Request for Proposal
From
Executive Search Firms

Issued by: Holy Cross Electric Association, Inc.
3799 Highway 82
P.O. Box 2150
Glenwood Springs, CO 81602-2150

Issue Date: September 19, 2016
Proposal Due Date: October 7, 2016

RFP Website: http://www.holycross.com/ceo-search
The Holy Cross Electric Association, Inc. a/k/a Holy Cross Energy (HCE) Board of Directors is currently accepting sealed proposals from qualified executive search firms to conduct the search for the position of President and Chief Executive Officer (CEO). This search is being conducted to fill the position of the current CEO who has announced retirement from the position effective on July 1, 2017.

1. **MINIMUM QUALIFICATIONS**

HCE encourages proposals from all search firms that have conducted successful searches for electric cooperatives (or similar fields) at the executive level.

2. **INTRODUCTION**

HCE was founded in 1939, and it is a member-owned, not-for-profit electric cooperative utility providing electricity, energy products and services to more than 55,000 consumers primarily in the Western Colorado counties of Eagle, Pitkin, and Garfield.

Each consumer receiving electric service from HCE is a member-owner eligible to vote at meetings of members, to become a Director, and to receive member equity allocations and/or distributions.

As a not-for-profit electric utility, annual revenues that exceed operating expenses are credited to each Member's equity account based upon their annual energy purchases (sometimes referred to as "patronage"). Each Member receives an annual statement showing their current and past year(s) Member Equity allocation and equity account balance. Members may receive cash distributions from their equity account up to two times per year depending upon length of membership. Cash distributions are made at the discretion of the Board of Directors based upon the Bylaws and financial condition of HCE. Members have received cash distributions of over $105 million since 1963 with nearly $37 million distributed since May of 2005.

HCE is governed by a member-elected Board of Directors consisting of seven current HCE members from specific geographical districts serving staggered three year terms. Director candidates submit nominating petitions signed by at least 15 current members residing within the geographical District in which the candidate resides and wishes to represent. If there is more than one candidate for a Director District, then a general election is held for the purpose of electing Directors. HCE is not subject to the economic (ratemaking) jurisdiction of the Colorado Public Utilities Commission because its Members have elected to exempt HCE from such jurisdiction. HCE remains subject to the Commission's complaint and territorial jurisdiction and is also subject to any Federal, State or local authority with appropriate jurisdiction.

HCE has long term power supply commitments through contracts with Public Service Company of Colorado (a subsidiary of Xcel Energy) and Western Area Power Administration. Additional wholesale resources include economy purchases from Black Hills Power, and power is also purchased from a number of small renewable energy generation facilities within HCE’s service territory. These include the first community-owned solar garden in Colorado and three additional community owned arrays totaling 3.5 MW, and 1 MW solar array and 11 MW biomass plant selling power to HCE under long term power purchase agreements. HCE is an 8% owner of Comanche Unit 3 generating unit, a 750 MW super-critical, coal-fired power plant located in Pueblo, CO which became operational in July, 2010. HCE provides an annual update of its power supply sources, associated emissions, and Renewable Portfolio Standard compliance. HCE believes in being a conscientious steward of its natural resources. HCE has several long standing programs which were often ahead of popular demand, addressing efficiency, conservation and renewable resources. HCE was one of the first utilities in Colorado to offer Net Metering to its consumers, and HCE currently has more than 760 net metered accounts. HCE was among utility pioneers in offering consumers the option...
of purchasing renewable energy to offset their carbon footprint. Nearly 1,900 of HCE's consumers are participating in Wind Power and Local Renewable Pool programs purchasing over 1,100,000 kilowatt hours of renewable energy per month. HCE has provided thousands of complimentary Residential Energy Audits since the 1980's.

In 2004, HCE established its WE CARE (With Efficiency, Conservation and Renewable Energy) program providing consumers:

- An upfront incentive for consumer owned renewable energy generation facilities. To date, more than $7 million in payments have been distributed for the installation of more than 5,600 kilowatts of generation capacity.
- Complimentary residential and commercial energy audits. Complimentary electric water heater blankets and LED bulbs are installed for members during residential audits.
- Incentives for the installation of new efficient equipment and replacement of old, outdated equipment for residential and commercial consumers.

