

**TOWN OF EAGLE**  
**ORDINANCE NO. 16**  
**(Series of 2025)**

AN ORDINANCE OF THE TOWN OF EAGLE, COLORADO, GRANTING A FRANCHISE TO HOLY CROSS ENERGY, ITS SUCCESSORS AND ASSIGNS, TO LOCATE, BUILD, INSTALL, CONSTRUCT, ACQUIRE, PURCHASE, EXTEND, MAINTAIN, REPAIR AND OPERATE INTO, WITHIN AND THROUGH THE TOWN OF EAGLE, ALL NECESSARY AND CONVENIENT FACILITIES FOR THE PURCHASE, GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY, AND TO FURNISH, SELL AND DISTRIBUTE SAID ELECTRICAL ENERGY TO THE RESIDENTS OF THE TOWN OF EAGLE FOR LIGHT, HEAT, POWER AND OTHER PURPOSES BY MEANS OF CONDUITS, CABLES, POLES AND WIRES STRUNG THEREON, OR OTHERWISE ON, OVER, UNDER, ALONG, ACROSS AND THROUGH ALL PUBLIC EASEMENTS AND ALL STREETS AND OTHER PUBLIC WAYS IN SAID TOWN OF EAGLE, EAGLE COUNTY, COLORADO, AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF EAGLE, COLORADO:

**ARTICLE 1**  
**SHORT TITLE**

- 1.1 This Ordinance shall be known and may be cited as the "Holy Cross Energy Franchise Ordinance."

**ARTICLE 2**  
**DEFINITIONS**

For the purpose of this Ordinance, the following terms shall have the meaning given herein:

- 2.1 "Town" is the Town of Eagle, Eagle County, Colorado, the municipal corporation as is now constituted or as the same may be enlarged or expanded from time to time through annexation.
- 2.2 "Company" refers to Holy Cross Energy, a Colorado corporation, its successors and assigns.
- 2.3 "Board" refers to the legislative body of the Town, known as the Town Board of Trustees of the Town of Eagle, Colorado.
- 2.4 "Facilities" refers to all overhead and underground electric facilities, buildings and structures owned by the Company which are necessary to provide electricity into, within and through the Town of Eagle including, but not limited to, such essential apparatus, appliances, plants, systems, substations, works, transmission and distribution lines, structures, anchors, cabinets, cables, conduits, guy posts, guy wires, meters, microwave, communication facilities, overhead and underground lines, pedestals, poles, regulators, sectionalizers, switchgears, transformers, various pad mounted and pole mounted equipment, vaults, wires and all other

- related electrical equipment required for the distribution, generation, maintenance, operation, purchase and transmission of electrical energy.
- 2.5 "Public Easements" refers to easements created by general dedication and available for use by any public utility for its facilities. This term also includes all easements for utility use which are dedicated to the Town in accordance with Section 4.13.075 of the Town's Municipal Code.
- 2.6 "Private Easements" refers to easements created by deed, specific dedication to specific grantees or acquired by the Company by prescriptive right and available only for use by the Company for its Facilities, or by the Company and other users or utilities specifically named as grantees in the deed of dedication or which have also acquired the easement by prescriptive right.
- 2.7 "Residents" refers to and includes all persons, businesses, industry, governmental agencies and any other entity whatsoever, presently maintaining a residence, business, farm, ranch or other enterprise located within, in whole or in part, the boundaries of the Town.
- 2.8 "Revenues", unless otherwise specified, refers to and are the gross amounts of money that the Company receives from its customers within the Town from the sale or delivery of electrical energy for any particular period of time.
- 2.9 "Streets and Other Public Ways" refers to streets, alleys, viaducts, bridges, roads, lanes and other public ways in the Town, subject to limitations stated herein.

