

ORDINANCE NO. 2017-008

AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE FRANCHISE AGREEMENT BETWEEN THE TOWN OF CASTLE ROCK AND THE INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION

WHEREAS, by Ordinance No. 2010-39, the Town Council approved a Franchise Agreement with The Intermountain Rural Electric Association ("IREA"),

WHEREAS, the Franchise Agreement provides for 1% of the previous calendar years adjusted gross revenues to be applied to certain work undertaken by IREA on behalf of the Town ("Franchise Credit"),

WHEREAS, the Town has determined that it is necessary and appropriate to amend the Franchise Agreement to expand the uses for which the Franchise Credit can be applied.

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

**Section 1. Approval.** The First Amendment to Franchise Agreement in the form attached as *Exhibit 1* is hereby approved. The Mayor and other proper Town officials are hereby authorized to execute the First Amendment by and on behalf of the Town of Castle Rock, Colorado.

**Section 2. Severability.** If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this ordinance.

**Section 3. Safety Clause.** The Town Council finds and declares that this ordinance is promulgated and adopted for the public health, safety and welfare and this ordinance bears a rational relation to the legislative object sought to be obtained.

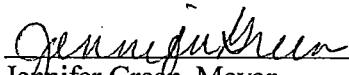
**APPROVED ON FIRST READING** this 28th day of March 2017 by a vote of 7 for and 0 against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

**PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING** this 4th day of April 2017, by the Town Council of the Town of Castle Rock by a vote of 4 for and 0 against.

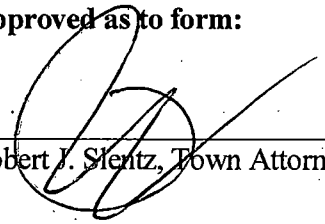
ATTEST:

  
Sally A. Misare, Town Clerk


TOWN OF CASTLE ROCK

  
Jennifer Green, Mayor

Approved as to form:

  
Robert J. Slentz, Town Attorney

Approved as to content:

  
David L. Corliss, Town Manager

**FIRST AMENDMENT TO THE  
FRANCHISE AGREEMENT BETWEEN THE TOWN OF CASTLE ROCK AND  
THE INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION**

**DATE:** April 4, 2017.

**PARTIES:** **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 ("Town").

**THE INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION**, a Colorado corporation, 5496 North U.S. Highway 85, Sedalia, Colorado 80135 ("Company").

**RECITALS**

A. The Town and Company are parties to "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" (the "Franchise Agreement").

B. The Franchise Agreement provides for 1% of the previous calendar year's adjusted gross revenues to be applied to certain work undertaken by the Company on Town's behalf ("Franchise Credit").

C. The Town has determined that it is necessary and appropriate to amend the Franchise Agreement to expand the uses for which the Franchise Credit can be applied and Company has agreed to such amendment.

NOW THEREFORE, in consideration of the mutual covenants and promises, the parties agree to the following terms and conditions:

**AGREEMENT**

**Section 1. Amendment.** Article II, Section 4 of the Franchise Agreement is amended in its entirety to read as follows:

**Section 4. 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

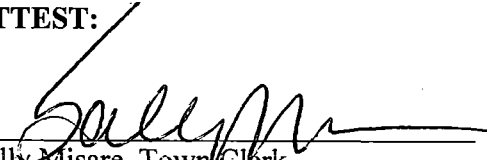
conversions (the "Work"), to permit the Town to make or facilitate street, sidewalk, waterline, sanitary sewer line, water tank, well, wellsite, park and other public improvements, or private improvements that the Town determines provide a public benefit, the Company shall bear the expense of such Work to the following extent:

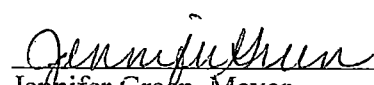
- (a) Each year the Town shall be allowed one percent (1%) of the previous calendar year's adjusted gross revenue, as defined in Article IV, Sections 3 and 4 hereof, as an allotment to be applied to the cost of such Work.
- (b) In any year, the Town may request, and if it requests, shall be allowed advance 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 2. Ratification.** Except to the extent expressly modified by this First Amendment, the Franchise Agreement is in full force and effect. To the extent of any inconsistency between this First Amendment and the Franchise Agreement, the terms and conditions of this First Amendment shall control.

ATTEST:

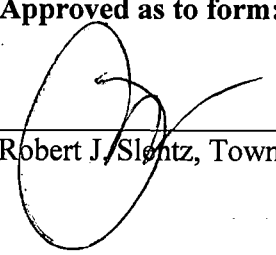
TOWN OF CASTLE ROCK

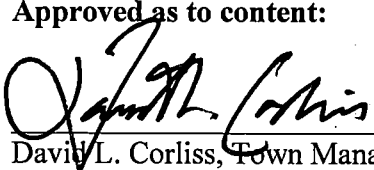
  
Sally Misare, Town Clerk

  
Jennifer Green, Mayor

Approved as to form:

Approved as to content:

  
Robert J. Slentz, Town Attorney

  
David L. Corliss, Town Manager

**ATTEST:**

By: \_\_\_\_\_

Secretary

**THE INTERMOUNTAIN RURAL  
ELECTRIC ASSOCIATION**

By: \_\_\_\_\_

President