Other HCE programs that support efficiency, conservation and wise use of natural resources:

1. Annual funding of the LivingWise® educational program helping provide over 1,000 local elementary school students and their teachers with devices and information concentrating on residential energy and water resource efficiency.
2. Support for Weatherization services for income-qualified members through partnerships with the Colorado Energy Office and Energy Outreach Colorado.
3. Partnerships with local non-profits, including Walking Mountains Science Center, the Community Office for Resource Efficiency (CORE), and Clean Energy Economy for the Region (CLEER), and Energy Smart Colorado.
4. Expending more than $1 million over the past several years redesigning, building and retrofitting its overhead power lines in order to protect raptors from accidental electrical contact.
5. Created transportation incentives for its employees to reduce the number of vehicle trips to and from work.
6. Continuing our long standing practice of sophisticated system design and use of high efficiency transformers to maximize system reliability, energy efficiency and economy.

3. **SCOPE OF SERVICES**

The following is the proposed scope of search firm services (Services) to be provided under this RFP. Recommended adjustments by selected firm will be considered.

3.1 Work with the Board to identify executive skill set most desired in the next CEO and create a position profile.
3.2 Recruit aggressively based on position profile, existing job description, benefits, affirmative action goals and EEO requirements, and information about HCE and region, and place advertising on the appropriate websites and job posting resources.
3.3 Prepare a report summarizing the results of the recruitment process and facilitate / assist the HCE CEO Search Team and/or Board in the selection of finalists (including internal candidates). The firm shall guide the selection through the entire process, up to and including the recommendation of the top three to five candidates to the Board.
3.4 Provide support including scheduling final candidate interview, preparing interview questions, and handling all logistical support associated with the final interview effort.
3.5 Recommend / design the assessment process and post offer background screenings.
3.6 Administer the assessment process as well as other analytical tools.
3.7 Perform reference checks on the top three to five candidates.
4. COMPENSATION & FEES
The proposal for compensation for the Services must include a breakdown for each phase of the Services, professional fees, travel costs, and other expenses. Costs shall be detailed according to the work items contained in the proposal. Proposer shall state conditions for engaging the Proposer’s firm, terms, and any guarantees. HCE’s standard independent contractor Addenda to the Proposer’s contract for Services will be attached [see addenda to this request].

5. PROPOSAL SUBMISSION
Proposals and any addenda thereto shall be submitted by the Proposer in digital format (pdf is preferable). It is mandatory that proposals be signed by a duly authorized representative of the Proposer and be received by jrowley@holycross.com and time recorded no later than 5:00 p.m. on October 7, 2016.

6. ACTIVITY COMPLETION DATE
The following schedule has been established for this selection process [the schedule may be changed by the Board of Directors in its discretion]:

- Request for Proposal Available- September 19, 2016
- Proposals Due- October 7, 2016
- Short List Interviews (if necessary)- October 17- November 10, 2016
- Board Approval/Contract Award- November 25, 2016

6.2 Late proposals shall be disqualified from consideration. The timely and accurate submission of a proposal is the sole responsibility of the Proposer.
6.3 Proposal information shall be kept confidential by HCE pending subsequent evaluation and negotiation. Proposal contents shall only be released once the Board meeting agenda has been posted for award consideration of a contract by the Board of Directors.
6.4 HCE reserves the right to negotiate any terms and conditions of proposals received and contract forms received, prior to acceptance/rejection of said proposal or contract resulting from proposal.
6.5 Proposal submission e-mail should have the following subject line: “HCE CEO Search Firm Proposal: (name of Proposer)”. HCE assumes no responsibility for non-delivery or errant delivery of proposals.
6.6 All proposals shall be submitted in a form and manner as indicated in this Request for Proposal document and by the proposal forms.

7. INFORMATION TO BE SUBMITTED WITH THE PROPOSAL
Proposers shall provide the following information with their proposal submission. Failure to provide any of the information below may be cause for rejection of proposal. Each proposal shall conform to the requirements set forth in this section. The proposal shall include all information requested in this RFP presented in a clear and concise manner and in the order requested below. Each proposal must include the following elements:

7.1 Cover letter signed by a representative empowered to enter into contracts on behalf of Proposer. The cover letter must indicate the name, address and primary contact information of the Proposer including the contact person’s name, address, phone, facsimile number, and e-mail address.
7.2. Table of contents listing major sections and subsections of the proposal that correspond to the requirements of this RFP
7.4 An overall introduction to the proposal including a statement of the firm’s understanding of the Services and experience in successful searches in the industry.
7.5 An overall approach for achieving the objectives of the Services, steps involved, and start and completion dates for each task. Include an explanation of firm’s distinguishing characteristics/approach.
7.6 An explanation of the role of the firm as related to the Services. Include specifics as to who will be responsible for handling the Services.
7.7 Costs are required to include a breakdown for each phase of the Services, professional fees, travel costs, and other expenses. Costs shall be detailed according to the work items contained in the proposal. State conditions for engaging firm, terms, and any guarantees.
7.8 History and Background to include an identification of firm’s history and philosophy.
7.9 References. A list of three former electric cooperative clients, if any, including contact name, address, and telephone number(s) for whom the firm has performed services similar to those described in this Request for Proposals.
7.10 Time Frame. Indicate average placement time.

