

**ORDINANCE NO. 2020-\_\_**

**AN ORDINANCE APPROVING A FRANCHISE AGREEMENT  
BETWEEN THE TOWN OF CASTLE ROCK, COLORADO,  
AND INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION**

**WHEREAS**, the Town of Castle Rock, Colorado (“Town”), is authorized to grant or renew franchises to construct, reconstruct, operate, and maintain electric systems, using public rights of way and properties within Town boundaries; and

**WHEREAS**, Intermountain Rural Electric Association, (“IREA”) has constructed and desires to continue to operate and maintain an electrical system within Town, and wishes to renew its Franchise Agreement with the Town; and

**WHEREAS**, the Town has a legitimate and necessary role in ensuring the availability of electrical services within in its jurisdiction, in accordance with applicable law and the provisions thereof; and

**WHEREAS**, Town Council desires to grant to IREA, and IREA desires to accept, the terms and conditions set forth herein for the use of Town-owned rights of way and easements, and rights of way and easements dedicated and accepted for public use, in installing and operating a electric system in Town; and

**WHEREAS**, the public has had adequate notice and opportunity to comment on IREA’s proposal to continue to provide electric service in Town; and

**WHEREAS**, Town Council has determined it is in the best interest of the Town and the community to grant a Franchise to the IREA for the term provided in the agreement; and

**NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO, AS FOLLOWS:**

**Section 1. Approval.** Town Council hereby approves the Franchise Agreement between the Town of Castle Rock, Colorado, and Intermountain Rural Electric Association, in the form as attached as *Exhibit 1*. The Mayor and other proper Town officials are hereby authorized to execute the Agreement by and on behalf of the Town.

**Section 2. Implementation.** Town officials are hereby authorized to take such action as appropriate to implement the Franchise Agreement.

**Section 3. Preemption and Severability.** If any part of this ordinance shall, for any reason, be found by a court of law invalid or in conflict with state or federal law, such final judgment shall not affect the remaining provisions of this ordinance.

**Section 4. Safety Clause.** The Town Council finds and declares that this ordinance is promulgated and adopted for public health, safety and welfare and bears a rational relation to the legislative objective sought to be obtained.

**APPROVED ON FIRST READING** this 3<sup>rd</sup> day of November 2020, by a vote of \_\_\_ for and \_\_\_ against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

**PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING** this \_\_\_ day of \_\_\_\_\_ 2020, by the Town Council of the Town of Castle Rock, Colorado, by a vote of \_\_\_ for and \_\_\_ against.

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jason Gray, Mayor

**Approved as to form:**

**Approved as to content:**

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

\_\_\_\_\_  
Kristin Read, Assistant Town Manager

AN AGREEMENT GRANTING A FRANCHISE BY THE TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO, TO THE INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, PURCHASE ACQUIRE, LOCATE, MAINTAIN, OPERATE, AND EXTEND INTO, WITHIN AND THROUGH SAID TOWN, PLANTS, WORKS, SYSTEMS AND FACILITIES FOR THE GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRICAL ENERGY BY MEANS OF CONDUITS, WIRES, CABLES, POLES, AND STRUCTURES, OR OTHERWISE, ON, OVER, UNDER, ALONG, AND ACROSS ALL PUBLIC AND DEDICATED STREETS, ALLEYS, VIADUCTS, BRIDGES, ROADS, LANES, PUBLIC WAYS, AND OTHER PUBLIC PLACES IN SAID TOWN OF CASTLE ROCK; TO SELL, FURNISH, AND DISTRIBUTE SAID PRODUCTS TO THE TOWN AND THE INHABITANTS THEREOF.

#### ARTICLE I

Whenever the word "Town" is hereinafter employed, it shall designate the Town of Castle Rock, Douglas County, Colorado, the Grantor, and whenever the word "Company" is used, it shall designate not only the Intermountain Rural Electric Association, a Colorado Corporation, the Grantee, but also its successors and assigns.

#### ARTICLE II

Section 1. Grant of Authority. There is hereby granted by the Town to the Company the franchise right, privilege, and authority to construct, purchase, acquire, locate, maintain, operate, and extend into, within, and through the Town, plants, works, systems, and facilities for the generation, transmission, and distribution of electrical energy for lighting, heating, cooling, power, or other similar utility purposes, with the right and privilege, for the period and upon the terms and conditions hereinafter specified, to sell, furnish, and distribute any or all of said products to the Town and the inhabitants thereof, by means of conduits, wires, cables, poles, and structures, or otherwise, on, over, under, along, and across all public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways, and other public places in the Town, and on, over, under, along,

and across any extension, connection with or continuation of the same, and on, over, under, along, and across all new public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways, and other public places as may be hereafter laid out, opened, located, or constructed within the territory now or hereafter included within the boundaries of the Town, in accordance with the terms herein below.

