

**ORDINANCE NO. 6
SERIES 2019**

AN ORDINANCE OF THE TOWN OF VAIL, EAGLE COUNTY, 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 VAIL, 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 VAIL 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 STREETS AND OTHER PUBLIC WAYS IN THE TOWN OF VAIL, AND SETTING FORTH DETAILS RELATED THERETO

WHEREAS, the Town's current energy franchise agreement with Holy Cross Energy is set to expire in May 2019;

WHEREAS, pursuant to C.R.S. § 31-32-102, Holy Cross Energy published notice of its intent to apply for the passage of an ordinance granting it a new franchise agreement to operate within the Town in a newspaper of general circulation published in the Town once a week for three successive weeks on April 1, April 8, and April 15, 2019, specifying the new franchise agreement would be considered by the Town Council at its regular meeting on April 16, 2019;

WHEREAS, following first reading of this Ordinance on April 16, 2019, and pursuant to C.R.S. § 31-32-103, Holy Cross Energy caused additional published notice of the proposed franchise agreement to be published in a newspaper of general circulation published in Town for a period of not less than two (2) weeks, from May 7, 2019 to May 14, prior to May 21, 2019;

WHEREAS, Holy Cross has provided proof of such published notice in the form of newspaper affidavits of publication; and

WHEREAS, the Town Council finds and determines that approval of the proposed franchise agreement is in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO, THAT:

Section 1. The Town Council approves the Franchise Agreement attached hereto and incorporated herein, subject to final approval by the Town Attorney.

Section 2. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not effect the validity

of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

Section 3. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper for the health, safety and welfare of the Town of Vail and the inhabitants thereof.

Section 4. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, theretofore repealed.

INTRODUCED, READ ON FIRST READING, APPROVED, ORDERED PUBLISHED ONCE IN FULL AND ORDERED PUBLISHED this 16th day of April 2019; with a public hearing for second reading of this Ordinance set for the 7th day of May 2019, in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

David Chapin, Mayor

ATTEST:

Tammy Nagel, Town Clerk

READ AND APPROVED ON SECOND READING AND ORDERED PUBLISHED this 21st day of May 2019.

David Chapin, Mayor

ATTEST:

Tammy Nagel, Town Clerk

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 Franchise Ordinance (the "Franchise"), the following terms shall have the meaning given herein:

2.1 "Town" is the Town of Vail, 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 "Council" refers to the legislative body of the Town, known as the Town Council of the Town of Vail, Colorado.

2.4 "Facilities" refers to all overhead and underground electric facilities, buildings, and structures necessary to provide electricity into, within and through the Town of Vail including, but not limited to, such essential apparatus, appliances, plants, systems, substations, works, transmission and distribution lines and structures, anchors, cabinets, cables, conduits, guy posts and guy wires, meters, microwave and 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 and available for use by any public utility for its facilities.

2.6 "Private Easements" refers to easements created and available only for use by the Company for its Facilities, or by the Company and other selected users or utilities.

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 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 of Vail hereby grants to the Company the non-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 boundaries all necessary and convenient Facilities for the purchase, generation, transmission, and distribution of electrical energy. Such grant is made together with the non-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. The rights granted by this Franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the Town reserves the right to make or grant a franchise to any other person, firm, or corporation.

3.2 Scope of Grant. Such grant includes the right and obligation to furnish electrical energy either overhead, on poles and wires, or underground, or otherwise, on, over, under, along, across and through any 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 Streets and Other Public Ways as may be hereafter laid out, opened, located, or constructed within the boundaries of 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, subject to any required Town permits, 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 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.

3.4 Duration of Franchise. This Franchise shall be in full force and effect on the first day of the month following the date this Franchise is finally approved by the Town Council of the Town of Vail (the "Effective Date"), and the terms, conditions and covenants hereof shall remain in full force and effect for a period of twenty (20) years from the Effective Date.

3.5 Periodic Review. Consistent with Section 12.5 of the Vail Town Charter, five (5) years from the Effective Date, and every five (5) years thereafter until the end of the term as defined herein, the Town may review the terms of this Franchise. The Town shall notify the Company in writing no later than one hundred and eighty (180) days before each five (5) year anniversary of the Effective Date if it desires to seek to amend the Franchise. The five (5) year periodic review shall not affect the twenty (20) year duration of the Franchise as set forth in Section 3.4 above.

