



INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County" or "owner"), and Integration & Control Solutions, LLC, a New Mexico limited liability company ("Contractor"), collectively (the "Parties"), to be effective for all purposes January 29, 2025 ("Effective Date").

WHEREAS, the County Purchasing Officer determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 25-16 ("RFP") on August 15, 2024, requesting proposals for Water Production SCADA Equipment Replacement and Support Services ("Services") for various project locations throughout the County ("Sites"), as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a Step 1 response dated September 12, 2024 and a Step 2 response by November 21, 2024 ("Contractor's Response"); and

WHEREAS, based on the evaluation factors set out in the RFP, Contractor was one (1) of two (2) successful Offerors for the services listed in the RFP; and

WHEREAS, the Board of Public Utilities, as part of a multiple source award, approved this Agreement and AGR25-16b at a public meeting held on January 15, 2025; and

WHEREAS, the County Council, as part of a multiple source award, approved this Agreement and AGR25-16b, at a public meeting held on January 28, 2025; and

WHEREAS, Contractor shall provide the Services, as described below, to County.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. DEFINITIONS: In addition to any other terms elsewhere defined in this Agreement, the following terms are defined for the purpose of this Agreement. Where a definition is not defined, the standard meaning applies.

1. **I/O** means Input/Output and refers to devices that transfer data to and from a device such as a Programmable Logic Controller or a Remote Terminal Unit to another device such as a computer or server.
2. **MTU** means Master Terminal Unit. A control which also functions as a server that hosts the control software that communicates with lower control devices.
3. **PLC** means Programmable Logic Controller a device which executes real-time control tasks based on sensor and field device signals.
4. **RTU** means a Remote Terminal Unit an electronic device that connects sensors to a SCADA system.
5. **SCADA** means Supervisory Controls and Data Acquisition System.

SECTION B. SERVICES: Contractor shall provide SCADA (RTU/PLC) control panel design and engineering services, fabrication, provision of spares, installation, testing and commissioning services, support, and documentation and training services for several sites as identified by County and as detailed further below. Contractor shall provide all labor, tools, equipment, materials, and permitting needed to complete the Services. All work shall be in accordance with any local, state, or federal standards.

1. Project Kick-Off Meeting: The Contractor shall, within ten (10) business days from the Effective Date of this Agreement host a virtual or on-site kick-off meeting, as determined by the County's Project Manager, with the County's designated Department of Public Utilities ("DPU") staff ("Project Staff"). As part of the kick-off meeting, the parties shall:
 - a. Introduce and assign Contractor and County project team members and Project leads ("Project Staff").
 - b. Establish a mutually agreed upon Project Schedule that includes deliverable due dates, Project Milestones, and communication protocols. Contractor shall provide a written memorandum to the County's Project Staff within five (5) business days from the date of the kick-off meeting outlining the final agreed-upon Project Schedule. The Project Schedule may be modified by mutual written agreement of the parties.
 - c. Discuss the scope of work, planning assumptions, and Project progression to meet County identified schedule dates.
 - d. Identify data transfer methods between Contractor and Project Staff related to the performance of this Agreement.
2. Safety shall be Contractor's main concern. Contractor shall comply with and enforce on Site all local, state, and federal laws governing safety, health, and sanitation. County may periodically inspect Contractor's compliance and enforcement of such laws. Contractor, not County, shall be responsible for any fines set forth for such violations of codes, Occupational Safety and Health Act (OSHA) standards, or any other governing agency having jurisdiction at the Sites. Contractor shall provide all needed safeguards, safety devices and protective equipment. Contractor shall take all actions necessary to protect the life and health of its employees at the Site, protect the safety of County employees working in the area of the Site, protect the safety of the public, and protect the property of County in connection with the performance of the Services under this Agreement.
3. System Design and Engineering.
 - a. Requirements Analysis: Contractor shall conduct a thorough review of operational requirements and existing site conditions to ensure the SCADA control panel systems meets all necessary criteria.
 - b. Panel Designs: due to the variety of sites that require different amounts of I/O and control types, Contractor shall develop and deliver site specific panel drawings and wiring diagrams for each site. Each site shall receive a design for the required PLC I/O cards including spares to support each site specifically.
 - c. Design Engineering Support: Contractor shall provide project and panel drawings stamped by an Electrical Engineer licensed in the state of New Mexico.
4. Installation
 - a. Site Preparation: Contractor shall perform site surveys to prepare the installation environment, including panel location verifications, existing wiring and cabling needs, existing instrumentation and control devices readiness and operational status.
 - b. Panel Fabrication: Contractor shall Manufacture SCADA panels to County specifications as well as UL508 and NFPA 70 standards, ensuring all components meet quality standards and compliance requirements.
 - c. Panel Installation: Contractor shall mount and install SCADA control panels, including all necessary wiring, connections, and interfacing with existing site systems.