### ARTICLE 3

#### GRANT OF FRANCHISE

- 3.1 Grant of Right to Serve. Subject to the conditions, terms and provisions contained in this Franchise, the Town hereby grants to the Company an exclusive right, privilege and authority to locate, build, install, construct, acquire, purchase, extend, maintain, repair and operate into, within and through all of the Town, all necessary and convenient Facilities for the purchase, generation, transmission and distribution of electrical energy. Such grant is made together with the exclusive right and privilege to furnish, sell and distribute said electrical energy to the Residents of the Town for light, heat, power and other purposes.
- 3.2 Scope of Grant. Such grant includes the right and obligation to furnish electrical energy using the Company Facilities on, over, under, along, across and through any and all Public Easements and all Streets and Other Public Ways, on, over, under, along, across and through any extension, connection with, or continuation of, the same and/or on, over, under, along, across and through any and all such new Public Easements and Streets and Other Public Ways as may be hereafter laid out, opened, located or constructed within the Town. The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all Streets and Other Public Ways and Public Easements. Any such excavation, occupation and use must be in accordance with Town standards and regulations and will be undertaken under the supervision of the properly constituted authority of the Town for the purpose of bringing electrical energy into, within and through the Town and supplying electrical energy to the Residents.
- 3.3 Public Easements Dedicated to the Town. The Town also grants the Company the right to construct Facilities and place necessary above ground Facilities which are required for the maintenance, repair and improving of existing overhead and underground Facilities used to furnish electric energy within Public Easements

dedicated to the Town for utility use in accordance with Section 4.1 3.075 of the Town's Municipal Code without obtaining an Encroachment Permit as would otherwise be required by Section B of said Code Section. The Company is a "service provider" as used in that Code Section.

- 3.4 Service to Town Facilities. The Town hereby grants to the Company the exclusive right, privilege and authority to provide street and security lighting to the Town, and to serve all Town owned or operated structures, plants, equipment or Town apparatus and facilities, including the right, privilege and authority to furnish, sell and distribute electrical energy necessary for such.

#### ARTICLE 4

##### SPECIFIC ELEMENTS OF GRANT

- 4.1 Recreational Areas. The Company shall not have the right to locate, build or construct Facilities under, across or through public parks or recreational areas, open space or other Town owned property located within the Town except as expressly set forth in this Franchise or with prior written approval granted by the Board. Said approval shall not be unreasonably withheld.
- 4.2 Trees and Shrubs. The Company shall have the right to trim or cut down such trees and shrubbery and to control the growth of the same by chemical means, machinery, or otherwise, only as may be reasonably necessary to protect its Facilities.
- 4.3 Location of Company's Facilities. Wherever reasonable and practicable, the Company will endeavor to install its Facilities within Public Easements. The Company shall locate its Facilities within the Town so as to cause minimum interference with any of the Town's facilities or property, including without limitation water lines, sewer lines, storm drains and the proper use of Streets and Other Public Ways, and so as to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said Streets and Other Public Ways.
- 4.4 Restoration of Public and Private Improvements. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain or any other public or private improvement, the Company shall at its own expense and in a quality workmanlike manner, repair or cause to be repaired and restored to its original condition such sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain or other public or private improvement after the installation of its Facilities. However, upon failure of the Company to do such required repairs within a reasonable time and in a workmanlike manner, the Town may perform the required work and charge the Company for all reasonable costs thereof. Nothing hereinabove shall be construed to obligate the Company to pay for the removal and relocation of its Facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof or under the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practices, as such may from time to time be amended.

- 4.5 Use of Facilities. The Company shall have the right to make such use of its Facilities and other property owned by Company, for uses other than the uses contemplated in this Franchise Ordinance, as it deems proper so long as such other uses do not interfere with its ability to supply electrical energy, consistent with the then current zoning.
- 4.6 Changed Conditions (Overhead). If at any time it shall be necessary to change the position of any overhead electrical facilities of the Company located within Public Easements or Streets and Other Public Ways to permit the Town to lay, make or change street grades, pavements, sewers, water mains, storm drains or other Town works, such changes shall be made by the Company at its own expense, after reasonable notice from the Town. Any necessary position change of overhead electrical facilities of the Company located within Private Easements will be paid for by the person, or private or public entity requesting such change. The Town shall consult with the Company during the design of any such Town works which may require relocation of existing overhead electrical facilities of the Company and work with the Company to ensure that any relocation necessary is minimized and that a location for the relocated Facilities is provided.
- 4.7 Compliance with Town Ordinances. The Company shall comply with all Town ordinances and regulations regarding curb and pavement cuts, excavating, digging and related construction, maintenance and operational activities. The Company shall not have the right to cut the pavement on a Street or Other Public Way within two (2) years of paving the Street or Other Public Way, except with written approval granted by the Board, which written approval shall not be unreasonably withheld. If requested by the Town, the Company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within 30 days after issuance of request.
- 4.8 Town Review of Construction and Design. Prior to construction of any significant Facilities within the Town, as determined jointly by the Company and Town, the Company shall furnish to the Town the plans for such proposed construction. In addition, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, inter alia, (1) that all applicable laws including building and zoning codes, air and water pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized.
- 4.9 Capital Improvement and Major Development Projects. The Company and the Town shall endeavor to inform one another of any capital improvement and major development projects anticipated within the Town that may impact the Facilities or operations of either party. The party proposing such capital improvements shall inform the other party of the nature of such improvements within a reasonable time after plans for such improvements have been substantially formulated. Each party shall cooperate in the timely exchange of all necessary information, design data, drawings and reports to properly assess and evaluate the potential impacts of said improvements and major developments.
- 4.10 Maintenance of Facilities. The Company shall install, maintain, repair, replace and upgrade its Facilities to ensure both the adequacy of and quality of, electric service to the Town and all Residents. All excavation and construction work done