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 upon prior written approval granted by the Town Council. 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 and in a manner to minimize damage or interference to trees, shrubbery and other natural features according to custom and usage within the utilities industry.

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, provided, however, that 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.

4.5 Use of Facilities. The Company shall have the right to make such use of its Facilities and any property owned by the Company for uses other than the uses contemplated in this Franchise, as it deems proper so long as such other uses do not interfere with its ability to supply electrical energy.

4.6 Relocation of Overhead Facilities. If at any time it shall be necessary to change the position of any overhead electrical Facilities of the Company 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.

4.7 Compliance with Town Requirements. The Company shall comply with all Town requirements regarding curb and pavement cuts, excavating, digging and related construction, maintenance and operational activities, including obtaining Town permits as required therefor. 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 thirty (30) days after issuance of such 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. Upon request, 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 Projects. The Company and the Town shall endeavor to inform one another of any capital improvement 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.

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 with necessary Town permits in a timely and expeditious manner which minimizes the inconvenience to the Town and all Residents.

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 electronic, oral or written, to the Town and its affected Residents, of planned service interruptions of significant duration.

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 Company's applicable and effective rates and under the terms and conditions set forth in the Rate Schedules; Standards for Service, Rules and Regulations, and Service Connection and Extension Policies, adopted by and on file with the Company, 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 shall, 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 utilities industry as the business of the Company and the growth of the Town justify, in accordance with its Standards for Service, Rules and Regulations, and Service Connection and Extension Policies for electric service currently in effect and on file with the Company, subject only to regulations thereof as is provided by state and federal 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 should be interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

5.4 Changes in Rates and Service. 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 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 a continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor.

5.5 Maps and Regulations. The Company shall submit maps of its Facilities within the Town boundaries to the Town Clerk. The Company shall keep current copies of its Standards for Service, Service Connection and Extension Policies, Rules and Regulations on Company's website. All changes in such maps, Standards for Service, Rules and Regulations, and policies, shall be submitted to the Town as the same may from time to time occur. The Town shall provide copies of its map to the Company if Town boundaries change.

5.6 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.

5.7 Compliance with Laws. The Company shall comply with all County, State or Federal laws, rules and regulations, ordinances or resolutions related to the subject matter hereof.

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 Town for the purpose of stringing wires thereon for any reasonable Town authorized use; which use shall not include the distribution or transmission of electricity; provided, however, that the Company shall assume no liability, nor shall it be put

to 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 its Facilities. Use of Facilities hereunder by the Town shall not apply to the Town's licensees, permittees and franchisees. The Company agrees to permit Town licensees, permittees and franchisees, except those holding an electric utility franchise or license from the Town, to use its Facilities upon reasonable terms and conditions to be contractually agreed upon with the Company, in writing.

ARTICLE 7

INDEMNIFICATION AND POLICE POWER

7.1 **Town Held Harmless.** The Company shall indemnify, defend and save the Town, its officers and employees, harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the Town pursuant to this Franchise, and the securing of, and the exercise by the Company of, the franchise rights granted in this Franchise and shall pay all reasonable expenses arising therefrom. The Town shall provide prompt written notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its franchise rights. The Company shall be permitted, at its own expense, to appear and defend or to assist in defense of such claim. In the event a claim or claims for injury or damage is brought against the Company, and such shall include a claim of responsibility against the Town, both parties shall defend the respective claim or claims brought against each, and each shall be responsible for its own attorney's fees during the pendency and continuation of any such action or proceeding. At the conclusion of the litigation or proceeding, whether by settlement, dismissal, order of court or administrative agency, or otherwise, if a determination is made that the Town is in no way responsible for the claim or claims, or that the Company is solely responsible, the Company shall promptly reimburse the Town for its reasonable attorney's fees and costs incurred in defending such claim or claims.