Section 2. Manner of Use; Repair Access. The Company is further granted the right, privilege, and authority to excavate in, occupy, and use any and all public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways, and other public places under the supervision of properly constituted Town authority for the purpose of bringing electrical energy into, within, and through the Town and supplying electrical energy to the Town and the inhabitants thereof and in the territory adjacent thereto, provided, however, that the Company shall so locate its substations, transmission, and distribution structures, lines, equipment, and conduits within the Town in compliance with the Town's ordinances and regulations to cause minimum interference with the proper use of streets, alleys, and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said public and dedicated streets, alleys, or other public ways and places. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled, or paved streets or public place or any other public improvement, the Company shall repair the same in a workmanlike manner, in accordance with and subject to the then-applicable ordinances of the Town of Castle Rock. The Company shall use due care not to interfere with or damage any water mains, sewers, or other structures in said public and dedicated streets, alleys, or other public places.

Section 3. Streetlight/Traffic Signal Repairs. Unless subject to another agreement to the contrary, the Town is responsible for the maintenance and repair of Town-owned streetlights and traffic signals after the meter, and for the meter pedestal (unless the pedestal is owned by the Company), and the Company is responsible for components from the meter upstream (or from the pedestal upstream if the pedestal is owned by the Company). If the Town-owned streetlight is unmetred, the Company is responsible for repairs upstream from the Company-owned pedestal or transformer serving the streetlight, and the Town is responsible for maintenance and repair after the pedestal or transformer. Notwithstanding the foregoing, the Town and the Company agree to follow the process below for reporting and repairing damaged and/or non-functioning Company-owned street lighting infrastructure:

1. The Town agrees to report damaged and/or non-functioning Company-owned streetlights to the Company using the Company's website [irea.coop\outage center\report a streetlight outage] (the "Repair Link"). The Company has provided the Town with a direct line to the Company Control Center for any traffic signal outages (the "Traffic Link").
2. The Town will use the Repair Link or the Traffic Link to submit both Town reports and third-party reports made to the Town ("Report" and, collectively, "Reports").
3. Reports must include the following information:
  - a) Person reporting's name and phone number;
  - b) Detailed location of streetlight or traffic signal (e.g. direction and distance from a specific intersection and/or address); and
  - c) Streetlight or traffic signal number, if available.
4. The Company will create a service order (the "Service Order") to repair a streetlight within three business days of Report receipt. Time shall be tolled if an incomplete Report is

submitted. The Company shall notify the Town in writing if it is unable to create the Service Order due to an incomplete Report within three business days of receipt of said Report.

5. Additionally, the Company shall designate the repair timeframe for a streetlight based on the Streetlight Repair Timeframe Table in Section 4. The Company shall identify the repair category and adhere to the Streetlight Repair Timeframes Table.
6. The Company shall finalize the Service Order and dispatch a repair crew to complete any streetlight repair work within the Repair Timeframe Table in Section 4.
7. The Company shall dispatch a service technician within two hours of the receipt of any Report from the Traffic Link. All traffic signal electric repairs shall be completed within 24 hours of the Report, unless the Town agrees in writing to extend the timeframe. IREA shall be responsible only for the repair of the electric system supplying energy to the traffic signal and not the traffic signal itself.

Section 4. Streetlight Repair Timeframes. The Town and the Company recognize that a variety of streetlight repair types exist, which may substantially vary in complexity and corresponding timeframes for completion. Therefore, pursuant to the Streetlight Repair Timeframe Table herein, the Company shall categorize the type of streetlight repair work required as part of the Service Order process in Section 3. All streetlight repair timeframes are subject to and dependent on any required permits from the Town.

Streetlight Repair Timeframes Table\*

	Category A	Category B	Category C	Category D
Timeframe	Completed within three business days	Completed within 10 business days	Completed within 14 business days	Company will notify Town within three business days of anticipated completion timeframe, which is subject to mutual agreement

\*The Parties agree that timeframes will toll upon complete submission of any required permits to the Town until such time that the Town approves said permits.

Category A: Simple and routine repair, e.g., replacement of a fuse and/or streetlight head.

Category B: Moderate repair, e.g., pole replacement and/or underground conductor repair.

Category C: Major repair, e.g., failures of any items associated with an individual light standard, regardless of cause.

Category D: Case-by-case, e.g., conductor failure requiring contemplation of retaining walls, landscaping, etc.

Section 5. Reporting. The Company agrees to provide the Town with a report of complete and pending Service Orders within THREE business days upon written request. The Town will email requests to the Company’s Service Order Administrator at SOAdmin@irea.coop.