- d. Wiring and Commissioning Installation: Test, label and terminate all existing control wiring and cables from existing RTB enclosures, instrumentation devices and motor control centers or Variable Frequency Drive (VFD) controllers.
 - e. Onsite Acceptance Testing (OAT): contractor shall perform acceptance testing in their facility and the County shall witness the acceptance testing of each PLC prior to shipping to Los Alamos. Provide to County Documentation of the acceptance testing which includes Contractor certification of successful testing and supporting methodology, measurements, equipment and criteria supporting that the equipment has been tested and verified and ready for installation.
5. Testing and Commissioning
- a. Functional Testing: Contractor shall conduct comprehensive functional tests to validate the operation of each SCADA control panel, ensuring all inputs and outputs perform as expected. This testing will be done in unison with the County's SCADA software supplier and coordinated to test the control system back to the SCADA control center.
 - b. Integration Testing: Contractor shall test the integration of SCADA control panels with owner supplied SCADA control systems to verify communication and data exchange.
 - c. Performance Testing: Contractor shall evaluate system performance under various operational conditions to ensure reliability and responsiveness.
 - d. User Acceptance Testing (UAT): Contractor shall collaborate with County's end-users to perform UAT, ensuring the system meets all operational needs and obtaining formal sign-off.
 - e. Warranty. Contractor shall furnish to County a one (1) year warranty from date of startup for all completed and turned-over systems, control panels, instrumentation devices.
6. Documentation and Training
- a. Documentation: Contractor shall provide to County, detailed documentation, including system schematics, wiring diagrams, and user manuals.
 - b. Training: Contractor shall conduct training sessions for County's operational staff to ensure they are proficient in using and maintaining the new SCADA control panels and controls system.
7. Contractor shall provide the following maintenance and support services as part of the On-Call hourly rates identified in Exhibit A, and shall include adjustments and or repairs to SCADA systems to include, but not limited to:
- a. Water Systems Electrical equipment trouble shooting and support including installations.
 - b. Water Systems Mechanical equipment trouble shooting and support including installations.
 - c. Water Systems Instrumentation and Controls trouble shooting and support including installations.
 - d. Water Systems PLC/HMI programming and support.
 - e. Perform any PLC/HMI program changes as requested by County.
 - f. Perform maintenance of the control systems as directed by County.
 - g. Perform instrument installs and calibration services as directed by County.
 - h. 24 Hour 7 days a week response to service and support system calls from County.
 - i. 72 hours response time from receipt of customer request for non-critical items.
 - j. Same day response for system critical issues that affect operations and County water distribution. This response shall consist of an initial remote support to determine issues and dispatch of Contractor personnel to repair issue when parts are available.
8. Procedure for Authorizing and Scheduling On-Call Support Services: County shall request a written quote from Contractor for On-Call Support Services, and upon County's acceptance of the quote, County shall schedule work by phone call from County Project Manager to Contractor, to be followed up in writing by County Project Manager or designee, via email within two (2) business days. The costs for the On-Call Support Services are provided as a

per hour fee by classification in Exhibit A. For the purposes of this Agreement and Exhibit A, "On-Call Support Services" are those services designated as Emergency Services by County staff and require response from Contractor within forty-eight (48) hours, including weekends, and state and federal holidays. "On-Call Non-Emergency Services" are those services designated as Non-Emergency Services by County staff, which require response within five (5) business days, and which excludes weekends, state and federal holidays. Contractor shall be entitled to the mileage rate in Exhibit A for On-Call service requests.

9. **Equipment Acquisition.** From time-to-time County may request Contractor to procure components, parts and supplies which are compatible with existing SCADA equipment. Said components, parts, and supplies shall be supplied and invoiced by the Contractor as approved by County's Project Manager. Components, parts, and supplies shall be billed at Contractor's cost as documented by invoices stating the amount paid by Contractor, plus the Invoice Processing Fees for Equipment Acquisition, and shall be as provided in Exhibit A.

SECTION C. TERM: The term of this Agreement shall commence January 29, 2025, and shall continue through January 28, 2032, unless sooner terminated, as provided herein.