8. LATE PROPOSAL
A proposal received after the receiving time specified shall be rejected.

9. WITHDRAWAL OF PROPOSAL
A proposal may be withdrawn by written or e-mail notice, provided such notice is received prior to the date and time set for the proposal opening. A request for withdrawal of a proposal after award shall not be considered.

10. VALIDITY PERIOD
Pricing submitted for the Services in response to this Request for Proposal solicitation is required to be valid through March 1, 2017.

11. AWARD OF PROPOSAL
Award of proposal shall be made on the basis of the proposal that is most advantageous to HCE. In all instances, the decision rendered by HCE shall be final.
   11.1 HCE reserves the right to reject any or all proposals, or parts thereof, and to waive any informalities or irregularities.
   11.2 HCE reserves the right to hold proposals for a period not to exceed ninety days from the date of opening before awarding or rejecting said proposals.
   11.3 A contract shall not be assigned to any other person or entity without the consent of the HCE Board of Directors. Requests for assignment shall be submitted, in writing, to the HCE CEO Search Team

12. QUESTIONS / CLARIFICATIONS
Questions regarding the Request for Proposal shall be directed to John Rowley, Vice President, Human Resources, at jrowley@holycross.com and must be submitted no later than September 28, 2016.
12.1 Communications from prospective Proposers, such as in person, by telephone, voice-mail, electronic mail, or other similar means, to any member of the Board of Directors, officer, agent or employee of HCE, other than indicated above, are prohibited.
Except for inquiries directed through Mr. Rowley, HCE will not meet nor otherwise communicate individually with prospective Proposers. HCE may, at its sole discretion, disqualify any Proposer who fails to observe this requirement.
12.2 If any questions or responses require revision to this Request for Proposal as originally published, such revisions will be by formal addendum only.

13. REQUEST FOR PROPOSAL DOCUMENT AND ANY ADDENDA
Copies of the Request for Proposal document and all addenda issued thereto may be obtained from John Rowley, Vice President, Human Resources, PO Box 2150 Glenwood Springs, CO 81602 or downloaded directly from the HCE website at www.holycross.com/ceo-search. Proposers are solely responsible for checking the HCE website for any addenda issued for this solicitation.

14. INDEMNIFICATION AGREEMENT
By submission of a Proposal, then the successful Proposer shall keep and hold HCE, its Board of Directors and its officers, directors, agents, servants, and employees harmless from any and all liabilities, losses, suits, claims, judgments, fines, penalties, demands or expenses, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorneys’ fees, court costs, and expert fees), claimed by anyone by reason of injury or damage to persons or property sustained in or about HCE property, as a proximate result of the acts or omissions of the successful Proposer, its agents, servants, or employees, or arising out of the operations of the successful Proposer upon and about HCE, excepting such liability as may result from the sole negligence or intentional misconduct of HCE, its officers, directors, servants, agents and employees.

In the event this section is applicable to any such matter, then Proposer shall further use legal counsel reasonably acceptable to HCE in carrying out successful Proposer’s obligations hereunder. Any final judgment rendered against HCE for any cause for which successful Proposer is liable hereunder shall be conclusive against successful proposer as to liability and amount, where the time for appeal therefrom has expired. The Indemnity provisions set forth herein shall survive the expiration or early termination of any Agreement.

15. PROPOSER EXPENSES
Prospective Proposers are solely responsible for their own expenses in preparing any proposal.

16. STATUS OF SUCCESSFUL PROPOSER
Successful Proposer shall have the status of an “Independent Contractor” and shall not be entitled to any of the rights, privileges, benefits, and emoluments of an officer or employee of HCE.

17. ASSIGNMENT
No assignment of any agreement resulting from award of this proposal shall be allowed including the right to receive payment without the express written permission of the CEO Search Team or its designee.

18. EVALUATION CRITERIA
HCE shall review each Proposer’s initial proposal and select the Proposer that it determines to be the most qualified, in HCE’s sole discretion, pursuant to the evaluation criteria set forth in this section. A Proposer may be required to submit additional or supplemental information to HCE to facilitate this selection process. An initial proposal may be rejected if it is determined by HCE to be non-responsive, provided that HCE reserves the right to waive any irregularities or technicalities that it determines, in its sole discretion, to be minor in nature and in the best interests of HCE.

Further, any proposal may be rejected if it is determined by HCE that the Proposer is not capable of providing the services satisfactorily or due to the failure of the Proposer to provide information requested relating to such determination.

