

APPENDIX 4

**FRANCHISE AGREEMENT BETWEEN TOWN OF INDEPENDENCE
AND HEBER LIGHT & POWER**

ORDINANCE NO. 2010-12
AN ORDINANCE GRANTING TO HEBER LIGHT & POWER,
ITS SUCCESSORS AND ASSIGNS, AN
ELECTRIC LIGHT, HEAT, AND POWER FRANCHISE.

THE LEGISLATIVE BODY OF TOWN OF INDEPENDENCE ORDAINS AS FOLLOWS:

SECTION 1
FINDINGS AND INTENT

The Findings and Intent of this Ordinance are:

1. For more than 100 years, Heber Light & Power Company ("HL&P") has provided electrical service to the Heber Valley including areas in and near the Town of Independence ("Town").
2. The Town desires to grant a Franchise to Heber Light & Power: (a) to allow it to maintain and install facilities in the Town's public streets and rights-of-way; (b) to provide electric service to the portions of the Town identified on Exhibit A (attached hereto), and (c) to comply with Utah Code Annot. § 11-13-204(7).
3. The Town and HL&P intend this Franchise to preserve for the Town the opportunity to economically create its own public electric power system, if it should so desire in the future.

SECTION 2
FRANCHISE GRANTED

A nonexclusive Franchise for electrical light, heat, and power is granted to Heber Light & Power, a Utah interlocal entity, its successors and assigns, to construct, install, operate and maintain electrical facilities over, across, and under the present and future streets, alleys, and public ways of the Town (collectively "Public Ways"), including facilities to interconnect with the HL&P's generation facilities and other like facilities, for the purpose of furnishing, supplying, transmitting, and distributing electricity to the Town and its inhabitants within those areas identified on Exhibit A, a metes and bounds description, and Exhibit B, an aerial photograph for illustration purposes only, upon such terms, conditions, restrictions, and regulations as are contained in this Ordinance. This Franchise does not relieve HL&P of the obligation to comply with Town code provisions and regulations, including but not limited to the requirements to obtain conditional use permits and building permits. This Ordinance and the Franchise are hereinafter collectively referred to as the "Franchise."

In the event of an annexation of additional area into the Town, the area included within the HL&P Franchise shall be expanded to include such areas and HL&P shall provide the Town with amended Exhibits A and B.

SECTION 3
TERM & RENEWAL

The Franchise is granted for a term of commencing with the date on which this Ordinance becomes effective and shall end five (5) years thereafter, unless extended as provided below.

On the anniversary of the Effective Date and each year thereafter, the Franchise will automatically be extended for an additional five (5) year term and will continue to be annually extended for subsequent five (5) year periods unless either the Town or HL&P gives written notice to the other, at least one hundred twenty (120) days prior to the annual extension, that the party giving notice objects to an automatic renewal or extension. Upon such notice, the Town and the HL&P shall agree to either extend the period of this Franchise for a mutually acceptable period of time, enter into negotiations to effect the formation and operation of the Town of Independence Power Company or upon the unilateral determination of the Town, the Franchise shall be terminated. During negotiations HL&P shall have the continued right to use the Public Ways of the Town as set forth herein and HL&P will continue to provide, at the prevailing rates, temporary service to the Town and the public and will not remove any of its facilities used to provide such service until receiving approval by the Town.

SECTION 4
RECORDS ACCESS

The Town shall have reasonable access during normal business hours to inspect, audit or make copies of all books, records and other information related to HL&P's operations and business at the Town's own expense; provided, however, that the Town must preserve the confidentiality of such information.