7.2 **Police Power Reserved.** The Company expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. 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.** In consideration for the grant of this Franchise, the Company shall pay to the Town a sum equal to four-percent (4%) of its gross Revenues collected from the sale of electricity within the boundaries of the Town (the "Franchise Fee"), but this Franchise Fee may be reduced at any time by resolution of the Town Council to three-percent (3%) of the Company's gross Revenues collected from the sale of electricity within the boundaries of the Town. Should the Franchise Fee be reduced to three-percent (3%), the Town may, at its option,

return the Franchise Fee to four percent (4%) at any time upon resolution of the Town Council. Electric revenues received from service to the Town facilities will not be assessed the Franchise Fee under this section nor will the Town be paid the Franchise Fee from such revenues collected from Town facilities. To the extent required by law, the Franchise Fee shall be surcharged to the Residents of the Town. The Franchise Fee is a surcharge in addition to any charges specified in the Company's tariffs and any applicable taxes.

8.2 Franchise Fee Payment In lieu of Other Fees. 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.

8.3 Payment. Payment of the Franchise Fee shall be made by the Company to the Town on or before thirty (30) days after the end of each quarter of each calendar year for the preceding three (3) month period but shall be adjusted and prorated 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.

8.4 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 Town Council shall have access to the books of said Company for the purpose of confirming the quarterly gross revenues received from operations within said Town.

8.5 Correction of Underpayment/Overpayment. Should either the Company or the 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 thirty (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.

8.6 Occupancy Tax Alternative. In the event the 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 one calendar year the current Franchise Fee as set forth in Section 8.1 herein within the Franchise Area for that calendar year. In the event the one-percent (1%) community enhancement fee shall also be declared invalid and/or shall be set aside by a Court of competent jurisdiction, then the occupancy tax levied upon the Company by the Town shall be one percent (1%) higher than the current Franchise Fee. Such occupancy tax shall be adjusted for any Franchise Fees or enhancement 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 and/or enhancement fee levied hereunder, all of the remaining terms, conditions and provisions of this

Franchise 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. Any alternative levy imposed by the Town shall only be valid if such is surchargeable by the Company under the provisions of C.R.S. § 40-3-106(4).

8.7 Payment of Expenses Incurred by Town in Relation to Franchise. At the Town's option, the Company shall pay in advance or reimburse the Town for expenses incurred for publication of notices related to the enactment of this Franchise and for photocopying of documents during the negotiations for, and processing of, this Franchise.

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 thirty (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 Town Council 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 Town Council decides the Franchise Fee percentage hereunder shall be changed, it shall provide for such change by ordinance; provided, however, that any change in the Franchise Fee percentage shall then be surcharged by the Company to the Residents of the Town.

9.3 Copies of Tariffs. The Company shall post copies of its tariffs currently in use on the Company's website.

ARTICLE 10

ADMINISTRATION

10.1 Amendments. At any time during the term of this Franchise, the Town through its Town Council, or the Company, may propose amendments to this Franchise by giving thirty (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.

10.2 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 for such rights and Facilities by reason of such condemnation.

10.3 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.

10.4 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 stipulations, terms, conditions, and agreements 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 Town Council, 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 ninety (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 Town Council shall determine whether any or all rights and privileges granted the Company under this Franchise shall be forfeited and may declare this Franchise null and void.

10.5 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.

10.6 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.

10.7 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 twelve (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 ninety (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.

10.8 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 shall voluntarily make monetary resources available to the Town for such programs and/or activities (the "Fund"). Programs for which the Fund 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; (7) Undergrounding of overhead electric and other utility lines. Fund money made available under this Article may be spent for other purposes only with the express written consent of the Company. This program has been initiated solely by the Company; the Town has not made the program a requirement for this Franchise. Funding for this program is not a cost of doing business but is a voluntary contribution by 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 gross Revenues, commencing with 2019 Revenues, collected from the sale of electricity within the boundaries of the Town. Said payments shall be made into the Fund no later than February 15th 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 Town Council, 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 Fund. Unless the Company objects, in writing, prior to such expenditure, the Company shall have waived its right to object if the Fund is expended for the use identified in the notice.

11.5 Audits. The Town may audit the Company's books related to gross Revenues 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 Fund. The Company shall have the express right to temporarily suspend or terminate in full its annual contributions to the Fund if it is determined that funds allocated and paid to the Town for the Fund are being, or have been, misappropriated, administered with bias or discrimination, or for other inappropriate actions.