The evaluation criteria utilized to evaluate proposals received shall include, but not be limited to, the following:

18.1 A satisfactory record of successful search assignments for electric utilities with extra consideration for successful searches in distribution cooperatives;
18.2 Evidence of understanding by firm of modern leadership qualities necessary for the position, CEO transition in progressive organizations and leadership skills necessary to develop and sustain a strong organizational culture.
18.3 Evaluation of key personnel. This shall include the quality of the personnel and the number of hours these quality personnel shall allocate to the search;
18.4 The responsiveness of the RFP by the firm to the tasks to be performed as identified in the Scope of Services.
18.5 The timeliness and speed with which the search firm can complete the Services.
18.6 The comprehensiveness and rationale of the search approach.
18.7 Past performance on contracts with electric utilities in terms of quality of work and compliance with schedules. This will be evaluated based on a check of references.
18.8 Recruiting Options / Fee Arrangement that compare to the level of effort to be expended.
19. **NON-COLLUSION**
Proposers, by submitting a signed proposal, certify that the accompanying proposal is not the result of, or affected by, any act of collusion with any other person or company engaged in the same line of business or commerce or any other fraudulent act.

20. **OWNERSHIP OF PROPOSALS**
All responses to this Request for Proposal solicitation shall become the property of HCE.

21. **CONTRACT NEGOTIATIONS**
After recommendation of a selected Proposer by the selection panel, contract negotiations will commence. If at any time contract negotiation activities are judged to be ineffective by the CEO Search Team or by HCE’s legal counsel, then HCE will cease all negotiation with that Proposer and begin negotiations with the next highest ranked Proposer. This process may continue until both the Proposer and HCE execute a completed agreement or HCE determines that no acceptable alternative proposal exists.

22. **APPEAL BY UNSUCCESSFUL PROPOSER**
No appeals by an unsuccessful Proposer will be considered.

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ADDENDUM TO INDEPENDENT CONTRACTOR SERVICES AGREEMENT
BETWEEN
HOLY CROSS ELECTRIC ASSOCIATION, INC. (the “Company”)
AND
_________________________ (the “Contractor”)
DATED __________, 20__

The provisions of this Addendum are an amendment to the “Independent Contractor Services Agreement” dated ________________, 20__, between Holy Cross Electric Association, Inc. a/k/a Holy Cross Energy, a Colorado nonprofit cooperative corporation and ________________, a Colorado corporation (the “Agreement”), and are on the following terms:

The following sections are added to the Agreement:

Section 1. Environmental Protection. The Contractor shall perform the work in compliance with all applicable Federal, State, and local Environmental Laws. For purposes of this Agreement, the term “Environmental Laws” shall mean all Federal, state, and local laws including statutes, regulations, ordinances, codes, rules, and other governmental restriction and requirements relating to the environment or solid waste, hazardous substances, hazardous waste, toxic or hazardous material, pollutants or contaminants including, but not limited to the Comprehensive Environmental Response Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, et seq., and the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq., now or at any time hereafter in effect.

Section 2. Protection to Persons and Property. The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of federal, state, and local laws, rules, and regulations and building and construction codes, in addition to the safety rules and procedures of the Company.

The following provisions shall not limit the generality of the above requirements:

a. The Contractor shall at no time and under no circumstances cause or permit any employee of the Contractor to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Agreement.

b. The Contractor shall transport and store all material in facilities and vehicles which are designed to protect the material from damage. The Contractor shall ensure that all vehicles, trailers, and other equipment used comply with all applicable licensing, traffic, and highway requirements.

c. The Contractor shall so conduct the work as to cause the least possible obstruction of public highways.

d. The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

e. The Contractor shall make good and fully repair all injuries and damages to the work or any portion thereof under the control of the Contractor by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor’s negligence.

(i) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Company and Company’s directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney’s fees) for personal loss, injury, or death to persons (including but not limited to Contractor’s employees) and loss, damage to or destruction of Company’s property or the property of any other person or entity (including but not limited to Contractor’s property) in any manner arising out of or connected with the Agreement, or the materials or equipment supplied or services performed by Contractor, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Contractor liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Company.
(ii) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Company and Company’s directors, officers, and employees from all liens and claims filed or asserted against Company, its directors, officers, and employees, or Company’s property or facilities, for services performed or materials or equipment furnished by Contractor, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Contractor shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Company promptly when it has done so. If Contractor does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Company shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Contractor.