SECTION 5
EQUAL TREATMENT

In providing service under this Franchise, HL&P shall comply with the following to ensure equal treatment of customers living outside of HL&P's members' municipal boundaries to those within:

- a. the rates and conditions of service for customers outside the municipal boundaries of the municipal members of HL&P shall be at least as favorable as the rates and conditions of service for similarly situated customers within the municipal boundaries of the municipal members;
- b. a general rebate, refund or other payment made to customers located within the municipal boundaries of the municipal members shall also be provided to customers located outside the municipal boundaries of the members;
- c. a schedule of rates and conditions of service, or any change to the rates

and conditions of service, shall be approved by the governing body of HL&P;

- d. prior to implementation of any rate increase, the governing body of HL&P shall first hold a public meeting to take public comment on the proposed increase, after providing at least twenty days and not more than sixty days advance notice published in a newspaper of general circulation within the Town, and to its customers on the ordinary billing and on the Utah Public Notice Website, created by Section 63F-1-701,
- e. HL&P shall operate as a single entity providing service both inside and outside of the municipal boundaries of its members;
- f. and HL&P shall file with the Public Service Commission its current schedule of rates and conditions of service.

SECTION 6 OMBUDSMAN

a. The Town and HL&P shall appoint an ombudsman to resolve individual customer complaints that concern any term contained in Section 5 above and that is not resolved by HL&P's internal dispute resolution procedure as provided in Section 6. c. below. The ombudsman shall be an individual with knowledge, skill, experience, training, or education in the retail electric industry. If the Town and HL&P are unable to appoint an ombudsman, the appointment will be made as provided in the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association.

b. Subject to Section 6.c., the ombudsman shall have power to review, investigate, mediate and arbitrate the customer complaint. The ombudsman shall then make written recommendations to the Town, the governing body of HL&P or its General Manager and to the complaining customer. If the recommendations are rejected by either HL&P or the complaining customer, or if mediation otherwise fails to resolve the dispute, the ombudsman will arbitrate the dispute following the procedures of the Utah Uniform Arbitration Act. Any decision issued by the ombudsman may be confirmed under Utah Code Section 78B-11-123. The ombudsman may not award any attorneys' fees. However, if judicial enforcement becomes necessary, attorneys' fees may be awarded to the prevailing party by the court. HL&P shall pay the ombudsman's fees and expenses. HL&P and the complaining customer shall cooperate with, provide information to, and allow inspections, tests, and audits reasonably requested by the ombudsman in furtherance of his or her duties. The ombudsman shall have the same rights of access to HL&P records as those granted to the Town in Section 4, above.

c. Before the ombudsman may review, investigate, mediate or arbitrate a customer complaint, the customer must give HL&P, through any internal dispute resolution procedure adopted by the HL&P Board, thirty (30) days to resolve the complaint to the customer's satisfaction.

SECTION 7 INDEMNIFICATION

The Town shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by HL&P of its electrical facilities. HL&P shall indemnify, defend and hold the Town harmless from and against such claims, demands, liens and all liability or damage on account of HL&P's use of the Public Ways within the Town, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The Town shall: (a) within forty-five days give written notice to HL&P of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and (b) permit HL&P to assume the defense of such claim, demand, or lien. If HL&P is prejudiced by the Town's failure to give timely notice of a claim and the opportunity to defend, HL&P shall not be required to indemnify the Town from the claim. If HL&P fails, after notice and opportunity, to assume such defense, HL&P shall be subject to liability for any settlement made. If any claim is settled by the Town, without giving HL&P notice and opportunity to assume such defense, HL&P shall not be liable for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, HL&P shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any tortious act or omission of the Town.

SECTION 8 SUCCESSORS AND ASSIGNS

This Franchise shall apply to HL&P and its Town-approved successors in interest and assigns, subject to the Town's approval which approval shall not be unreasonably withheld. HL&P shall be subject to all legal right, power and authority now or later possessed by the Town to control and direct by ordinance or resolution the Franchise and the manner in which HL&P shall use and enjoy it.

SECTION 9 FEES

Upon the request of the Town, HL&P shall collect on behalf of the Town any fee that the Town is allowed to impose on HL&P customers for the purchase or use of electricity.

SECTION 10 APPLICABLE LAW

The Franchise is granted pursuant to the laws of Utah.

SECTION 11 CUSTOMER'S EXISTING RIGHTS

This Franchise is not intended nor should it be interpreted as limiting the rights of HL&P's customers under its policies or applicable law.

SECTION 12 ACCEPTANCE AND EFFECTIVE DATE

This Franchise shall be effective upon HL&P's acceptance of the Franchise within ten (10) days of its adoption.

