

ORDINANCE NO. 2021-032

**AN ORDINANCE APPROVING A FRANCHISE AGREEMENT
BETWEEN THE TOWN OF CASTLE ROCK, COLORADO,
AND BLACK HILLS COLORADO GAS, INC.**

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

WHEREAS, Black Hills Colorado Gas, Inc., ("BHCG") has constructed and desires to continue to operate and maintain natural gas services within the 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 natural gas services within in its jurisdiction, in accordance with applicable law and the provisions thereof; and

WHEREAS, the Town Council desires to grant to BHCG, and BHCG 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 natural gas system in the Town; and

WHEREAS, the public has had adequate notice and opportunity to comment on BHCG's proposal to continue to provide natural gas service in the Town; and

WHEREAS, the Town Council has determined it is in the best interest of the Town and the community to grant a Franchise to the BHCG for the term provided in the Franchise Agreement.

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

Section 1. Approval. The Town Council hereby approves the Franchise Agreement between the Town of Castle Rock, Colorado, and Black Hills Colorado Gas, Inc., in the form attached as *Exhibit 1*. The Mayor and other proper Town officials are hereby authorized to execute the Franchise 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.

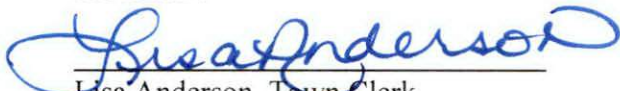
Section 3. Preemption and Severability. If any part of this Ordinance shall, for any reason, be found by a court of law invalid or in conflict with state or federal law, such final judgment shall not affect the remaining provisions of this Ordinance.

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 7th day of December 2021, 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 21st day of December 2021, by the Town Council of the Town of Castle Rock, Colorado, by a vote of 7 for and 0 against.

ATTEST:



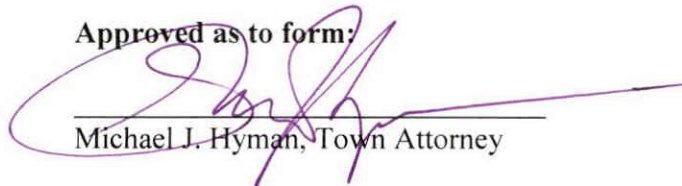
Lisa Anderson, Town Clerk

TOWN OF CASTLE ROCK



Jason Gray, Mayor

Approved as to form:



Michael J. Hyman, Town Attorney

Approved as to content:



Kristin Read, Assistant Town Manager



AN AGREEMENT GRANTING BLACK HILLS COLORADO GAS, INC. D/B/A BLACK HILLS ENERGY, ITS LESSEES, SUCCESSORS AND ASSIGNS, A NATURAL GAS FRANCHISE AND THE AUTHORITY TO CONSTRUCT, OPERATE, MAINTAIN, AND EXTEND NATURAL GAS DISTRIBUTION PLANT AND SYSTEM, AND GRANTING THE RIGHT TO USE THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE TOWN OF CASTLE ROCK, COLORADO.

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 Grantee is used, it shall designate not only Black Hills Colorado Gas, Inc. d/b/a Black Hills Energy, but also its successors and assigns.

ARTICLE II

Section 1. Grant of Authority. Town hereby grants a non-exclusive franchise to Grantee, its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public easements as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and all other apparatus and appliances necessary or convenient for transporting, distributing and supplying natural gas for all purposes for which it

may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business.

Section 2. Term. This franchise shall take effect on the first day of the month following the date this Agreement is finally approved by the Colorado Public Utilities Commission (the "Effective Date"), at which time Grantee will begin to collect the franchise fee set forth herein, and this franchise shall remain in effect for a period of ten (10) years from the Effective Date of this Agreement.

Section 3. Franchise Fees or Taxes. In exchange for the franchise granted herein, Grantee shall collect from their customers located within the corporate limits of Grantor, but not from the Grantor, and pay to the Grantor an amount equal to three percent (3%) of gross receipts derived from the sale, distribution or transportation of natural gas delivered within the present limits of Grantor, as amended from time to time. Gross receipts as used herein are revenues received from the sale, distribution or transportation of natural gas, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt from, fees, charges, taxes or assessments which the Grantor may impose for the privilege of doing business within the Town right-of-ways, including, subject to the limitations herein, excise taxes, occupation taxes, licensing fees, or right-of-way permit fees. In the event the Grantor imposes any such fee, charge, tax or assessment, the payment to be made by Grantee in accordance with this Agreement shall be reduced in an amount equal to any such fee, charge, tax or assessment imposed upon Grantee. The exemption of fees as noted in this Section shall only apply to right-of-way permits concerning the natural gas delivery which is the subject of this Agreement. Ad

valorem property taxes imposed generally upon all real and personal property within the Town shall not be deemed to affect Grantee's obligations under this Agreement.

