

ORDINANCE NO. 6-14(a)

AN ORDINANCE GRANTING A FRANCHISE BY THE TOWN OF LARKSPUR, 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 LARKSPUR, TO SELL, FURNISH AND DISTRIBUTE SAID PRODUCTS TO THE TOWN AND THE INHABITANTS THEREOF; AND PROVIDING FOR THE REPEAL OF FRANCHISE ORDINANCE NO. 155 OF SAID TOWN, PASSED AND APPROVED MARCH 19, 1981.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LARKSPUR, DOUGLAS COUNTY, COLORADO:

ARTICLE I

Whenever the word "Town" is hereinafter employed, it shall designate the Town of Larkspur, 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 in the boundaries of the Town, in accordance with the terms herein.

Section 2. Manner of Use - Repair. 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 as to cause minimum interference with the proper use of streets, alleys and 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 Larkspur. 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. 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 shall be permitted at its own expense to appear and defend or assist in the defense of the same.

Section 4. Relocation of Company Facilities. The cost of relocation of Company facilities located within the Town shall be borne as follows:

- a. The Company facilities located within the public right of way will be relocated by the Company at its own cost and expense when such relocation is reasonably determined to be necessary by the Town to permit the Town to change street grades or to permit street or sidewalk improvements.
- b. The Company shall have no obligation to relocate at its expense any of its facilities located on private property, private easements, or private rights of way, however acquired.
- c. In the event the Town abandons or vacates any public right-of-way in which the Company has located its facilities, the Town agrees to exercise its authority to reserve the rights granted to the Company by this Ordinance; provided that the Company shall remove and, if necessary, relocate such facilities to the nearest or most practicable public right-of-way at the request of a property owner that is burdened by such reservation, so long as the property owner pays the actual cost of said removal and relocation.

Section 5. 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 directly related to the conduct of any municipal business; provided, however, that in the event the Company grants permission for the Town to use any of its structures within Town limits, the Company shall 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. The use by the Town shall in no way interfere with the Company's use of said poles and structures. To the extent permitted by law, the Town shall indemnify and hold harmless the Company from any claim for any liability for any reason which may arise out of or be caused by any act or omission of the Company or its employees, agents or contractors, related to installation, maintenance, presence, use, condition, repair or removal of the Town's attachments, facilities or equipment, and the Town shall assume all risk and responsibility related to the actions of its employees, agents and contractors when working on, at or near the Company's facilities and shall indemnify the Company against any loss or damage caused or incurred by said agents, employees or contractors while using the facilities which are the subject of this Agreement. The Town's use of any poles or structure as of the date of this Ordinance shall be deemed approved by the Company.

ARTICLE III

Section 1. Rates Regulation. The Company shall furnish electrical 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, Rules 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, Rules, and Regulations, as amended from time to time.

Section 4. Rules 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 Rules 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 Ordinance, to the termination of this franchise, a sum equal to three percent (3%) of the first Ten Thousand Dollars (\$10,000.00) of annual Gross Revenue derived from the sale of electrical energy to each customer at any one location, plus two percent (2%) of the annual gross revenue derived from the sale of electrical energy in excess of Ten Thousand Dollars (\$10,000.00) to each customer for each such service at any one location.

Section 2. Payment Schedule. 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, excluding franchise fees, 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. Proration. Payments for the portions of the initial and terminal years of the term of this franchise shall be made on the basis of revenue as above provided for the months and portions of months during which this franchise is in effect.

Section 6. 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 Council of the Town shall have access to the books of the Company for the purpose of checking the Gross Revenue received for operations within the Town.

Section 7. 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 under a franchise, 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.

ARTICLE V

Section 1. Term - Effective Date. This Ordinance shall become effective, as provided by law, thirty (30) days after its publication following final passage, upon acceptance in writing by the Company within said period, and the terms, conditions and covenants thereof shall remain in full force and effect for a period of twenty-five (25) years from and after effective date.

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 and all of its plants, structures, conduits, cables, poles and wires, and 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, wires and equipment, the Company shall, at its own expense and in a workmanlike manner, refill, repair, resurface and return to its original state any 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.

Section 4. Assignment. Nothing in this Ordinance 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 Ordinance, subject to the Town's approval, which shall not be unreasonably withheld, conditioned or delayed. Approval shall not be required for an assignment for the purpose of increased capitalization or loan or bond guarantee.

Section 5. Acceptance by Company. This franchise shall be subject to all of the provisions of the laws of the State of Colorado. The Company shall accept this franchise by a writing filed with the Town Clerk within sixty (60) days from and after the passage of this Ordinance by the Town Council of the Town.

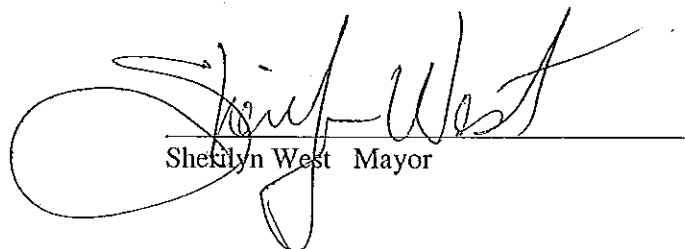
Section 6. Effect of Ordinance. This Ordinance is the entire understanding of the parties regarding its subject matter and may be changed or modified only by written agreement of the parties. This Ordinance repeals, replaces and supersedes all previous Town ordinances granting or amending any franchises to the Company, specifically including Ordinance No. 155, passed and approved March 19, 1981.

