



**ORDINANCE 1007**

**AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE  
AND GENERAL UTILITY EASEMENT TO FALL RIVER RURAL  
ELECTRIC COOPERATIVE, INC.**

**WHEREAS**, Fall River Rural Electric Cooperative, Inc., an Idaho corporation, ("Fall River Rural Electric"), is providing electric power and energy to the citizens of the City of Rexburg, Idaho (the "City") and other surrounding areas;

**WHEREAS**, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City;

**WHEREAS**, the City desires to set forth the terms and conditions by which Fall River Rural Electric shall use the public ways of the City;

BE IT ORDAINED BY the City of Rexburg, Idaho:

**SECTION I: Grant of Franchise and General Utility Easement.** The City hereby grants to Fall River Rural Electric the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as "Electric Facilities") in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as "Public Ways") within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof.

**SECTION II: Term.** The term of this Franchise and General Utility Easement is for thirty-five (35) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

**SECTION III: Acceptance by Company.** Within sixty (60) days after the passage of this ordinance by the City, Fall River Rural Electric shall file an unqualified written acceptance thereof, with the City Clerk, otherwise the ordinance and the rights granted herein shall be null and void.

**SECTION IV: Non-Exclusive Franchise.** The right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides water or sewer service to City residences; provided, however, that such use shall not unreasonably interfere with Fall River Rural Electric's Electric Facilities or Fall River Rural Electric's rights granted herein.

**SECTION V: City Regulatory Authority.** In addition to the provision herein contained, the City 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 Idaho, the laws of Idaho or City Ordinances.

**SECTION VI: Indemnification.** The City 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 Fall River Rural Electric of its Electric Facilities. Fall River Rural Electric shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of Fall River Rural Electric's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt

written notice to Fall River Rural Electric of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and Fall River Rural Electric with respect to such claim, demand or lien, permit Fall River Rural Electric to assume the defense of such claim, demand, or lien with counsel satisfactory to City. If such defense is not assumed by Fall River Rural Electric, Fall River Rural Electric shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, Fall River Rural Electric shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

**SECTION VII: Annexation.**

7.1 **Extension of City Limits.** Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by Fall River Rural Electric located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

7.2 **Notice of Annexation.** When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to the Grantee: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

Fall River Rural Electric  
1150 N 3400 E  
Ashton, Idaho 83420

**SECTION VIII: Plan, Design, Construction and Installation of Company Facilities.**

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

8.2 Except in the case of an emergency, Fall River Rural Electric shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from the City which permit shall not be unreasonably withheld, conditioned, or delayed. Fall River Rural Electric will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, Fall River Rural Electric shall not be obligated to obtain a permit to perform emergency repairs.

8.3 All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

8.4 If, during the course of work on its Electrical Facilities, Fall River Rural Electric causes damage to or alters the Public Way or public property, Fall River Rural Electric shall (at its own cost and expense and in a manner approved by the City) replace and restore it in as good a condition as existed before the work commenced.

8.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, Fall River Rural Electric shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.

8.6 The City shall have the right without cost to use all poles and suitable overhead structures owned by Fall River Rural Electric within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that Fall River Rural Electric shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences

with Fall River Rural Electric's use of same. Nothing herein shall be construed to require Fall River Rural Electric to increase pole size, or alter the manner in which Fall River Rural Electric attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of Fall River Rural Electric and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by Fall River Rural Electric.

8.7 Fall River Rural Electric shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, Fall River Rural Electric shall first notify the City of such work and shall allow the City, at its own expense, to share the trench of Fall River Rural Electric to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with Fall River Rural Electric's Electric Facilities or delay project completion.

8.8 Before commencing any street improvements or other work within a Public Way that may affect Fall River Rural Electric's Electric Facilities, the City shall give written notice to Fall River Rural Electric local operations manager at:

Fall River Rural Electric  
1150 N 3400 E  
Ashton, Idaho 83420

**SECTION IX: Relocations of Electric Facilities.**

9.1 The City reserves the right to require Fall River Rural Electric to relocate its Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Within a reasonable period of time after written notice, Fall River Rural Electric shall promptly commence the relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of Fall River Rural Electric, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. The City shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work and shall support the efforts of Fall River Rural Electric to obtain reimbursement.