by or under the authority of the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the Town and all Residents. The Town shall have the right to inspect any portion of the Facilities located in the Streets or Other Public Ways. However, the Town will not require construction of the Facilities in such a manner that would not meet the National Electrical Safety Code and other governing entity requirements or standard utility engineering practices. The Company agrees to cooperate with the Town in conducting the inspection.

- 4.11 Town Not Required to Advance Funds. Upon receipt from the Town of an authorization to proceed and a promise to pay for construction, the Company shall extend its Facilities to the Town for municipal uses therein or for any municipal facility outside the boundaries of the Town and within the Company's certificated service area, without requiring the Town to advance funds prior to construction.
- 4.12 Scheduled Interruptions. The Company shall, whenever possible, give notice, either oral or written, to the Town and its affected Residents, of planned service interruptions of significant duration.
- 4.13 Cooperation with Other Utilities. When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies to have all lines undergrounded as part of the same project. The Company shall not be required to pay the costs of any other utility or company in connection with work under this section.
- 4.14 Annual Review of Franchise. At the request of either the Town or the Company, the parties hereto shall meet to discuss any topic of concern.

## **ARTICLE 5**

### **RATES, REGULATIONS, UNIFORMITY OF SERVICE AND UPGRADES**

- 5.1 Furnishing Electrical Energy. The Company shall furnish electrical energy within the boundaries of the Town, and to the Residents thereof at the Company's applicable and effective rates and under the terms and conditions set forth in the Company's Electric Service Tariffs, Rules and Regulations and Consumer Service Facilities Metering and Use Guidebook adopted by and on file with the Company, as such may from time to time be amended, subject only to regulations thereof as is provided by law. The Company shall not, as to rates, charges, service, Facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any Resident, provided that nothing in this grant 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.
- 5.2 Facility Upgrades. The Company will, from time to time, during the term of this Franchise make such improvements, enlargements and extensions of its Facilities incorporating, when reasonable and practical, technological advances within the industry as the business of the Company and the growth of the Town justify, in accordance with its Electric Service Tariffs, Rules and Regulations and Consumer Service Facilities Metering and Use Guidebook or other customary practices in effect and on file with the Company, as such may from time to time be amended, subject only to regulations thereof as is provided by law.

- 5.3 Reliable Supply of Electricity. The Company shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers is interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.
- 5.4 Maps and Regulations. The Company shall, submit copies of its Consumer Services Facilities Metering and Use Guidebook, Electric Service Tariffs, Rules and Regulations and maps of its Facilities within the Town boundaries to the Town Clerk. All changes in such information shall be submitted to the Town as the same may from time to time occur. Any provided maps shall be kept confidential by the Town.
- 5.5 Subdivision Review. The Company shall analyze any subdivision plats or planned unit development plans submitted to it by the Town and respond to any request by the Town for information regarding the adequacy of its Facilities necessary to serve such proposed plat or plan and answer any other questions posed to the Company by the Town regarding said plat or plan as are within the knowledge of the Company. The Company shall respond to said requests or questions within reasonable time limits set by the Town's Subdivision Regulations. The Town will require the developers of such projects to meet all applicable provisions of the Company's Electric Service Tariffs, Rules and Regulations and other customary practices, as such may from time to time be amended.
- 5.6 Interrelationship of Laws, Rates, Regulations and Ordinances. The Company shall comply with all County, State or Federal laws and rules and regulations related to the subject matter hereof. The Company also agrees to abide by all ordinances and resolutions of the Town, unless and except to the extent that this Franchise Ordinance shall relieve the Company of the obligation to comply with the terms and conditions of such other ordinances or any other provisions hereof. The Company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the use of electrical energy and the 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 provide a safe, continuous and uninterrupted service to each and all of such customers and the proper measurement thereof and payment therefor. Any such rules, regulations, terms and conditions must not be inconsistent with this Franchise Ordinance, but no ordinance of the Town may regulate the Company's rates or charges for the furnishing of electrical energy, or shall lessen the safety of providing such energy to its customers, nor shall any such ordinance alter the manner in which service is extended to such customers.