Section 6. Remedy for Delays. In the event the Company should default in performance of its obligations under Sections 3 and 4 of this Article II, and such default shall remain uncured for more than two business days after notice of default is given to the Company, the Town shall be entitled to a credit to the Town of 10% percent of the monthly light standard flat fee rate sum for

one month for each standard that was not repaired timely pursuant to Sections 3 and 4. This shall be the exclusive remedy available to the Parties for default of Sections 3 and 4. This sum shall not be a penalty but is liquidated damages.

The Parties agree that, under all of the circumstances, the daily basis and the amount set forth as liquidated damages is reasonable and equitable, and that actual damages from a default of these provisions are impossible to measure. Permitting the Company to continue and finish the repair work, or any part of it, after the time fixed for its completion, or after the date to which the time of completion may have been extended, shall not operate as a waiver on the part of the Town of liquidated damages or any of its rights under the Agreement.

Section 7. Town Held Harmless. The Company shall so maintain its electrical equipment and distribution system as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Company shall save and hold the Town harmless from all liability or damage and all reasonable expenses necessarily accruing against the Town arising out of the negligent exercise by the Company of the rights and privileges hereby granted, provided that the Company shall have had notice of the pendency of any action against the Town arising out of such exercise by the Company of said rights and privileges and be permitted at its own expense to appear and defend or assist in the defense of the same.

Section 8. Changes at Company Expense. If at any time the Town deems it necessary to change the location or nature of any facilities of the Company, including but not limited to, pole relocations or changes, electrical facility improvements or relocations, and underground conversions (the "Work"), to permit the Town to make or facilitate street, sidewalk, waterline, sanitary sewer line, water tank, well, wellsite, park and other public improvements, or private improvements that the Town determines provide a public benefit, the Company shall bear the



expense of such Work to the following extent:

- (a) Each year the Town shall be allowed one percent (1%) of the previous calendar year's adjusted gross revenue, as defined in Article IV, Sections 3 and 4 hereof, as an allotment to be applied to the cost of such Work.
- (b) In any year, the Town may request, and if it requests, shall be allowed advance credit toward the cost of such Work in an amount up to fifty percent (50%) of that year's one percent (1%) allotment. Any such credit shall be applied against the one percent (1%) allotment for the year in which the credit is given.
- (c) Unused allotments shall be carried over from year to year and will accumulate until used by the Town.
- (d) Such one percent (1%) allotment shall be in addition to the franchise payment made pursuant to this Agreement, shall come from general revenues, and shall not be recovered through any surcharge imposed on Town of Castle Rock customers.

Section 9. Use of Facilities by Town. The Town shall have the right to petition the Company to use all poles and appropriate overhead structures within the Town limits for any reasonable Town purpose; provided, however, that in the event the Company grants permission for the Town to use any of its structures within the Town limits, the Company will assume no liability of any nature therefor, directly or indirectly, or incur any expense by virtue of the use by the Town of said poles and structures. Further, the use by the Town shall in no way interfere with the Company's use of said poles and structures in providing electric service within the Town. The Town's use of any pole or structure as of the date of this Agreement shall be deemed approved by

the Company.

### ARTICLE III

Section 1. Rates Regulation. The Company shall furnish electric energy within the corporate limits of the Town or any addition thereto, to the Town, and to the inhabitants thereof, and to any person or persons or corporation doing business in the Town or any addition thereto, at the rates and under the terms and conditions set forth in the Rates and Regulations promulgated by the Board of Directors of the Company, as amended from time to time.

Section 2. No Discrimination. The Company shall not, as to rates, charges, services, facilities, rules, regulations, or in any other respect make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this section shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

Section 3. Extensions. The Company will, from time to time during the term of this franchise, make such enlargements and extensions of its distribution systems as the business of the Company and the growth of the Town justify, in accordance with Company's Rates and Regulations.

Section 4. Rates and Regulations. The Company from time to time may promulgate such rules, regulations, terms, and conditions governing the conduct of its business, including the utilization of electrical energy and payment therefor, and the interference with or alteration of any of the Company's property upon the premises of its customers, as shall be necessary to ensure continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor, provided that the Company shall keep on file in its local office,

available to the public, copies of its Rates and Regulations, including such revisions thereto as are adopted by the Company from time to time.

#### ARTICLE IV

Section 1. Franchise Payment. As a further consideration for this franchise, and in lieu of all occupancy, occupation, and license taxes or other taxes on the rights to do business, or other special taxes, assessments, or excises upon the property of the Company (except uniform taxes or assessments applicable to all taxpayers or businesses), the Company shall pay to the Town, for the period beginning on the effective date of this Agreement to the termination of this franchise, a franchise fee equal to three percent (3%) of the first Ten Thousand Dollars (\$10,000) of annual gross revenue derived from the sale of electric energy to each customer at any one location plus two percent (2%) of the annual gross revenue derived from the sale of electric energy in excess of Ten Thousand Dollars (\$10,000) to each customer for such service at any one location.