9.2 Fall River Rural Electric shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, Grantee may charge the expense of removal or relocation to the developer or customer. For example, Fall River Rural Electric shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition or caused by a private development.

**SECTION X: Subdivision Plat Notification.** Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval and a copy of the plat to Fall River Rural Electric:

Fall River Rural Electric  
1150 N 3400 E  
Ashton, Idaho 83420

**SECTION XI: Trees and Trimming.** Fall River Rural Electric or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways to prevent the branches or limbs or other part of such trees or vegetation from interfering with Fall River Rural Electric's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent Fall River Rural Electric, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

**SECTION XI: Compensation.**

12.1 In consideration of the rights, privileges, and franchise hereby granted, Fall River Rural Electric shall pay to the City from and after the effective date of the acceptance of this franchise, three percent (3 %) of its gross revenues derived from within the corporate limits of City. The term "gross revenue" as used herein shall be construed to mean any revenue of Fall River Rural Electric derived from the sale and use of electric power and energy within the municipal boundaries of the City after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount as may then be allowed by state law. The City shall provide Fall River Rural Electric with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective sixty (60) days after City has provided such written notice to Fall River Rural Electric.

12.2 The franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from Grantee with respect to Grantee's electric business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting there from the amount of said franchise fee paid hereunder.

**SECTION XII: Renewal.** At least 120 days prior to the expiration of this Franchise, Fall River Rural Electric and the City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. Fall River Rural Electric shall have the continued right to use the Public Ways of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

**SECTION XIV: No Waiver.** Neither the City nor Fall River Rural Electric shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

**SECTION XV: Transfer of Franchise.** Fall River Rural Electric shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of Fall River Rural Electric's mortgage(s) shall not constitute a transfer or assignment.

**SECTION XVI: Amendment.** At any time during the term of this Franchise, the City through its City Council, or Fall River Rural Electric may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and Fall River Rural Electric and formally adopted as an ordinance amendment.

**SECTION XVII: Non-Contestability--Breach of Contract.**

17.1 Neither the City nor Fall River Rural Electric will take any action for the purpose of securing modification of this Franchise before any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise.

17.2 In the event Fall River Rural Electric or the City fails to fulfill any of their respective obligations under this Franchise, the City, or Fall River Rural Electric, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

**SECTION XVIII: Notices.** Unless otherwise specified herein, all notices from Fall River Rural Electric to the City pursuant to or concerning this Franchise shall be delivered to the City Clerk's Office. Unless otherwise specified herein, all notices from the City to Fall River Rural Electric pursuant to or concerning this Franchise shall be delivered to:

Executive Vice President

Fall River Rural Electric  
1150 N 3400 E  
Ashton, Idaho 83420

and such other office as Fall River Rural Electric may advise the City of by written notice.

**SECTION XIX: Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

**SECTION XX: Effective date.** This ordinance shall become effective as soon as it shall be published or posted as required by law, deposited and recorded in the office of the City Clerk, and accepted as required herein.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR THIS 7<sup>TH</sup> day of May, 2008.

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Shawn Larsen, Mayor

ATTEST:

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Blair D. Kay, City Clerk

STATE OF IDAHO)  
  )ss.  
County of Madison )

I, BLAIR D. KAY, City Clerk of the City of Rexburg, Idaho, do hereby certify: That the above and foregoing is a full, true and correct copy of the ordinance entitled:

**AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.**

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this 7<sup>th</sup> day of May, 2008

APPROVED by the Board of Directors of Fall River Rural Electric Cooperative, Inc. and attested to hereby, this 28<sup>th</sup> day of April, 2008.

(SEAL)

\_\_\_\_\_  
Blair D. Kay, City Clerk

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Boyd Bowles, Board President

ATTEST:

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Chris Ricks, Secretary