## ARTICLE 6

### USE OF COMPANY FACILITIES

- 6.1 Use of Poles by Town. The Town shall have the right, without cost, to jointly use all poles and suitable overhead structures within the Town for the purpose of stringing wires thereon for any reasonable Town authorized use; which use shall not include generation, distribution or transmission of electricity. However, the Company shall assume no liability, or any additional expense, in connection therewith, and said use shall not interfere in any unreasonable manner with the Company's use of same, or the use thereof by the Company's permittees,



licensees or other existing users of such Facilities. The Town is not authorized to assign its right to jointly use the Company's Facilities to any third party. The Company, in its sole discretion, may allow third parties to use its Facilities upon such terms and conditions as the Company deems appropriate.

- 6.2 Joint Use of Trenches. The Company, upon receiving a written request from the Town, shall permit the Town to install additional conduit in any trench excavated for the Company's Facilities, for the express purpose and use of the Town, provided such additional installation shall be in accordance with sound engineering methods and safety regulations, and shall not interfere with or cause any conflict with the Company's Facilities, and shall not cause the Company additional installation expense or additional expense to maintain and repair its Facilities. The Town, at its expense, will pay all costs and expenses of such additional installation. The Town shall be responsible for ensuring that required vertical and horizontal separations between its facilities and that of the Company's are strictly maintained. The Town and Company shall jointly hold each other harmless from any liability or damage resulting from their respective facilities being installed in a joint trench.

## ARTICLE 7

### INDEMNIFICATION AND POLICE POWER

- 7.1 Mutual Hold Harmless. Each party, shall to the extent allowed by law, indemnify, defend and save the other party harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the indemnifying party under the provisions of this Franchise, and the securing of, and the exercise of the Franchise rights granted in this ordinance and the indemnifying party shall pay all reasonable expenses, including reasonable attorney's fees and legal assistant's fees, arising therefrom. The indemnifying party will provide prompt written notice to the other party of the pendency of any claim or action against the indemnified party arising out of the exercise of the Franchise rights. The indemnifying party will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the indemnifying party shall not be obligated to indemnify, defend or hold the other party harmless to the extent of any claim, demand, or lien arising out of, or in connection with, any negligent act or failure to act or the intentional misconduct by the indemnified party or any of its officers, employees or agents. The indemnified party's use of independent contractors shall not constitute an avoidance or defense to the indemnifying party's duties to defend and indemnify under this section. Each party shall maintain public liability insurance in an amount not less than \$1,000,000. Each party shall be a named insured on the other party's liability insurance.
- 7.2 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.

**ARTICLE 8**  
**FRANCHISE FEE**

- 8.1 **Franchise Fee.** As a further consideration for this Franchise, and accepted by the Town in lieu of all occupancy and license taxes and all other special taxes, assessments, fees, or excises upon the Facilities or other property of the Company, or other levies that might be imposed, either as a franchise tax, occupation tax, occupancy tax, license tax, permit charge, or for the inspection of the Facilities or other property of the Company, and charges which would otherwise be chargeable to the Company, or otherwise, the Company shall pay to the Town a sum equal to four percent (4%) of its quarterly Revenues collected from the sale of electricity within the boundaries of the Town for electrical energy furnished for light, heat, power and other purposes. This four percent (4%) fee shall be surcharged to the Residents within the Town and is in addition to any charges specified in the Company's Electric Service Tariffs, Rules and Regulations and any applicable taxes. Payment of the franchise fee does not exempt the Company from payment of property or sales taxes which are not directly related to the franchise or the occupation of the Streets and Other Public Ways. Revenues received from Town facilities will not be assessed a four percent (4%) fee under this section nor will the Town be paid the four percent (4%) fee from such revenues collected from Town facilities.
- 8.2 **Payment.** Payment of the Franchise Fee shall be made by the Company to the Town on or before 30 days after the end of each quarter of each calendar year for the preceding three (3) month period but shall be adjusted for the portions of the calendar quarters at the beginning and at the end of this Franchise. All payments shall be made to the Town Clerk.
- 8.3 **Revenue Audit.** For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Article, the Company shall file with the Town Clerk, or such other official as shall be designated by the Town from time to time, a statement, in such reasonable form as the Town may require, showing the total gross receipts received by the Company from the sale of electricity to Residents within the boundaries of the Town for the preceding three (3) month period. The Town Clerk or any official appointed by the Board shall have limited access to the books of said Company for the sole purpose of confirming the quarterly Revenues received from operations within said Town. Such access is conditioned on the agreement of the Town not to disclose the information to any third party.
- 8.4 **Correction of Underpayment/Overpayment.** Should either the Company or Town discover either an underpayment or overpayment of the quarterly Franchise Fee, the party making such discovery shall inform the other party within a reasonable time. If the error is substantiated as an underpayment, the Company shall make payment of the deficiency within 30 days of the date the error was substantiated. If the error is substantiated as an overpayment, a credit equal to the overpayment will be applied to the next quarterly Franchise payment due the Town. If any dispute arises regarding underpayment/overpayment, Company and Town agree to submit the dispute to binding arbitration, with each party to bear their own costs.
- 8.5 **Occupancy Tax Alternative.** In the event said Franchise Fee levied herein should be declared invalid and or shall be set aside by a Court of competent jurisdiction, then, and in such event, and in lieu thereof, the Town may thereafter levy an