By accepting this Franchise, HL&P agrees to provide electric service within the areas of the Town identified in Exhibit A during the term of the Franchise, in a manner consistent with this Franchise and HL&P's policies, as the policies may be changed from time-to-time.

SECTION 13 REMEDIES

If HL&P fails to perform any term of this Agreement, the Town may give HL&P written notice to cure ("Notice to Cure"). The Notice to Cure shall specify the nature of the alleged failure to perform and the manner in which said failure may be cured.

HL&P shall have 30 days following receipt of the Notice to Cure to correct the failure to perform. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period.

If HL&P does not timely cure the failure to perform, it shall be in default. In the event of HL&P's default, the Town may terminate the Franchise by giving HL&P written notice of the termination ("Notice of Termination") of the Franchise. The Franchise shall automatically terminate 120 days after HL&P's receipt of the Notice of Termination.

If HL&P cures within the time period provided in this Section 13 or if the Town does not give a Notice of Termination within 120 days of the delivery of the Notice to Cure, then no default shall exist and the Town may take no further action without submitting a new Notice to Cure and complying with the other requirements of this Section 13.

SECTION 14 REASONABLE ACCOMMODATION OF OTHER ELECTRICAL SERVICE PROVIDERS

In order to reduce, as much as possible, the duplication of electrical infrastructure within the Town, HL&P will reasonably accommodate the Town or its designee, Rocky Mountain Power or any other electrical service providers' use of HL&P's electrical infrastructure where necessary or convenient to the other electrical service provider. This provision is intended to protect the Town from the installation of unnecessary and unsightly transmission lines, and it is not intended to create a third-party beneficiary to this Franchise.

In any event, HL&P shall not place infrastructure in any location where similar infrastructure is already located without written approval by the Town, which approval shall not be unreasonably withheld. This section shall not be construed to give HL&P, any authority to provide service outside the service area authorized herein.

SECTION 15 OTHER FRANCHISES

Should other electric companies request franchises to construct, install or maintain electrical facilities in the Town's streets, alleys and public grounds, the Town agrees that such franchises shall not include terms or conditions applicable to such other electric companies that are more favorable than those contained in this franchise. This Section 15 shall not apply to Sections 4, 5, and 6 of this Franchise.

SECTION 16 TOWN REGULATORY AUTHORITY

In addition to the provision herein contained, the Town reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the laws of Utah or Town Ordinance.

SECTION 17 CAPITAL FACILITIES PLAN

HL&P shall meet not less than annually with representatives of the Town to discuss HLP's capital facilities plan ("Plan") for projected Capital Facilities in the Public Ways. Upon approval by the HL&P Board, HL&P shall provide the Town with a copy of the approved Plan and shall not construct Capital Facilities in the Public Ways that are not part of the approved Plan, without the Town's consent. If HL&P anticipates modifying the Plan for Capital Facilities in the Public Ways, HL&P shall meet with representatives of the Town to discuss the proposed modifications. Upon approval of the Plan modification by the HL&P Board, HL&P shall provide the Town with a copy of the approved Plan as modified and shall not construct Capital Facilities in the Public Ways that are not part of the approved Plan. For the purposes of this Section 17, Capital Facilities means construction or replacement of Electrical Facilities in the Public Ways, other than routine operation and maintenance. If the Town serves a notice of termination under Section 3 before HL&P begins construction or installation of the Capital Facilities, HL&P shall not construct or install such Capital Facilities, unless such construction or installation is required to insure continued service or the safety of the public or HL&P's employees during the Franchise term.

SECTION 18. PLAN, DESIGN, CONSTRUCTION AND INSTALLATION OF COMPANY FACILITIES

All Electrical Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and Town laws, codes and regulations.

Except in the case of an emergency, HL&P shall, prior to commencing new construction or major reconstruction or excavation work in the public way or street or other public places, apply for applicable permit(s) from the Town which permit(s), if provided for, shall not be unreasonably withheld, conditioned, or delayed. HL&P will abide by all applicable ordinances and all lawful rules, regulations and requirements of the Town, and the Town may inspect the manner of such work and require remedies as may be reasonably

necessary to assure compliance. Notwithstanding the foregoing HL&P shall not be obligated to obtain a permit to perform emergency repairs, but shall notify the Town of such repairs as soon as practicable.