SECTION D. COMPENSATION:

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in an amount not to exceed NINE HUNDRED FIFTY THOUSAND and NO/100 DOLLARS (\$950,000.00), which amount does not include applicable New Mexico gross receipts taxes ("NMGRT"). Compensation shall be paid in accordance with the rate schedule set out in Exhibit A, attached hereto and made a part hereof for all purposes.
2. **Total Not-to-Exceed Compensation Amount.** The Parties understand that County can only utilize Contractor's Services, as specified herein, throughout the term of this Agreement, in a manner that does not surpass the total not-to-exceed compensation amount for Services estimated by County and specified in Section D(1) herein, unless approved by Amendment to this Agreement as provided herein. This provision shall not be construed to conflict with the agreed-upon rates stated herein. It is the sole responsibility of Contractor to ensure that all work performed does not exceed the not-to-exceed amount of this Agreement or any subsequent Amendment. Any work performed under this Agreement by Contractor where the costs exceed the not-to-exceed amount is not a just and lawful debt payable to Contractor.
3. **Monthly Invoices.** Contractor shall submit itemized monthly invoices to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

SECTION E. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION F. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, its agents, or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty, or obligation. Contractor shall make no

representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely, and reliable manner.

SECTION G. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and shall maintain the personnel, experience, and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION H. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables, or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent, or other property right, and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

SECTION I. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary, or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend, and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION J. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services, and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance, or other evidence acceptable to County, stating that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance, Automobile Liability Insurance, and Professional Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; ONE MILLION DOLLARS

(\$1,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

- 4. Professional Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00). Professional Liability Insurance shall provide coverage for Services provided hereunder during the term of this Agreement and for a period of at least five (5) years thereafter.

SECTION K. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION L. DUTY TO ABIDE: Contractor shall abide by all applicable federal, state, and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement.

SECTION M. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability, or veteran status.

SECTION N. CHOICE OF LAW: The interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

SECTION O. VENUE, FORUM NON-CONVENIENS, EXCLUSIVE STATE JURISDICTION: County and Contractor knowingly, voluntarily, intentionally, and irrevocably agree that any and all legal proceedings related to this Agreement, or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated, filed, tried, and maintained in the First Judicial District Court of the State of New Mexico. County and Contractor each expressly and irrevocably waive any right otherwise provided by any applicable law to remove the matter to any other state or federal venue, consents to the jurisdiction of the First Judicial District Court of the State of New Mexico in any such legal proceeding, waives any objection it may have to the laying of the jurisdiction of any such legal proceeding. County and Contractor also agree that this term is a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this term with legal counsel.

SECTION P. WAIVER OF JURY TRIAL: In the event of any action or proceeding, (including without limitation, any claim, counterclaim, cross-claim or third party claim) arising out of or, relating to this Agreement, or the transaction contemplated by this Agreement, County and Contractor KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL, and agree that a court shall determine and adjudicate all issues of law and fact with a jury trial being expressly waived. County and Contractor also agree that this waiver of a jury trial was a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this jury waiver with legal counsel.

SECTION Q. INDEMNITY: Contractor shall indemnify, defend, and hold harmless County, its Council members, employees, agents, and representatives, from and against all liability, claims,

demands, actions (legal or equitable), damages, losses, costs, or expenses, including attorney fees, of any kind or nature, to the extent that the liability, claims, demands, actions, damages, losses, costs, and expenses are caused by, or arise out of, the acts or omissions of the Contractor or Contractor's officers, employees, agents representatives, and subcontractors in the performance or breach of the Services under this Agreement.

SECTION R. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence; provided, however, that the Party failing to perform shall (i) as soon as possible, inform the other Party of the occurrence of the circumstances preventing or delaying the performance of its obligations, and describe at a reasonable level of detail the circumstances causing such delay, and (ii) exert reasonable efforts to eliminate, cure, or overcome any of such causes and to resume performance of its Services with all possible speed. In such event, the non-performing Party may be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay.

SECTION S. NON-ASSIGNMENT: Contractor shall not assign this Agreement or any privileges or obligations herein and shall not novate this Agreement to another without the prior written consent of the **County Utilities Manager**.

SECTION T. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION U. PROHIBITED INTERESTS: Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it shall not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept, or agree to accept, a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION V. TERMINATION:

1. **Generally.** The **County Utilities Manager** may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section D. Contractor shall render a final report of the Services performed to the date of termination, and shall turn over to County originals of all materials prepared pursuant to this Agreement.
2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION W. NOTICE: Unless otherwise provided in this Agreement, any notices required under this Agreement shall be made in writing. Notices shall be sent via 1) hand-delivery; 2) registered or certified mail; 3) a nationally recognized overnight courier service; or 4) electronic mail (with copy by mail or courier). All notices shall be sent to each party at the addresses set out in this section or any address later provided by such party in writing, with postage prepaid by the sender, and shall be deemed delivered upon hand delivery, verified proof of delivery by courier, or three (3) days after deposit in the United States Mail.