occupancy tax upon the Company, not to exceed in any calendar year three percent (4%) of the Revenues collected from the sale of electricity within the Town for electrical energy furnished for light, heat, power, and other purposes for that calendar year. Such occupancy tax shall be adjusted for any Franchise Fees previously paid to the Town in such calendar year. In the event the Town shall enact such an occupancy tax, in lieu of the Franchise Fee, all of the remaining terms, conditions and provisions of this Ordinance shall remain in full force and effect for the period stated herein. Such occupancy tax ordinance or enactment shall be designed to meet all legal requirements to ensure that it is not construed as an income tax.

- 8.6 Franchise Fee Payment in Lieu of Other Fees. As indicated in Section 8.1, above, the Franchise Fee paid by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its property or any other tax not related to the Franchise or the physical operation thereof and does not exempt the Company from payment of head taxes or other fees or taxes assessed generally upon business.
- 8.7 Street Cut Permits. The Company will provide the Town with a Corporate Bond without Sureties each year to ensure it performs all conditions imposed by such permits. Upon request from the Town, the Company will furnish the Town with the Company's estimated cost of street repair.
- 8.8 Termination of Franchise. If this Franchise is terminated by either the Company or the Town for whatever reason, or is declared null and void, all Franchise Fees or occupancy taxes levied herein shall be suspended as of the date the Franchise is legally terminated. Final payment of any Franchise Fee or occupancy tax owed and due the Town shall be made on or before 30 days after the date the Franchise is legally terminated.

## ARTICLE 9

### REPORTING AND CHANGE IN FRANCHISE FEE

- 9.1 Reports. The Company shall submit reasonable and necessary reports containing, or based upon, information readily obtainable from the Company's books and records as the Town may request with respect to the operations of the Company under this Franchise, and shall, if requested, provide the Town with a list of real property within the Town which is owned by the Company.
- 9.2 Change of Franchise Fee. The Company shall, upon request from the Town, notify the Board of any changes in the Franchise Fee percentage made with other municipalities served by the Company under a franchise within the State of Colorado. If the Board decides the Franchise Fee percentage hereunder shall be changed, it shall provide for such change by Ordinance. However, any change in the Franchise Fee percentage shall then be surcharged by the Company to the Residents of the Town.

## ARTICLE 10

### ADMINISTRATION

- 10.1 Duration of Franchise. This Ordinance shall be in full force and effect from and after its passage as by law required and the conditions, terms, and provisions

herein shall remain in full force and effect for a period of 20 years from and after such enactment.