Grantee shall report and pay any amount payable under this Ordinance on a monthly basis. Such payment shall be made no more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of any franchise granted by Grantor to Grantee.

Grantee shall list the local franchise fee collected from customers as a separate item on bills for utility service issued to their customers. If at any time the Colorado Public Utilities Commission or other authority having proper jurisdiction prohibits such recovery, Grantee will no longer be obligated to collect and pay the franchise fee until an alternate lawful franchise fee can be negotiated and implemented. In addition, with prior approval of Grantor, Grantee may reduce the franchise fee payable for natural gas delivered to a specific customer when such reduction is required to attract or retain the business of that customer.

Section 4. Map. Within ten (10) days of the date of this ordinance, the Grantor shall provide Grantee with a map of its corporate limits (the "Map"). The Map shall be of sufficient detail to assist Grantee in determining whether their customers reside within the Grantor's corporate limits. The Map shall serve as the sole basis for determining Grantee's obligation hereunder to collect and pay the franchise fee from customers; provided, however, that if the Grantor's corporate limits are changed by annexation or otherwise, it shall be the Grantor's sole responsibility to (a) update the Map so that such changes are included therein, and (b) provide the updated Map to the Grantee. Grantee's obligation to collect and pay the franchise fee from customers within an annexed area shall not commence until the later: (a) of sixty (60) days after such Grantee's receipt from the Grantor of an updated Map including such annexed area, or (b)

such time after such Grantee's receipt from the Grantor of an updated Map including such annexed area as is reasonably necessary for such Grantee to identify the customers in the annexed area obligated to pay the franchise fee.

The Grantor shall, upon request from Grantee, provide copies of annexation ordinances to Grantee on a timely basis to ensure appropriate franchise fee collection from customers within the corporate limits of the city as set forth above.

Section 5. No Discrimination. Except as permitted by law, the Colorado Public Utilities Commission, and the Company's Tariffs, 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.

ARTICLE III

Section 1. Extension of Grantee's Facilities. Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor. Prior to any significant extension of its distribution facilities, Grantee shall obtain written approval from the Town, at its sole discretion.

Section 2. Relocation of Grantee's Facilities. If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, unless otherwise reimbursed by federal, state or local legislative act or governmental agency, Grantee, upon reasonable notice from Grantor, shall remove and/or relocate its facilities

or equipment situated in the public rights-of-way, at the sole cost and expense of Grantee, if such removal and/or relocation is necessary to prevent interference.

If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference, then Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment.

Grantor shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. If alternative public right-of-way space is available, Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of way until it (i) if applicable, receives the reasonable cost of relocating the same and (ii) obtains a reasonable public right-of-way, dedicated utility easement, or private easement alternative location for such facilities.

Section 3. Coordination with Grantor. For all new Grantee installation or replacement of infrastructure in Grantor's right of way longer than a quarter of a mile, Grantee will provide Grantor with a minimum notice of 30 days. For all installation or replacement of infrastructure not longer than a quarter of a mile in Grantor's right of way, Grantee shall provide Grantor with a minimum notice of 14 days.

Section 4. Construction and Maintenance of Grantee's Facilities. Any pavements, sidewalks or curbing taken up and any and all excavations or any potholing made shall be done

in such a manner as to cause only such inconvenience to the inhabitants of Grantor and to the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good of condition as existed immediately prior to excavation.

Grantee agrees that for the term of this franchise, it will use its best efforts to maintain facilities and equipment in a condition sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance and will fix its excavations within a commercially reasonable time period, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible. Within a reasonable time thereafter, Grantee shall request and Grantor shall issue any permits or authorizations required by Grantor for the actions conducted by Grantee during the emergency situation.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given to the Grantee as soon as practical in advance of the actual commencement of the work, considering seasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities.

ARTICLE IV

Section 1. Records. Grantor shall have access to and the right to examine, during normal business hours, Grantee's books, receipts, files, records and documents as is reasonably necessary to verify the accuracy of payments due hereunder; provided, that Grantor shall not exercise such right more than twice per calendar year, unless necessitated by a court order, audit, or any other reasonable rationale requested in good faith by Grantor. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any under-payment by Grantee shall be paid within thirty (30) days of recalculation of the amount due, and any over-payment by Grantee shall be deducted from the next payment of such franchise fee by such Grantee to Grantor; provided, that neither party shall have the obligation to correct a mistake that is discovered more than two (2) years after the occurrence thereof.

Section 2. Governing Rules and Regulations. The franchise granted hereunder is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by state or federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Agreement in accordance with the action

taken. In determining the rights and duties of the Grantee, the terms of this Agreement shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the Grantor.