County:

James Martinez, Senior Engineer
Incorporated County of Los Alamos
1000 Central Avenue, Suite 130
Los Alamos, New Mexico 87544
E-mail: james.martinez@lacnm.us

Contractor:

Preston Patterson, Operations Manager
Integration & Control Solutions, LLC
4485 Irving Blvd N.W.
Albuquerque, New Mexico 87114

With a copy to:

County Attorney's Office
1000 Central Avenue, Suite 340
Los Alamos, New Mexico 87544

E-mail: ~attorney@lacnm.us

SECTION X. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein, and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both authorized representatives of County and Contractor. In the event of any conflict between the terms, conditions, and provisions of this Agreement, and the terms, conditions and provisions of any exhibits or attachments, the terms, conditions and provisions of this Agreement shall control and take precedence.

SECTION Y. NO IMPLIED WAIVERS: The failure of County to enforce any provision of this Agreement is not a waiver by County of the provisions, or of the right thereafter, to enforce any provision(s).

SECTION Z. SEVERABILITY: If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language and purpose of the Agreement enforceable; and (ii) all other provisions of this Agreement shall remain in effect so long as the substantive purpose of the Agreement is possible.

SECTION AA. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form is attached as Exhibit B. Contractor must submit this form with this Agreement, if applicable.

SECTION AB. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES: Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

SECTION AC. DUPLICATE ORIGINAL DOCUMENTS: This document may be executed in two (2) counterparts, each of which shall be deemed an original.

SECTION AD. NEGOTIATED TERMS: This Agreement reflects negotiated terms between the parties, and each party has participated in the preparation of this Agreement with the opportunity to be represented by counsel, such that neither party shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

SECTION AE. CONFIDENTIAL INFORMATION: Any confidential information of one party that is provided to the other party during the term of this Agreement shall be kept confidential and shall not be made available to any individual or organization in accordance with the Confidential Information Disclosure Statement in Exhibit C. The Confidential Information Disclosure Statement shall be completed by Contractor as a condition precedent and submitted as part of this Agreement. Its terms shall govern as if fully set forth herein.

SECTION AF. REQUIRED FEDERAL PROVISIONS.

1. **New Mexico DWSRF Contract Provision #C1: Anti-Discrimination Laws (Super Cross-Cutters).** Contractors and Subcontractors are required to comply with the following provisions:
 - a. **CIVIL RIGHTS ACT OF 1964.** The Contractor and any subcontractors shall not, on the grounds of race, color, or national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination, any person under any program or activity receiving federal financial assistance.
 - b. **SECTION 13 of PL 92-500; UNDER THE FEDERAL WATER POLLUTION CONTROL ACT; REHABILITATION ACT OF 1973; PL 93-112, AND AGE DISCRIMINATION ACT OF 1975.** The Contractor and any subcontractors shall not on the grounds of race, color, national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination any person under any program or activity funded in whole or in part with Federal funds. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.
2. **New Mexico DWSRF Contract Provision C10 Office of Inspector General Posting.** The US Environmental Protection Agency requires that contracts exceeding \$1,000,000 prominently display the Office of the Inspector General Hotline poster within contractor work areas and facilities where work is performed.
 - a. Posters may be obtained at: <https://www.epa.gov/office-inspector-general/poster-report-fraud-waste-and-abuse-epa-oig-hotline>
3. **New Mexico DWSRF Contract Provision #C3: Executive Order 11246 Equal Employment Opportunity.** The following clause must be inserted into all construction contracts for DWSRF projects.
 - a. **EQUAL EMPLOYMENT OPPORTUNITY**
 1. Executive Order 11246 (Contracts/subcontracts above \$10,000)
 - (a) During the performance of this contract, the contractor and all subcontractors agree 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, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for 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 nondiscrimination 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 considerations 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 he has a collective bargaining agreement or the other contract or understanding, a notice to be provided advising the said labor union or workers' representatives 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 of 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 his 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 contractors' noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract 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 otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders 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 a 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.

4. **New Mexico DWSRF Contract Provision #C5: Prohibition on Telecomm Contract Provisions. The following clause must be inserted into all construction contracts for DWSRF Equivalency or Grant projects.**

a. **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.** The CONTRACTOR shall comply with 2 CFR 200.216, which prohibits the use of loan or grant funds to procure or use certain telecommunication and video surveillance services or equipment either:

1. produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or any subsidiary or affiliate of such entities; or
2. provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by the government of a covered foreign country.