- 10.2 Temporary Extension of Franchise. Prior to the expiration of this Franchise, should the parties desire to renew the terms and conditions of this Franchise or execute a new Franchise, but have not yet done so, the parties may temporarily extend the terms and conditions of this Franchise by written agreement for a period of not longer than 180 days from such date of expiration. During such extension, all provisions of the Franchise shall continue in effect as if the Franchise had not expired.
- 10.3 Amendments. At any time during the term of this Franchise, the Town through its Board, or the Company, may propose amendments to this Franchise by giving 30 days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall within a reasonable time, negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s). No amendment(s) to this Franchise shall be effective until mutually agreed upon by the Town and the Company and until all public notice requirements pursuant to Colorado statutes, and ordinance requirements of the Town, have been met. This section shall not apply to Franchise Fee changes under Article 9.
- 10.4 Revocation of Privileges by Condemnation. In the event, at any time during the term of this Franchise, the Town shall condemn any of the Facilities of the Company within the boundaries of the Town, and thereby revoke all or any part of the privilege and authority herein granted to the Company to serve the Residents of the Town, then and in such event the Town shall pay to the Company just compensation as provided by the laws of the State of Colorado for such rights and Facilities by reason of such condemnation.
- 10.5 Compliance Impaired. Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this Franchise is impossible or is delayed because of circumstances beyond the Company's or Town's control. In those instances, the Company or Town shall use its best efforts to comply in a timely manner and to the extent possible.
- 10.6 Company's Failure to Perform. It is agreed that in case of the failure of the Company to perform and carry out any of the conditions, terms and provisions herein set forth in any substantial particular, wherein such failure is within the Company's control and with respect to which redress is not otherwise herein provided, the Town, acting through its Board, may, after hearing, determine such substantial failure; and, thereupon, after notice given the Company of such failure, the Company may have a reasonable time, not less than 90 days, unless otherwise agreed by parties, in which to remedy the conditions respecting which such notice shall have been given. After the expiration of such time and the failure to correct such conditions, the Board shall determine whether any or all rights and privileges granted the Company under this ordinance shall be forfeited and may declare this Franchise null and void.
- 10.7 Ownership of Facilities. All Facilities used or placed by the Company within the boundaries of the Town shall be and remain the property of the Company.
- 10.8 Transfer of Rights. The Company shall not transfer or assign any rights under this Franchise to a third party, excepting only corporate reorganizations of the Company not including a third party, unless the Town shall approve in writing

such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.

- 10.9 Removal of Facilities. Upon the expiration of this Franchise, if thereafter the Company Facilities shall not be used for electric, telephone, or cable TV purposes for a period of 12 successive months, the Town shall have the option of having the Company remove such Facilities or claim such Facilities as its own. If the Town elects to have the Company remove the Facilities, it shall give written notice to the Company directing it to remove such Facilities, and the Company shall remove the same no later than 90 days after the date of such notice, unless the Company and the Town agree to a longer period within which removal shall occur. Any Facilities, either underground or overhead, remaining after such time that are not expressly claimed by the Town shall be deemed to have been abandoned. Any cost incurred by the Town in removing abandoned Facilities, and any liability associated with Facilities abandoned by the Company shall be the liability of the Company. For any Facilities claimed by the Town, any liability associated with such Facilities shall become the liability of the Town.
- 10.10 Non-renewal of Franchise (Alternative Electric Service). If this Franchise is not renewed, or if it is declared null and void, or the Company terminates any service provided for herein for any reason, and the Town has not provided for alternative electric service to the Residents of the Town, the Company shall not remove its Facilities and shall be obligated to continue electric service to the Residents until alternative electric service is provided. The Company will not withhold any temporary services necessary to protect the public.

## ARTICLE 11

### COMMUNITY ENHANCEMENT FUND

- 11.1 Purpose. The Company is committed to programs designed to make a difference in people's lives and the communities in which they reside. The Company will voluntarily make monetary resources available to the Town for such programs and/or activities. Programs for which such funds shall be spent shall be limited to (1) beautification projects, (2) energy conservation projects, (3) equipment and technology upgrades for schools, (4) scholarship funds, (5) acquisition of open space and/or park land and development thereof, (6) sponsorship of special community events and (7) undergrounding of overhead electric and other utility lines. Funds made available under this Article may be spent for other purposes only with the express written consent of the Company.
- 11.2 Payments to the Fund. The Company shall make annual payments to the fund equal to one percent (1%) of its prior year's Revenues, prorated for the portions of the months at the beginning and end of the term of this Franchise, collected from the sale of electricity within the boundaries of the Town, or \$2,000, whichever amount is greater. Said payments shall be made into the fund no later than February 15<sup>th</sup> of the year subsequent to the year in which the gross revenues are received by the Company.
- 11.3 The Fund. The fund established by the Company shall be maintained in a bank account in the name of the Town, but shall be maintained separately from all other funds and accounts held by the Town.
- 11.4 Payments from the Fund. All payments from the fund shall be for projects described in Section 11.1 hereof. Prior to any such expenditure, authorization to

withdraw from the fund shall be given by resolution or ordinance duly enacted by the Board, and such resolution or ordinance shall clearly describe the nature and purpose of the project for which the expenditure is made. Prior to any expenditure, the Town shall notify the Company of its intended use of the funds. Unless the Company objects, in writing, prior to such expenditure, the Company shall have waived its right to object in the future if the funds are expended for the use identified in the notice.