(iii) Contractor shall provide to Company’s satisfaction evidence of Contractor’s ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

f. Upon violation by the Contractor of any of the provisions of this section, after written notice of such violation given to the Contractor by the Company, the Contractor shall immediately correct such violation. Upon failure of the Contractor so to do the Company may correct such violation at the Contractor’s expense; Provided, however, that the Company may, if it deems it necessary or advisable, correct such violation at the Contractor’s expense without such prior notice to the Contractor.

g. The Contractor shall submit to the Company monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Company.

Section 3. Insurance. The Contractor shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers’ compensation and employers’ liability insurance, as required by law, covering all its employees who perform any of the obligations of the Contractor under the Agreement. If any employer or employee is not subject to the workers’ compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers’ compensation laws.

b. Public liability insurance covering all operations under the Agreement shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million each occurrence, and property damage limits of $1 million for each occurrence. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Company shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection “b” and “c” of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be paid by Contractor.

The Company shall be named as Additional Insured on all policies of insurance required in subsections “b” and “c” of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Company. The Contractor shall furnish the Company a certificate evidencing compliance with the foregoing requirements which shall provide not less than thirty days prior written notice to the Company of any cancellation or material change in the insurance.

Section 4. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Company prior to the time the Contractor receives final payment.
Section 5. Remedies.

a. Completion on Contractor’s Default. If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this Agreement, the Company, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty days after the service of such notice upon the Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the Company shall be made by the Contractor, the Company may take over the work and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Company for any cost or expense in excess of the Agreement price occasioned thereby. In such event the Company may take possession of and utilize, in completing the work, any materials, tools, supplies, equipment, appliances, and plant belonging to the Contractor or any of its subcontractors. The Company in such contingency may exercise any rights, claims or demands which the Contractor may have against third persons in connection with this Agreement and for such purpose the Contractor does hereby assign, transfer and set over unto the Company all such rights, claims and demands.

b. Dispute Resolution. This Agreement shall be deemed to be a contract made under the laws of the State of Colorado and shall for all purposes be construed and enforced in accordance with Colorado law. In the event of a dispute, the Parties, through a senior executive of each Party, shall attempt to amicably resolve the dispute. In the event that the dispute is not amicably resolved within ninety days, then the matter shall be resolved by arbitration using a single arbitrator under the auspices of Judicial Arbiters Group, Denver, Colorado (“JAG”), and in accordance with its Commercial Arbitration Rules. The arbitrator’s decision and award shall be final and binding and may be entered in any court having jurisdiction. The arbitrator shall not have the power to award punitive, special or incidental damages. Issues of arbitrability shall be determined in accordance with the laws of the State of Colorado relating to arbitration and all other aspects shall be interpreted in accordance with the laws of the State of Colorado. Each Party shall pay its own attorney fees associated with the arbitration and other costs and expenses of the arbitration shall be paid as provided by the rules of the JAG. If court proceedings to stay litigation or compel arbitration are necessary, the Party who unsuccessfully opposes such proceedings shall pay all associated costs, expenses and attorney’s fees which are reasonably incurred by the other Party. If any portion of this provision is held to be unenforceable, it shall be severed and shall not affect the duty to arbitrate. Except as permitted in this section, neither Party may bring a case in court. If either Party disregards this restriction, files a court case and fails to dismiss it promptly upon being notified of this provision, that Party will pay the other Party’s costs and expenses, including attorney fees, incurred after the notice in defending the court case.

Section 6. Materials and Supplies. In the performance of this Agreement there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. For the purposes of this section, an “eligible country” is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and suppliers to the markets of that country, as determined by the United States Trade Representative. The Contractor agrees to submit to the Company such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 7. Patent Infringement. The Contractor shall hold harmless and indemnify the Company from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in work.

Section 8. Compliance with Laws. The Contractor shall comply with all federal, state, and local laws, rules, and regulations applicable to its performance under the Agreement and the work. The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the Anti Kick-Back Act of 1986 (41 U.S.C. 51 et seq.), and 18 U.S.C. §§ 286, 287, 641, 661, 874, 1001, and 1366, as amended.

The Contractor represents that to the extent required by Executive Orders 12549 (3 CFR, 1985-1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR part 3017, it has submitted to the Company a duly executed certification in the form prescribed in 7 CFR part 3017.
The Contractor represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, Section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,” and any rules and regulations issued pursuant thereto.


a. Contractor Represents.

The Contractor represents that:

It has_______, does not have_______, 100 or more employees, and if it has, that it has_______, has not__________, furnished the Equal Employment Opportunity-Employers Information Report EEO-1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 of September 24, 1965, and Title VII of the Civil Rights Act of 1964.