Entities on the excluded parties list can be found in the System for Award Management (www.sam.gov). This prohibition cannot be waived. See Public Law 115-232, section 889 for additional information.

5. **New Mexico DWSRF Contract Provision #C6: American Iron & Steel (AIS).** *The requirements of this section apply to (1) all construction Contracts and Subcontracts for DWSRF projects and CWSRF treatment works projects and (2) all Contracts for the purchase of iron and steel products for a DWSRF project or CWSRF treatment works project.*

a. **AMERICAN IRON AND STEEL REQUIREMENTS**

Use of iron and steel products that are produced in the United States (US) is required for this construction. The prime contractor must provide documentation that all iron and steel products which are permanently incorporated as part of the project meet the specification of American Iron and Steel (AIS) per the definitions contained in section "1" below. Production in the US of the iron or steel products requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. The prime contractor must certify, section "2" below, that the contractor understands all iron and steel products permanently incorporated as part of the project must satisfy AIS requirements except those waived by EPA, section "3", or those included as De Minimis components, section "4". The prime contractor must submit to the owner AIS certifications for individual components supplied or installed by the prime contractor as well as components supplied or installed by all subcontractors, section "5". The contractor must include the AIS requirements in any subcontract or purchase agreement made by the prime contractor and require subcontractors or suppliers of AIS products to also require their subcontractors or suppliers to include AIS requirements in any subcontracts or purchase agreements they enter into. The owner may refuse payment on any AIS component for which a satisfactory AIS certification has not been submitted.

1. Definition of American Iron and Steel. Iron or steel products mean the following products made primarily (greater than 50% measured by material

cost) of iron or steel that are permanently incorporated into the project and are listed below, paragraphs a-d. **Products not listed below do not have to satisfy the AIS requirement.** In addition, iron and steel products used on the construction site temporarily (for example, trench boxes, scaffolding, or equipment used on site which will be removed before completion of the project) are not subject to the AIS requirements.

a. Lined or unlined pipes or fittings, manhole covers, hydrants, tanks, flanges, pipe clamps and restraints, valves, and reinforced precast concrete. Rebar and wire in reinforced precast products must be produced in the US and the casting of the concrete product must take place in the US. Cement and other raw materials used in production of reinforced precast concrete products do not have to be of domestic origin.

b. Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are: access hatches, ballast screen, benches (iron or steel), bollards (excluding any fill material), cast bases, cast iron hinged hatches (square and rectangular), cast iron riser rings, catch basin inlets, cleanout/monument boxes, construction covers and frames, curb and corner guards, curb openings, detectable warning plates, downspout shoes (boot and inlet), drainage grates, frames and curb inlets, inlets, junction boxes, lampposts, manhole covers (rings and frames), risers, meter boxes, service boxes, steel hinged hatches (square and rectangular), steel riser rings, trash receptacles, tree grates, tree guards, trench grates, and valve boxes (covers and risers).

c. Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

d. Construction materials are those articles, materials, or supplies made primarily (greater than 50% materials cost) of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems (discussed below). Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

Mechanical and electrical components, equipment and systems are not considered construction materials and do not have to meet the AIS requirements. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system. The following examples (including appurtenances necessary for their intended use and operation) are NOT considered construction materials and do not have to meet the AIS requirements: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

2. Certification(s)

Within no more than 21 days of determination of the apparent low bidder, the selected contractor must submit to the owner the certification included as Form #C4. At the conclusion of the project the contractor must certify with their final payment request that all iron and steel products permanently incorporated into the project satisfy the AIS requirements and no changes or substitutions to the products for which individual certifications were submitted to the owner have been made (Form #C5).

3. EPA Waiver

EPA has sole authority to approve waivers to the AIS provisions. The owner may seek a waiver at any point before, during, or after the bid process if one or a combination of the three conditions below are met. The prime contractor may suggest to the owner waivers not listed in the bid document. The owner has sole discretion to decide whether or not to request a suggested waiver. The waiver request(s) must satisfy one of the following conditions and be approved by EPA:

- a. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- b. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent;
- or
- c. Applying the requirements of Section 436 would be inconsistent with the public interest.

The waiver request must include proper and sufficient documentation to support the request. Form C#6 is a sample Waiver Request Form. A "Review Checklist for Waiver Review" is provided to assist the owner in preparation of a waiver request. The information outlined therein must be

included with the waiver request letter. Upon approval of the waiver request, EPA will notify the owner directly.

4. De Minimis Materials

The EPA has granted a nationwide waiver of the AIS requirements for de minimis incidental components of eligible infrastructure projects. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental. Examples of incidental components could include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc. Examples of items that are clearly not incidental include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures, etc.

Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the total materials incorporated into the project; the cost of an individual item may not exceed 1 percent of the total cost of the total materials incorporated into the project. Contractors who wish to use this waiver should determine the costs of all items installed or supplied for the project. The contractor must retain relevant documentation (i.e., invoices) for each of these items in their project files, and must summarize in reports to the owner: the total cost of all materials, the total cost of "incidental" materials, and the calculations by which they determined the percentage of incidental products installed or supplied for the project.

5. Individual Products Certification Documentation

The prime contractor must provide individual certification(s) to the owner for each iron and steel product purchased for incorporation into the project certifying that the product purchased satisfies the AIS requirements. The prime contractor is responsible for gathering all certifications for all products supplied or installed by suppliers and subcontractors, and for submitting these to the owner. As noted above, the contractor must also provide a final certification statement with their final payment request attesting that all American Iron and Steel requirements of this subpart have been met and there have been no changes or substitutions to the products individually certified.

6. **New Mexico DWSRF Contract Provision #C7: Davis-Bacon Prevailing Wage Requirements. New Mexico DWSRF Contract Provision #C7: Davis-Bacon Prevailing Wage Requirements.**

a. DAVIS-BACON PREVAILING WAGE REQUIREMENTS

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe

benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the

proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which

show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an

apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the

procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through

(4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

7. New Mexico DWSRF Contract Provision #C8: Environmental Review Requirements.

The requirements of this section apply to all construction Contracts and Subcontracts for DWSRF projects.

- a. **ENVIRONMENTAL REVIEW REQUIREMENTS.** The CONTRACTOR shall comply with the following provisions in accordance the National Environmental Policy Act (NEPA) as implemented by the NMED State Environmental Review Process:

A. Historical and Archeological Finds.

If, during the course of construction, evidence of deposits of historical or archeological interest is found, the contractor shall cease operations affecting the find. The owner shall then notify the State Revolving Fund Environmental Review Specialist, who shall in turn notify the State Historic Preservation Office. The SRF shall consult with the SHPO and other interested parties to determine the proper course of action regarding the discovery. No further disturbance of the deposits shall ensue until the SRF Environmental Review Specialist determines that the project activities in that area may proceed. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the specifications.

Authority for this derives from the National Historic Preservation Act (16 U.S.C. §§ 470 et seq.) and 36 CFR Part 800.

B. Mitigation Measures

The CONTRACTOR shall comply with all mitigation measures as established in the New Mexico DWSRF Assistance Agreement in execution of the contract, and require all SUBCONTRACTORS to do the same.

8. **New Mexico DWSRF Contract Provision C12: BIL Public Awareness (Signage) Requirement.**

Assistance recipients for the follow types of DWSRF projects must display project signs in accordance with the U.S. Chief Financial Officers Council Controller Alert titled “Enhancing Transparency Through the Use of the Building a Better America Emblem on Construction Signs”:

- Construction projects identified as “equivalency projects” for BIL general supplemental capitalization grants;
- Construction projects that receive additional subsidization (grants or forgivable loans) made available by BIL general supplemental capitalization grants;
- All construction projects funded with BIL emerging contaminants capitalization grants;
- All construction projects funded with BIL lead service line replacement capitalization grants.

Summary: The BIL signage term and condition requires a physical sign displaying the official Building a Better America emblem and EPA logo be placed at construction sites for BIL-funded projects. In cases where the construction site covers a large area (e.g., lead service line replacement or septic tank repair/replacement projects), a sign should be placed in an easily visible location near where the work is being performed (e.g., entrance to the neighborhood, along a main road through town, etc.). Signage costs are considered an allowable SRF expense, provided the costs associated with the signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, assistance recipients are encouraged to translate the language on signs (excluding the official Building a Better America emblem or EPA logo or seal) into the appropriate non- English language(s). The costs of such translation are allowable SRF expenses, provided the costs are reasonable.

1. Signage Requirements

a. Building A Better America Emblem: The recipient will ensure that a sign is placed at construction sites supported under this award displaying the official Building A Better America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law.” Construction is defined at 40 CFR 33.103 as “erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water

supply.” The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications for using the official Building A Better America emblem and corresponding logomark available at: <https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf>

b. EPA Logo: The recipient will ensure that signage displays the EPA logo along with the official Building A Better America emblem. The EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project.

The recipient will ensure compliance with the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>.