- 11.5 Audits. The Town may audit the Company's books for the limited purpose of determining the Revenues being collected within the Town at any reasonable time and with reasonable prior notice. The Company may audit the fund account, expenditures from the fund and resolutions and ordinances authorizing such expenditures at any reasonable time and with reasonable prior notice.
- 11.6 Forfeiture of Enhancement Funds. The Company shall have the express right to temporarily suspend or terminate in full its annual contributions to the Enhancement Fund if it is determined that funds allocated and paid to the Town are being, or have been, misappropriated, administered with bias or discrimination or for other inappropriate actions.
- 11.7 Advancement of Fund. The Company shall consider advances of funds, subject to the provisions of this section, for all projects that specifically involve undergrounding of overhead lines or projects acceptable to the Company which are related to the Company's existing Facilities. The Town shall make all reasonable attempts to plan and budget use of the Fund without advancement of future Funds. However, if the Town requests and the Company and the Town agree that it is in the mutual interest of both, the Company shall anticipate Fund amounts to be available for up to three (3) years in advance. Both parties shall enter into a special agreement concerning the advanced Funds. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. In no case shall the Company be obligated to advance Community Enhancement Funds which will exceed the duration of this Franchise Agreement.
- 11.8 TABOR Compliance Issue. The Community Enhancement Fund described in this Article is a program that has been initiated solely by the Company. This Town has not made the program a requirement for granting of a franchise to the Company. Funding for this program is not a cost of doing business, but is a voluntary contribution by the Company and is intended to be and shall be considered to be a gift or grant within the meaning of Article X, Section 20, of the Constitution of the State of Colorado for purposes of determining compliance by the Town with such constitutional provisions.

## **ARTICLE 12**

### **UNDERGROUNDING**

- 12.1 Town Undergrounding Policy. The Town has a policy under which all new Facilities to serve new development within the Town boundaries must be installed underground. Consistent with that policy, all new Facilities of the Company necessary to extend service into new developments shall be extended by the Company underground, subject to the provisions of paragraphs 12.2 and 12.3, below. As used herein, the term "new Facilities" shall not apply to any existing overhead Facilities that are changed, altered or upgraded by the Company.
- 12.2 At Consumer's Request. If a customer(s) within the Town should request that new Facilities be installed underground or for the conversion of existing overhead electrical

- facilities of the Company to underground facilities or if Town ordinances or resolutions require a customer(s) to install Company facilities underground, the Company shall proceed in accordance with its Electric Service Tariffs, Rules and Regulations or other customary practices, as each may from time to time be amended.
- 12.3 Town Requested Undergrounding. Except for the Company's contributions to the Community Enhancement Fund, which may be used by the Town to pay for the undergrounding of the Company's overhead electric facilities, any request, requirement imposed by resolution or ordinance, or other communication from the Town to the Company, asking, or requiring the Company to underground its new electrical facilities or its existing overhead electric facilities, or move, remove, or replace its existing underground electrical facilities, shall be responded to in accordance with the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practices, as such may from time to time be amended.
- 12.4 Relocation of Underground Facilities. No provision contained in this Article shall be construed to obligate the Company to pay for the removal and relocation of its underground electric facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof or under the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practice in use by the Company, as such may be from time to time amended.
- 12.5 Governmental Mandates. This Franchise or the Town's Municipal Code, as either may be amended from time to time, shall not prohibit or limit the Company's right to enforce its collection of any cost increase caused by governmental mandate in accordance with the provisions of the Company's Electric Service Tariffs, Rules and Regulations, or other customary practices of the Company, as such may be from time to time amended.

### **ARTICLE 13**

#### **MISCELLANEOUS**

- 13.1 Changes in Utility Regulation. In the event new legislation materially affects the terms and conditions of this Franchise Ordinance, the parties agree to renegotiate the affected terms and conditions in good faith as an amendment hereto. The parties hereto acknowledge that regulatory and legislative changes in the electric utility, gas utility and other energy industries are currently being discussed nationwide and statewide; that some changes in utility industry sectors have already been implemented; and that other changes may be made in the future, during the term of this Franchise. The parties agree, that insofar as future changes in the utility laws will allow, the Company shall always retain the right to bill customers for utility transportation services and energy sales within the Town if it is the provider of either the energy product or the transportation of such product. The parties agree that this will provide the most efficient and convenient utility service to the Residents of the Town and provide assurance to the Town of franchise fee collection for each component charged for the sale and delivery of energy products within the boundaries of the Town.