The Contractor agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Contractor agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Agreement will amount to more than $10,000, the Contractor will file such report, as required by law, and notify the Company in writing of such filing prior to the Company’s acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Agreement, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers’ representative of the Contractor’s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor’s noncompliance with the Equal Opportunity Clause of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.
(7) The Contractor will include this Equal Opportunity Clause in every subcontractor purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Contractor certifies that it does not maintain or provide for its employees any segregated facility at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Agreement. As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 10. Nonassignment of Agreement. The Contractor shall perform directly and without subcontracting not less than twenty-five percent (25%) of the work, to be calculated on the basis of the total Agreement price. The Contractor shall not assign the Agreement effected by an acceptance of this Proposal or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Contractor’s obligations hereunder or any part thereof without the approval in writing of the Company and of the Surety or Sureties, if any, on any bond furnished by the Contractor for the faithful performance of the Contractor’s obligations hereunder. If the Contractor, with the consent of the Company and any Surety or Sureties on the Contractor’s Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this Agreement, the Contractor shall be as fully responsible to the Company for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Contractor would be for its own acts and omissions and those of persons directly employed by it.

Section 11. Successors and Assigns. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto. The Company and Contractor acknowledge that this Agreement is assigned to the Government, acting through the Administrator, for security purposes under the Company’s mortgage and security instrument.

Section 12. Governing Law. This Agreement is entered into in the state of Colorado, it will be performed within such state, and all issues arising hereunder shall be governed in all respects by the laws of such state. Venue for all court actions will be in Garfield County, Colorado.

Section 13. Independent Contractor. The Contractor shall perform the work as an independent contractor, not as a subcontractor, agent, or employee of the Company.

Section 14. Notices. All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given when delivered personally, on the date of depositing in the U.S. Mails by certified mail, or the date of delivery to an overnight courier, addressed as follows:

If to Company to:
Chief Executive Officer
3799 Highway 82
P.O. Box 2150
Section 14. Addendum Supersedes. To the extent that this Addendum conflicts with, modifies or supplements the Agreement, the provisions contained in this Addendum shall supersede and shall govern the rights and obligations of the parties, but in all other respects the Agreement is ratified and confirmed. The Agreement and the Addendum are collectively considered the “Agreement.” The Effective Date of the Agreement is the day the last party signs the Agreement.

Acknowledged and agreed by the authorized representatives of the parties.

Company

Authorized Signature

Printed Name—John Rowley
Vice President, Human Resources

Title 20

Date

Contractor

Authorized Signature

Printed Name

Title 20

Date
U.S. DEPARTMENT OF AGRICULTURE

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CPR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989 Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name
PR/Award Number or Project Name

Name(s) and Title(s) of Authorized Representative(s)

Signature(s) Date

Form AD-1047 (1/92)
APPENDIX _____
Form of Mutual Confidentiality Agreement

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “Agreement”) is entered into as of ________2016, between Holy Cross Energy, a corporation, (the “Company”), and __________, a corporation (“Counterparty”). Each Party may be referred to in the singular as “Party” or in the plural as “the Parties” to this Agreement. For purposes of this Agreement, the Party disclosing confidential information hereunder is hereinafter referred to as the “Disclosing Party,” and the Party receiving confidential information hereunder is hereinafter referred to as the “Receiving Party.”

WHEREAS, Company and Counterparty each possess proprietary designs, inventions (whether or not patentable), formulations, materials, documentation, manufacturing methods, technical data and intellectual property, patents and copyrights, trade secrets, and technical know-how developed and/or obtained in the course of its business operations related to its field of expertise, and may provide sample materials to one another for experimental testing purposes, which samples have been developed from or incorporating such matters, all of which relate to or derive from the foregoing products and all of which shall be collectively referred to herein as the “Confidential Information”; and

WHEREAS, Company may provide Counterparty with certain of Company’s Confidential Information and Counterparty may provide Company with certain of Counterparty’s Confidential Information;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the Parties hereby agree as follows:

1. Confidential Information. The Parties will each disclose Confidential Information to the other with the content, scope, and extent of such disclosure to be solely within the discretion of the Party making the disclosure. Since the Confidential Information possessed by the Disclosing Party is considered by each Party to be an important and valuable asset of the Disclosing Party, the following conditions shall govern the disclosure of any such Confidential Information by one Party to the other. With respect to written materials, to the extent practicable, the Disclosing Party shall mark the cover page of each document containing Confidential Information as “Confidential.” With respect to Confidential Information that is disclosed orally, such information shall be identified as “Confidential” at the time of disclosure and clearly described in a writing designating the information as “Confidential” delivered to the Receiving Party within a reasonable period of time following the initial disclosure (but no longer than thirty (30) calendar days). Each of the Parties shall maintain the Confidential Information in confidence and shall not directly or indirectly discuss with, disclose to, copy for, reproduce for, photograph for, videotape for, publish for, or in any way report, disclose, describe, divulge, or otherwise make available the Confidential Information to any third party or any entity
except as shall be agreed to in advance in writing by the Disclosing Party in the Disclosing Party’s sole discretion. The Parties agree to take necessary and appropriate steps to preserve the confidentiality of all such Confidential Information.