As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects and use of the EPA seal requires prior approval from the EPA. To obtain the appropriate EPA logo or seal graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication. Instructions for contacting OPA is available on the Using the EPA Seal and Logo page.

c. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Building A Better America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

MICHAEL D. REDONDO
COUNTY CLERK

BY: _____
PHILO S. SHELTON, III P.E. **DATE**
UTILITIES MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

INTEGRATION & CONTROL SOLUTIONS, LLC, A NEW
MEXICO LIMITED LIABILITY COMPANY

BY: _____
PRESTON PATTERSON **DATE**
OPERATIONS MANAGER

Exhibit A
Compensation Rate Schedule
AGR25-16a

SCADA Control Panel Costs by Site ID and Contract Year

COST CATEGORY	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Site ID A	\$22,230.00	\$22,890.00	\$23,570.00	\$24,270.00	\$24,990.00	\$25,730.00	\$26,500.00
Site ID B	\$18,830.00	\$19,390.00	\$19,965.00	\$20,560.00	\$21,170.00	\$21,800.00	\$22,440.00
Site ID C	\$14,310.00	\$14,735.00	\$15,175.00	\$15,625.00	\$16,090.00	\$16,565.00	\$17,055.00
Site ID D	\$23,880.00	\$24,590.00	\$25,320.00	\$26,070.00	\$26,485.00	\$27,645.00	\$28,465.00
Site ID E	\$24,770.00	\$25,505.00	\$26,265.00	\$27,045.00	\$27,845.00	\$28,675.00	\$29,525.00

Anticipated SCADA Control Panel Costs by Site ID

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Site ID A	\$155,610.00	\$160,230.00	\$23,570.00		\$24,990.00		\$26,500.00
Site ID B	\$37,660.00				\$21,170.00		
Site ID C	\$28,620.00	\$29,470.00		\$15,625.00		\$16,565.00	
Site ID D	\$71,640.00	\$49,180.00			\$26,845.00		\$28,465.00
Site ID E	\$24,770.00				\$27,845.00		
Total	\$318,350.00	\$238,880.00	\$23,570.00	\$15,625.00	\$100,850.00	\$16,565.00	\$54,965.00
Total Anticipated SCADA Control Panel Costs							\$768,085.00
Contingency Amount							\$31,195.00
Support Per Hourly Rate Schedule (see below)							\$150,000.00
Total Not-to-Exceed Amount							\$950,000.00

SITE ID Chart for Current Locations, County Reserves the Right to add additional SCADA Locations throughout the term of this Agreement.

#	Site ID	Site	Notes
1	A	Otowi Well 1	ADDED HMI
2	A	Otowi Well 4	ADDED HMI
3	A	Guaje Booster 2/Tanks	ADDED HMI
4	A	Pajarito Booster 1	Replace HMI
5	A	Pajarito Tank/Booster3	ADDED HMI
6	A	Pajarito Well 4	Replace HMI
7	A	S-Site 2 Booster	ADDED HMI
8	A	Western Booster	ADDED HMI
9	A	Community Tank/Booster	ADDED HMI
10	A	S-Site Booster 1	ADDED HMI
11	A	Sycamore Tank (7.75mil)	NO HMI
12	A	Quemazon Booster	ADDED HMI
13	A	North Fill Booster	ADDED HMI
14	A	Guaje Fill Booster	ADDED HMI
15	B	Middle School Tank	ADDED HMI
16	B	N. Mesa Booster	Replace HMI
17	C	Group 12 Tank	NO HMI
18	C	Pajarito Tank 4	NO HMI
19	C	Pajarito Tank 4A	NO HMI
20	C	Arizona Tank (7.75mil)	NO HMI
21	D	Otowi Booster 1/Tank	ADDED HMI
22	D	Otowi Booster 2/Tank	ADDED HMI
23	D	Anniversary Tank	ADDED HMI
24	D	Barranca Boost2/Guaje Booster 3/Tanks	ADDED HMI

25	D	Barranca Tank 2 (Hawk)	ADDED HMI
26	E	Pajarito Booster 2/ Tank	ADDED HMI

On-Call Support Service Rates

Classification	Straight Time Rate	Overtime Rate
PLC/HMI/System Design and support and Programmer	\$140.00	\$196.00
I&C Technician II combination I&E and Field Foreman	\$98.75	\$138.25
I&C Technician III Instrument Installer and instrument Technician	\$90.90	\$127.26
I&C Technician IV Instrument Installer and general Labor	\$80.80	\$113.12
Journeyman Electrician	\$90.90	\$127.26
Apprentice Electrician	\$80.80	\$113.12

Invoice Processing Fee for Equipment Acquisition – Materials shall be invoiced at cost with the below stated invoice processing fee as applicable.