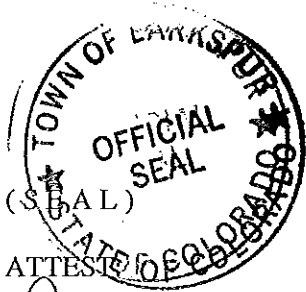
Section 7. Extension or Renewal of Ordinance. In the event the parties mutually agree that this Ordinance should be continued beyond the termination date set forth in Article V, Section 1, and mutually agree to the terms of the extension or renewal, including any adjustment to the franchise payment under Article IV, Section 1, the parties shall amend this Ordinance in writing to reflect the new terms and the Town shall adopt an ordinance to effect the extension or renewal of the Ordinance and the inclusion of the new terms. In the event the parties mutually agree that this Ordinance should be continued beyond the expiration date set forth in Article V, Section 1, but have not agreed to the terms of the extension or renewal or have not amended the Ordinance in writing or passed an ordinance extending the terms of the Ordinance on the expiration date of the Ordinance, the parties may mutually agree to a month-to-month extension, upon the same terms as are set forth in the Ordinance, until such amendment shall be adopted or an ordinance shall be passed giving effect to such new terms as may be agreed upon by the Town and the Company. No agreement under this Section shall be effective unless in writing and signed by authorized representatives or agents of the Company and the Town.

Section 8. Termination. In the event of the failure of either party to comply with any of the material provisions of this Ordinance, this Ordinance may be terminated by the non-defaulting party; provided that the party in default fails to cure within one hundred twenty (120) days following notice from the non-defaulting party of the existence of said default. Such termination shall not affect or diminish the rights, claims, or remedies available in equity or at law to the non-defaulting party arising by reason of said default.

INTRODUCED, READ AND ORDERED PUBLISHED, this 16th, day of March, A.D., 2006, by a vote of the Town Council of the Town, by a vote of 7 for and 0 against.

PASSED, ADOPTED AND APPROVED, THIS 18th, day of May, A.D., 2006 by a vote of the Town Council of the Town, by a vote of 6 for and 0 against.


Shekilyn West Mayor



Penny Henson
Penny Henson Deputy Town Clerk
Town of Larkspur

I hereby certify that this Ordinance No. 6.14(a), an ordinance granting a franchise by the Town of Larkspur, Douglas County, Colorado, to the Intermountain Rural Electric Association was adopted by the Town Council of the Town of Larkspur on March 18th, 2006.

Dated: March 22nd, 2006.

Penny Henson
Town Clerk
Town of Larkspur

ACCEPTANCE BY INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION
OF FRANCHISE GRANTED BY THE TOWN OF LARKSPUR,
DOUGLAS COUNTY, COLORADO BY ORDINANCE NO. 6-14

WHEREAS, the Town Council of the Town of Larkspur, Douglas County, Colorado, did on the 18th day of May, 2006, finally adopt and approve Ordinance No. 6-14 of said Town entitled:

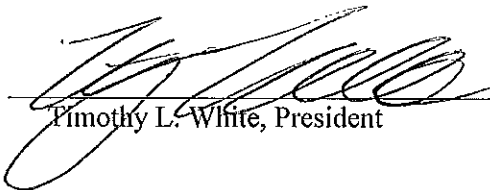
AN ORDINANCE GRANTING A FRANCHISE BY THE TOWN OF LARKSPUR, DOUGLAS COUNTY, COLORADO, TO THE INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, PURCHASE, ACQUIRE, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID TOWN, PLANTS, WORKS, SYSTEMS AND FACILITIES 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 LARKSPUR, TO SELL, FURNISH AND DISTRIBUTE SAID PRODUCTS TO THE TOWN AND THE INHABITANTS THEREOF; AND PROVIDING FOR THE REPEAL OF FRANCHISE ORDINANCE NO. 155 OF SAID TOWN, PASSED AND APPROVED MARCH 19, 1981.

NOW, THEREFORE, in consideration of the premises, and pursuant to the provisions of said Ordinance No. 6-14, Intermountain Rural Electric Association hereby accepts the terms and conditions of Ordinance No. 6-14 of the Town of Larkspur, Douglas County, Colorado.

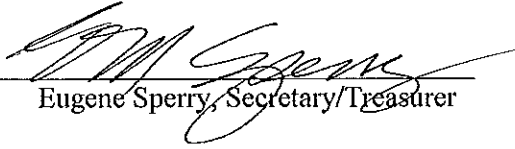
IN WITNESS WHEREOF, Intermountain Rural Electric Association has caused its corporate name to be hereunto subscribed by its President, and its corporate seal to be hereunto affixed, attested by its Corporate Secretary, this 6th day of June, 2006.

INTERMOUNTAIN RURAL ELECTRIC
ASSOCIATION

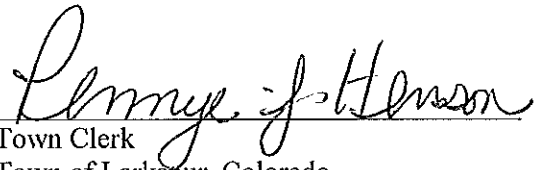
By:


Timothy L. Wlfite, President

ATTEST:

By: 
Eugene Sperry, Secretary/Treasurer

FILED WITH THE TOWN CLERK OF LARKSPUR, COLORADO THIS 19th day of June, 2006.


Town Clerk
Town of Larkspur, Colorado