Samples of products that are provided by the Disclosing Party to the Receiving Party for the Purpose (the “Samples”) shall be subject to special restrictions as follows: (a) the Samples shall be used only for the same limited purposes as the Confidential Information; (b) under no circumstances will the Samples be analyzed, disassembled or reverse engineered or provided to any third party; (c) further, any Samples that are in the possession, custody, or control of the Receiving Party shall be returned promptly to the Disclosing Party at any time upon the written request of the Disclosing Party

2. Prohibition of Use or Disclosure. The Receiving Party will not, without the prior written consent of the Disclosing Party (which consent may be granted or withheld in the Disclosing Party’s sole discretion): (a) use any portion of the Confidential Information for any purpose other than the Purpose; (b) disclose any portion of the Confidential Information to any persons or entities other than the officers, employees, attorneys, accountants, consultants, advisors, potential co-investors, and potential equity or debt financing sources of the Receiving Party who reasonably need to have access to the Confidential Information for the Purpose, who are bound by the terms of this Agreement either with the Disclosing Party or with the Receiving Party and making the Disclosing Party a third-party beneficiary thereof (provided that the Receiving Party maintains a log of each of the Representatives to whom the Receiving Party has provided Confidential Information); (c) make or permit to be made any public disclosure that the Receiving Party is having or has had discussions with the Disclosing Party or that the Disclosing Party has delivered Confidential Information to the Receiving Party unless required to be disclosed in the reasonable written opinion of the Receiving Party’s outside counsel (a copy of which has been provided to the Disclosing Party); or (d) initiate contacts of any kind relating directly to the Confidential Information with the customers or suppliers of the Disclosing Party or with the officers or employees of the Disclosing Party (other than in accordance with this Agreement). The Receiving Party shall be liable for any breach of this Agreement as a result of disclosure to or by any such individual. The Receiving Party agrees to use its reasonable commercial efforts (including, without limitation, court proceedings at the Receiving Party’s expense) to assure compliance by the Receiving Party’s Representatives with the provisions of this Agreement.

3. Excluded Information. The obligations of the Receiving Party hereunder with respect to Confidential Information shall remain in effect except to the extent that the Receiving Party can establish that:

(a) such Confidential Information is generally available to the public (whether through public filings or otherwise) other than as a result of unauthorized disclosure (contrary to the terms of this Agreement) by the Receiving Party or persons to whom the Receiving Party has made the information available; provided, however, that the foregoing exception shall not apply to Confidential Information, the components of which are available to the public, if such
information represents or reflects the organization or distillation of publicly available information into a unique combination or format and otherwise constitutes “Confidential Information” under this Agreement;

(b) disclosure of such Confidential Information is specifically authorized in writing by the Disclosing Party;

(c) such Confidential Information was received by the Receiving Party on a non-confidential basis (whether through public filings or otherwise) before receipt from the Disclosing Party, from a third party unless the Receiving Party has actual knowledge that such third party does not lawfully possess and is not lawfully entitled to disclose such information;

(d) such Confidential Information is independently developed by the Receiving Party or its Representatives entirely without reference to the Confidential Information;

(e) such Confidential Information was furnished to the Receiving Party or its Representatives, in whatever form or by whatever mode or medium, on or prior to the date of this Agreement; or

(f) such Confidential Information is required to be disclosed by the Receiving Party as provided in Section 5 after compliance by the Receiving Party with the provisions of such Section 5.

Confidential Information received by the Receiving Party shall not be deemed to fall within any of the foregoing exceptions merely because it is embraced by general information within any such exceptions. In addition, any combination of features received as Confidential Information by the Receiving Party shall not be deemed to fall within any of the foregoing exceptions merely because individual features are separately embraced within any such exceptions but only if the combination itself, and its principles of operation, is within such exceptions.