11.7 Advances of Funds. This Paragraph 11.7 applies only to the Fund identified for undergrounding of overhead electric lines discussed in Paragraph 11.1 above. The Town shall make all reasonable attempts to plan and budget use of the Fund without advancement of future Fund. 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 Fund. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated.

ARTICLE 12

UNDERGROUNDING

12.1 Town Policy. The Town has a policy that requires underground extension of new electrical distribution lines to new development within the Town. Amendments thereto will be furnished to the Company promptly after enactment by the Town. The Company shall extend its Facilities in accordance with such policy and the subdivision regulations and other applicable ordinances of the Town, but only subject to the provisions of the Company's Line Extension Policy, as may be amended from time to time, and other applicable Company rules and regulations, if any.

12.2 Customer's Request. If a customer within the Town should request that new Facilities be installed underground, or for the conversion of existing overhead Facilities to underground Facilities, the Company shall proceed in accordance with its Line Extension Policy.

12.3 Town Requested Undergrounding. Except for the Company's contributions to the Fund, which may be used by the Town to pay for the undergrounding of the Company's 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 new Facilities or existing overhead Facilities, or move, remove, or replace existing underground Facilities, shall be handled according to Sec. 12.4 herein and in accordance with the provisions of the Company's Line Extension Policy. The Town acknowledges receipt of a copy of the policy.

12.4 Relocation of Underground Facilities. If the Town elects to change the grade of or otherwise alter any Streets or Other Public Ways for a public purpose, as determined at the sole legislative discretion of the Town Council, unless otherwise reimbursed by federal, state or local legislative act or governmental agency, the Company, upon reasonable notice from the Town, shall remove and relocate its Facilities or equipment situated in the public rights-of-way, at the sole cost and expense of the Company. Provided, however, 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 entity under circumstances that reasonably require the party requesting or demanding the relocation to pay for the relocation under other provisions hereof, or under the provisions of the Company's Line Extension Policy.

ARTICLE 13

RENEWABLE ENERGY GOALS

13.1 Renewable Energy Goals. The Company has a commitment to Renewable Energy that falls in line with the advanced goals of the Town. In the fall of 2018 the Company announced a new SEVENTY70THIRTY plan. The SEVENTY70THIRTY plan sets a goal for the Company to purchase 70% of all power sold from clean renewable resources by the year 2030. This represents an increase from 39% renewables sourced at the time of the program's adoption. Another goal of the SEVENTY70THIRTY program is to reduce the 2014 greenhouse gas emissions associated with the Company's power supply by 70% compared to 25% 2018.

ARTICLE 14

MISCELLANEOUS

14.1 Changes in Utility Regulation. In the event new legislation materially affects the terms and conditions of this Franchise, the parties agree to renegotiate the affected terms and conditions in good faith. 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. One scenario is the implementation of open access to electric customers, and other energy customers, making such customers available to all utilities, thus eliminating or limiting territorial protections. Under this scenario one utility may contract to sell a type of energy to a customer, while another utility transports the energy to the customer for a fee charged to the other utility or the customer. 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.

14.2 Successors and Assigns. Upon written approval of the Town, except when transfer is permitted by Section 10.6 herein, the rights, privileges, franchises and obligations granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns.

14.3 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 Franchise. 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 CEO. Currently the addresses for each are as follows:

For the Town: Town Manager
 Town of Vail

75 South Frontage Road
Vail, Colorado 81657

For the Company: Mr. Bryan Hannegan
Holy Cross Energy PO Drawer 2150
Glenwood Springs, CO 81602

14.4 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.

14.5 Entire Agreement; Repeal. This Franchise, when approved by the Company as set forth below, constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Franchise. This Franchise supersedes all prior ordinances relating thereto, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 13, Series of 1999, of the Town of Vail, Colorado, is hereby repealed as of the Effective Date.

14.6 Non-Waiver. Any waiver of any obligation or default under this Franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

14.7 No Third-Party Beneficiaries. No provision of this Franchise 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.

ARTICLE 15

APPROVAL

15.1 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.

15.2 Company Approval. The Company shall file with the Town Clerk its written acceptance of this Franchise and of all its terms and provisions within fifteen (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.