If, during the course of work on its Electrical Facilities, HL&P causes damage to or alters the Public Way or public property, HL&P shall (at its own cost and expense and in a manner reasonably approved by the Town) replace and restore it in as good a condition as existed before the work commenced.

The Town shall have the right without cost to use all poles, trenches and suitable overhead structures owned by HL&P within Public Ways for Town wires used in connection with its fire alarms, police signal systems, or other public safety communication/telecommunication lines as well as decorative or informational Town banners used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the Town for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that HL&P shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection with the installation or use of said poles, and the use of said poles and structures by the Town shall be in such a manner as to prevent safety hazards or interferences with HL&P's use of same. Nothing herein shall be construed to require HL&P to increase pole size, or alter the manner in which HL&P attaches its equipment to poles, or alter the manner in which it operates and maintains its Electrical Facilities. Town attachments shall be installed and maintained in accordance with the reasonable requirements of HL&P and the current edition of the National Electrical Safety Code pertaining to such construction. Further, Town attachments shall be attached or installed only after written approval by HL&P in conjunction with HL&P's standard pole attachment application process, which process shall be timely and reasonable. HL&P shall have the right to inspect, at its own expense, such attachments to ensure compliance with this Section and to require the Town to remedy any defective attachments

Subject to Section 17 and upon obtaining any required permits, HL&P shall have the right to excavate the Public Rights of Ways subject to lawful conditions and requirements of the Town. Before installing new underground conduits or replacing existing underground conduits, HL&P shall as early as is practical notify the Town of such work by written notice and shall allow the Town, at its own expense to share the trench of HL&P to lay its own conduit therein, provided that such action by the Town will not unreasonably interfere with HL&P's Electrical Facilities or delay project completion.

Before commencing any street improvements or other work within a Public Way that may affect HL&P's Electrical Facilities, or may provide low cost opportunities for HL&P to upgrade or maintain its Electrical Facilities, the Town shall make reasonable efforts to notify HL&P.

SECTION 19 RELOCATION OF ELECTRICAL FACILITIES

The Town reserves the right to require HL&P to relocate its Electrical Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no

cost to the Town. Within a reasonable period of time after written notice, HL&P shall promptly commence and complete the relocation of its Electrical Facilities. For the purposes of this Section 19, a "reasonable period of time" shall mean ninety days (90) provided that HL&P may extend the time period upon consent of the Town, which consent shall not be unreasonably withheld.

Before requiring a relocation of Electrical Facilities, the Town shall identify, with the assistance and consent of HL&P, a reasonable alignment for the relocated Electrical Facilities within the Public Ways of the Town. The Town shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work once HL&P has restored the Public Ways.

As provided in its rules and regulations and to the extent reasonably practical, HL&P shall relocate Electrical Facilities in the Public Ways to the extent the Town makes relocation a requirement or condition of a private development. If the removal or relocation of Electrical Facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, HL&P may charge the expense of removal or relocation to the developer or customer. For example, HL&P shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition of or caused by a private development.

SECTION 20

In the event this Franchise is terminated and the Town forms its own public power utility, HL&P shall be reimbursed that portion of its actual cost for such infrastructure requested to be purchased by the Town, that HL&P has actually installed within the Town, to the extent that it has not been reimbursed from another source. HL&P will not, without the prior written consent of the Town, design or construct significant infrastructure (i.e. transmission lines, transformers, substations, etc.) for use within the Town to serve customers outside of the Town. In the event the parties agree that HL&P should install infrastructure within the Town that serves HL&P customers outside of the Town, the parties will enter into an infrastructure sharing agreement that identifies the costs to Independence, should the Town form its own public power utility.

Passed by the Town Council of Town of Independence, Utah this ___ day of __, 2010.

Signed:

Bill Duke, Mayor Pro Tem