4. Return of Confidential Information. Confidential Information furnished pursuant to this Agreement by the Disclosing Party shall remain the property of the Disclosing Party and shall, at the Disclosing Party’s request and option, forthwith either be: (i) returned to the Disclosing Party, together with all copies made by the Receiving Party (in whatever form, electronic or otherwise) and by anyone to whom such Confidential Information has been made available by the Receiving Party; or (ii) certified in writing by an officer of the Receiving Party as having been destroyed by the Receiving Party in compliance with this Section 4. In addition, any reports, analyses, notes, memoranda, presentations, summaries, or other documents or information prepared by or on behalf of the Receiving Party that contain or reflect any Confidential Information shall be destroyed or, if the Confidential Information was recorded on an erasable storage medium, that the Receiving Party shall use reasonable efforts to erase all such intangible Confidential Information. Notwithstanding the foregoing, the Receiving Party shall be entitled to retain one copy of
such Confidential Information as may be in Board and other corporate approval papers to the extent such retention is consistent with the Receiving Party’s policies; provided that all such retained Confidential Information shall remain subject to the terms of this Agreement. Upon request, the Receiving Party shall provide to the Disclosing Party a certificate confirming the return of all such Confidential Information and/or the destruction thereof.

5. Actions Seeking Disclosure. In the event of any legal action or proceeding or asserted requirement under applicable law or government regulations calling for disclosure of Confidential Information, the Receiving Party shall forthwith notify the Disclosing Party. Upon request of the Disclosing Party, and at the sole cost of the Disclosing Party, the Receiving Party shall cooperate with the Disclosing Party in contesting such disclosure. If the Receiving Party is nonetheless compelled to disclose Confidential Information, the Receiving Party shall, at the request of the Disclosing Party, use reasonable efforts to obtain assurances that such Confidential Information will be treated confidentially. Any disclosure of Confidential Information in order to comply with law or regulations as permitted above will not cause the information so disclosed to lose its status as Confidential Information for purposes of this Agreement.

6. Absence of License or Warranty. Nothing contained herein shall be construed as granting or deemed to be a license of the Confidential Information or any patent rights, trademarks, or trade secret rights related thereto which either Party owns now or may hereafter own, except for the purposes set forth hereunder. The Disclosing Party makes no representation, warranty, or assurance under this Agreement as to the accuracy or completeness of the Confidential Information furnished or to be furnished, its sufficiency for any purpose, or the absence of any conflict or infringement of the patent, intellectual property, or other rights of other parties and disclaims any and all liability that may be based on the Confidential Information, errors therein, or omissions therefrom.

7. Due Care. The Receiving Party hereby acknowledges that the value of the Confidential Information provided by the Disclosing Party is attributable substantially to the fact that the Confidential Information is maintained by the Disclosing Party in the strictest confidentiality and secrecy and is unavailable to others without the expenditure of substantial time, effort, or money.

8. Damages, Specific Performance. Each of the Parties acknowledges and agrees that a breach of its obligations set forth herein will result in irreparable damage to the other Party for which there will be no adequate remedy at law, and therefore, each Party agrees that, in the event of any breach of said obligations, the other Party and its successors and assigns shall be entitled to injunctive relief without proof of actual damages and such other and further relief at law or in equity, including monetary damages, as is proper under the circumstances. Neither Party shall be liable to the other for indirect, incidental, consequential, or punitive damages of any nature or kind resulting from or arising in connection with this Agreement or the disclosure of any Confidential Information.
9. **Term.** The term of this Agreement is ten years from [the above stated Effective Date] [the date first above listed]. Any Confidential Information relating to the Purpose that is disclosed by one Party to the other Party shall remain confidential for ten years from the date of disclosure.

10. **Miscellaneous.** No amendment, modification, or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge, or waiver is sought. No delay or failure at any time on the part of the Disclosing Party in exercising any right, power, or privilege under this Agreement, shall impair any such right, power, or privilege, or be construed as a waiver of such provision, or be construed as a waiver of any default or as any acquiescence therein, or shall affect the right of the Disclosing Party thereafter to enforce each and every provision of this Agreement in accordance with its terms. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and it supersedes all prior oral or written agreements, commitments, or understandings with respect to such matters [except to the extent expressly provided for in [LIST OTHER AGREEMENT(S)]].

This Agreement shall be binding upon the Parties and upon their respective successors and assigns. Notwithstanding the foregoing, this Agreement shall not be assignable by either Party without the prior written consent of the other Party. Section headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof. The Agreement shall be governed by and construed in accordance with the laws of Colorado (excluding the choice of law rules thereof) and each of the undersigned hereby consents to the jurisdiction of the State and Federal Courts of Garfield County located in Glenwood Springs in respect hereof.

11. **Execution.** To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each party; or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party; or that the signatures of the persons required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement account for more than a number of counterparts containing the respective signatures of all of the parties hereto.

IN WITNESS WHEREOF, the undersigned have duly executed this Confidentiality Agreement as of the day and year hereinabove set forth.

John Rowley VP Human Resources
LOBBYING CERTIFICATION

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization Name

Name of Authorized Official

Signature ___________________________ Date ____________

LOBYCERT.DOC (Computer generated form, Version 2, 12/96)

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