Section 3. Provisions for Inadequate Energy. If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

Section 4. Confidential Information. Grantor acknowledges that certain information it might request from Grantee pursuant to this Agreement may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such proprietary or confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief. Grantee shall agree to indemnify Grantor for any and all attorney fees that Grantor may incur in defending the withholding of such confidential information.

Section 5. Force Majeure. It shall not be a breach or default under this Agreement if either party fails to perform its obligations hereunder due to unforeseeable circumstances or uncontrollable forces, which shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; (ii) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; (iii) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and (iv) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly and reasonably as possible once it occurs in order to resume performance of its obligations hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

Section 6. Hold Harmless. Grantee, during the term of this Agreement, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in constructing, operating, and maintaining its distribution and transmission facilities or equipment; provided, however, that Grantee need not save Grantor harmless from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

Section 7. Successors and Assigns. All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the

terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

Section 8. No Third-Party Beneficiaries. This Agreement constitutes a franchise agreement between the Grantor and Grantee. No provision of this Agreement shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

Section 9. Severability. If any clause, sentence or section of this Agreement is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

Section 10. Non-Waiver. Any waiver of any obligation or default under this Agreement shall not be construed as a waiver of any future defaults.

Section 11. Repeal Conflicting Ordinances. This Agreement, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to the franchise granted by Grantor hereunder, and the same shall supersede all prior agreements relating thereto, and any terms and conditions of such prior agreements or parts of agreements in conflict herewith are hereby repealed. Ordinance No. 2011-30 of the Town of Castle Rock, Colorado, is hereby repealed as of the Effective Date hereof.

Section 12. Effect and Interpretation of Ordinance. The captions that precede each section of this Agreement are for convenience and/or reference only and shall not be taken into consideration in the interpretation of any of the provisions of this Agreement.

Section 13. Insurance. Grantee agrees to maintain, at its own cost, self-insurance in an amount to cover claims arising under this franchise. Upon request of the Town, Grantee shall

furnish an informal certificate of insurance to the Town so showing. Grantee shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. Grantee shall maintain, and shall cause each subcontractor of the Grantee to procure and maintain a policy with the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee. Evidence of qualified self-insured status may be substituted for the Worker's Compensation requirements stated herein.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual,

independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. The coverage requirement may be satisfied with a combination of general and excess liability policies, or self-insurance.

3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

4. Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) per claim and ONE MILLION DOLLARS (\$1,000,000) aggregate.

B. The policies required above, except Workers' Compensation insurance, Employers' Liability insurance and Professional Liability insurance shall be endorsed to include the Town, its officers and employees, as an additional insured. Every policy required above, except Workers' Compensation and Professional Liability insurance, if applicable, shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

C. Following ratification of this Agreement by the Colorado Public Utilities Commission, Grantee shall promptly provide the Town with a certification of insurance.

D. The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$387,000 per person, \$1,093,000 for two or more persons, per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

Section 14. Defaults and Remedies. In the event either party should default in performance of its obligations under this Agreement, and such default shall remain uncured for more than one hundred and eighty days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies.

Section 15. Notice. Any notices required to be given hereunder shall be sent to the following:

If to Grantee: Black Hills Energy
 7060 Alegre St.
 Fountain, CO 80817

If to Grantor: Town of Castle Rock
 100 North Wilcox
 Castle Rock, CO 80104

Section 16. Acceptance. Upon final passage and approval of this Agreement by Grantor, in accordance with applicable laws and regulations, Grantee shall file its acceptance by written instrument, within sixty (60) days of passage by the Town Council, with the Clerk of the Town of Castle Rock, Colorado. The Clerk of the Town of Castle Rock, Colorado shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee.

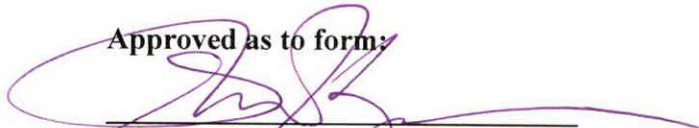
If Grantee does not, within sixty (60) days following execution of this Agreement, either express in writing its objections to any terms or provisions contained therein, or reject this Agreement in its entirety, Grantee shall be deemed to have accepted this Agreement and all of its terms and conditions.

ATTEST:



Lisa Anderson, Town Clerk

Approved as to form:



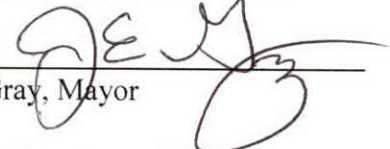
Michael J. Hyman, Town Attorney

BLACK HILLS COLORADO GAS, INC.

By: _____

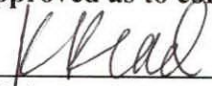
Its: _____

TOWN OF CASTLE ROCK



Jason Gray, Mayor

Approved as to content:



Kristin Read, Assistant Town Manager