Section 2. Payment Schedule. Payments shall be made as follows:

For each year of the term hereof, the Company shall, on or before March 31 of each year, make an estimate of the total franchise payments to be paid to the Town for the current year, and shall pay one-fourth (1/4) of said estimated amount on or before March 31, June 30, September 30, and December 31. Adjustments for any differences from payment calculated on actual revenue shall be made with the March 31 payment in the following year.

Section 3. Gross Revenue. The term "gross revenue," as used herein, shall be construed to mean any revenue derived by the Company under authorized rates, temporary or permanent, within the Town from the sale of electrical energy to customers other than the Town or any federal, state,

or local governmental entities after the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

Section 4. Adjustments. In the event that the gross revenue of the Company for any period of time during the term of this franchise is reduced as a result of a customer refund after payment of the franchise fee for that period, the Company shall be entitled to a credit toward further payments for all franchise payments paid in excess of the franchise fee based on the Company's gross revenue as so reduced.

Section 5. Audit. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this article, the Town Clerk and/or any committee or auditor appointed by the Town shall have access to the books of said Company for the purpose of checking the gross revenue received for operations within the Town.

Section 6. Most Favored Status. In the event that the Company should during the term of this franchise increase its franchise payments to any city or town in the Counties of Adams, Arapahoe, Douglas, and Jefferson in which it supplies electric service, whether by reason of an increase in the percentage payments on revenue or a different basis of determining revenue excluded from the percentage payment, the same change or changes to provide increased franchise payments shall be placed in effect in the Town, upon the Town's written request. The Company shall notify the Town of any such increased payments, provided that in no event shall the Company be liable to the Town for damages resulting from any delay or failure to give such notice.

Section 7. Proration. Payments for the portions of the initial and terminal years of this franchise shall be made on the basis of revenue as above provided for the months and portions of months in which this franchise is in effect.

## ARTICLE V

Section 1. Term. This Agreement shall be in effect from January 1, 2021, through December 31, 2030.

Section 2. Removal. Upon the expiration of this franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it is hereby granted the right to enter upon the public and dedicated streets, alleys, bridges, viaducts, roads, lanes, public ways, and other public places of the Town for the purpose of removing therefrom any or all of its plants, structures, conduits, cables, poles, wire, or equipment pertaining thereto at any time after the Town has had ample time and opportunity to purchase, condemn, or replace them. In so removing said conduits, cables, poles, wire, and equipment, the Company shall, at its own expense and in a workmanlike manner, refill, repair, resurface, and return to its original state excavations that shall be made by it in the graveled or paved streets, alleys, bridges, viaducts, roads, lanes, public ways, and other public or private places after the removal of conduits, poles, or other structures.

Section 3. Police Power Reserved. The right is hereby reserved to the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction in the premises.

Section 4. Assignment. Nothing in this Agreement shall be so construed as to prevent the Company from assigning all of its rights, title, or interest, gained or authorized under or by virtue of the terms of this Agreement, subject to the Town's approval, not to be unreasonably withheld. Approval shall not be required for an assignment for the purpose of increased capitalization or loan or bond guarantee.

Section 5. Repeal. This Agreement shall supersede all franchises the Town previously granted to the Company.

TOWN OF CASTLE ROCK

By: \_\_\_\_\_  
Jason Gray, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Anderson, Town Clerk

INTERMOUNTAIN RURAL ELECTRIC  
ASSOCIATION

By: \_\_\_\_\_  
Timothy L. White, President

ATTEST:

\_\_\_\_\_  
James T. Anest, Secretary

I hereby certify that the above Ordinance was introduced to the Town of Castle Rock at its meeting of \_\_\_\_\_, \_\_\_\_\_, 2020, and published one time by \_\_\_\_\_ on \_\_\_\_\_, 2020,

ATTEST

By: \_\_\_\_\_ (Seal)  
Lisa Anderson, Town Clerk

FINALLY ADOPTED, PASSED, APPROVED AND ORDERED PUBLISHED BY TITLE AND WITH ANY AMENDMENTS, BY THE TOWN OF CASTLE ROCK, COLORADO, UPON A MOTION DULY MADE, SECONDED, AND PASSED AT ITS MEETING HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022, BY A VOTE OF \_\_\_\_\_ IN FAVOR AND \_\_\_\_\_ AGAINST.

TOWN OF CASTLE ROCK

By: \_\_\_\_\_  
Jason Gray, Mayor

I hereby certify that the above Ordinance was finally adopted by the Town Council of the Town of Castle Rock at its meeting of \_\_\_\_\_, \_\_\_\_\_, 2020, and published by title only, with amendments if any, by \_\_\_\_\_ on \_\_\_\_\_, 2020,

ATTEST

By: \_\_\_\_\_ (Seal)  
Lisa Anderson, Town Clerk