gross operating revenues. The Grantor shall have the option to adjust fees annually according to applicable laws and consistent with the procedures applicable thereto. If Grantee fails to pay the franchise fee to the City within thirty (30) days of the end of each calendar quarter, Grantee shall pay a penalty in the amount of five percent (5%) of the amount due.

XXIII. ACCEPTANCE OF FRANCHISE

Grantee shall notify Grantor in writing of its acceptance of this Franchise within thirty (30) days of the approval of this Franchise by Grantor.

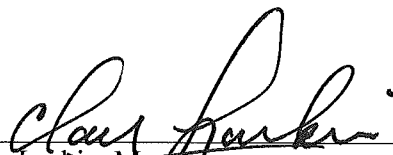
XXIV. EFFECTIVE DATE

This Ordinance shall become effective the date of the written acceptance of this Franchise by the Grantee, upon publication in one (1) issue a newspaper of general publication within the city of Post Falls and the official newspaper thereof.

Enacted by the city council as an ordinance of the city of Post Falls on the 16 day of July, 2002.

APPROVED by the Mayor on this 26 day of July, 2002.

City of Post Falls


Clay Larkin, Mayor

ATTEST:


Christene Pappas, City Clerk