- 13.2 Successors and Assigns. The rights, privileges, franchises and obligations granted and contained in this Ordinance shall inure to the benefit of and be binding upon the Company, its successors and assigns.
- 13.3 Representatives. Both parties shall designate from time to time in writing representatives to act as franchise agents for the Company and the Town. Such will be the persons to whom notices shall be sent regarding any action to be taken under this Ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party. Until any such change shall hereafter be made, notices shall be sent to the Town Manager and to the Company's Chief Executive Officer. Currently the addresses for each are as follows:

Town:

Town Manager  
Town of Eagle  
P.O. Box 609  
108 W. 2<sup>nd</sup>  
Eagle, CO 81631-0609

Company:

Chief Executive Officer  
Holy Cross Energy  
P.O. Box 2150  
Glenwood Springs, CO 81602-2150

- 13.4 Severability. Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft provisions that will achieve the original intent of stricken provisions.
- 13.5 Entire Agreement. This Franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Franchise.

**ARTICLE 14**  
**APPROVAL**

- 14.1 Town Approval. This grant of Franchise shall not become effective until approved by the Town in accordance with its ordinances and the statutes of the State of Colorado.
- 14.2 Company Approval. The Company shall file with the Town Clerk its written acceptance of this Franchise and of all its terms and provisions within 15 business days after the final adoption of this Franchise by the Town. The acceptance shall be in the form and content approved by the Town Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this Franchise shall become null and void.



INTRODUCED, READ, AND ORDERED PUBLISHED BY THE TOWN BOARD OF TRUSTEES OF THE TOWN OF EAGLE, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF EAGLE, ON THE 9 DAY OF December, 2025, BY A VOTE OF 6 IN FAVOR AND 0 AGAINST.

  
Mayor

ATTEST:

  
Town Clerk

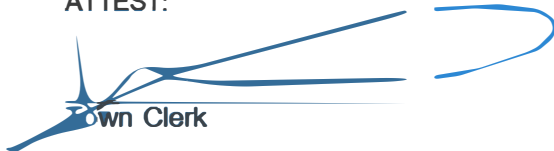
APPROVED AS TO FORM:

  
Town Attorney


Publication Dates:

FINALLY, adopted, passed and approved on second reading after Public Hearing on

ATTEST:

  
Town Clerk

TOWN OF EAGLE

  
Mayor

HOLY CROSS ENERGY

Bryan Hannegan, Chief Executive Officer

Date

**PROOF OF PUBLICATION**

STATE OF COLORADO       )  
  )  
COUNTY OF EAGLE        )

I, Melissa Daruna, Assistant Town Manager and Acting Town Clerk for the Town of Eagle, do solemnly swear and affirm that I published in full a true and correct copy of ORDINANCE 16, SERIES 2025 “AN ORDINANCE OF THE TOWN OF EAGLE, COLORADO, GRANTING A FRANCHISE TO HOLY CROSS ENERGY, ITS SUCCESSORS AND ASSIGNS, TO LOCATE, BUILD, INSTALL, CONSTRUCT, ACQUIRE, PURCHASE, EXTEND, MAINTAIN, REPAIR AND OPERATE INTO, WITHIN AND THROUGH THE TOWN OF EAGLE, ALL NECESSARY AND CONVENIENT FACILITIES FOR THE PURCHASE, GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY, AND TO FURNISH, SELL AND DISTRIBUTE SAID ELECTRICAL ENERGY TO THE RESIDENTS OF THE TOWN OF EAGLE FOR LIGHT, HEAT, POWER AND OTHER PURPOSES BY MEANS OF CONDUITS, CABLES, POLES AND WIRES STRUNG THEREON, OR OTHERWISE ON, OVER, UNDER, ALONG, ACROSS AND THROUGH ALL PUBLIC EASEMENTS AND ALL STREETS AND OTHER PUBLIC WAYS IN SAID TOWN OF EAGLE, EAGLE COUNTY, COLORADO, AND FIXING THE TERMS AND CONDITIONS THEREOF” on the Town of Eagle’s website, [www.townofeagle.org](http://www.townofeagle.org), on the 10<sup>th</sup> day of December, 2025.

Witness my hand and seal this 10th day of December, 2025.

  
Melissa Daruna,  
Acting Town Clerk



Ordinance Effective Date:

December 20, 2025