Material Cost	Invoice Processing Fee
\$100 and below Cost of Materials	I&C Straight Time Rate at 0.25 Hours
\$1000 to \$1000.01 Cost of Materials	I&C Straight Time Rate at 2.0 Hours
\$2500 to \$1000.01 Cost of Materials	I&C Straight Time Rate at 4.5 Hours
\$5000 to \$2500.01 Cost of Materials	I&C Straight Time Rate at 6.0 Hours
Over \$5000.00 Cost of Materials	I&C Straight Time Rate at 8.0 Hours

All service calls will have a 3-hour minimum charge for each classification code including travel charges.

Straight Time: Straight Time is defined as time worked during County's normal working hours, up to 10 hours per day, Monday through Friday (excluding weekends, state and federal holidays).

Overtime: Is defined as time worked outside of normal working hours or in excess of 40 hours per week plus any hours worked on weekends, state and federal holidays will be billed to the County at 1.4 times the Straight Time Rate, as seen in the table above.

On-Call Services and Travel Charges.

On-Call services will be provided and charged per labor rate table listed above. Travel charges will be calculated at \$0.65 per mile from Albuquerque and based on round trip mileage to and from project site and added to invoice as separate and detailed line item on all invoices. County shall be invoiced Two Hundred (200) Miles per Round Trip On-Call Service Visit.

County Travel Guidelines

Contractor's travel expenses shall be charged at actual cost, copies of all travel expenses must accompany invoices submitted to County, and shall only include the following:

1. Mileage shall be reimbursed at the mileage rate described above;
2. Hotel or motel lodging, not to exceed \$250.00 base rate per night excluding tax;
3. Meals, per Los Alamos County Travel Policy, currently \$90.00 per diem daily for multi-day travel, or up to \$40.00 daily for one day travel;
4. Internet connectivity charges;
5. Any other reasonable costs directly associated with conducting business with County.
6. If reimbursement for lodging or airfare is sought and no receipt is furnished by Contractor showing the actual cost, the travel expense shall be deemed unreasonable and un-reimbursable.

Travel Expenses not allowed are as follows:

1. Entertainment; in-room movies, games, etc. and
2. Alcoholic beverages, mini bar refreshments or tobacco products.

Exhibit B
Campaign Contribution Disclosure Form
AGR25-16a

Any prospective contractor seeking to enter into a contract with the Incorporated County of Los Alamos must file this form disclosing whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official during the two (2) years prior to the date on which prospective contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date prospective contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds TWO HUNDRED FIFTY DOLLARS (\$250.00) over the two (2) year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other things of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family member” means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of:

- (a) a prospective contractor, if the prospective contractor is a natural person; or
- (b) an owner of a prospective contractor.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a ☐ member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS: (Report any applicable contributions made to the following-COUNTY COUNCILORS: Theresa Cull; Melanee Hand; Susie Havemann; Ryn Hermann; Beverly Neal-Clinton; David Reagor; and Randal Ryti.)

Contribution Made By:			
Relation to Prospective Contractor:			
Name of Applicable Public Official:			
Contribution(s) Date(s)	Contribution Amount(s):	Nature of Contribution(s):	Purpose of Contribution(s):
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Please check the box next to the applicable statement.

<input type="checkbox"/>	CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE to an applicable public official by me, a family member or representative, and I have disclosed those contributions.
<input type="checkbox"/>	NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (position)

Exhibit C
Confidential Information Disclosure Statement
AGR25-16a

The Incorporated County of Los Alamos is a governmental entity subject to certain disclosure laws including, but not limited to, the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1, et seq. Nothing in this Agreement is intended to diminish or expand the application of any applicable disclosure laws to any proprietary or confidential information.

This Confidential Information Disclosure Statement ("Statement") defines obligations and waivers related to Confidential Information disclosed pursuant to the above referenced Agreement between County and Contractor. County and Contractor agree to the following:

1. **Statement Coordinator** – Each party designates the following person as its Statement Coordinator for coordinating the disclosure or receipt of Confidential Information:

	Contractor	County
Name:	Preston Patterson	James Martinez
Title:	Integration & Control Solutions, LLC	Senior Engineer
Address:	4485 Irving Blvd N.W.	1000 Central Avenue, Suite 130
City/State/Zip:	Albuquerque, New Mexico 87114	Los Alamos, New Mexico 87544
Email:	preston@ics-abqnm.net	james.martinez@lacnm.us

2. **Definitions:**
 - a) **Confidential Information** - any form of information, in any format, disclosed by the Discloser to the Recipient and identified in writing as confidential.
 - b) **Discloser** - the party disclosing Confidential Information.
 - c) **Exception** – An exception is satisfied if the Confidential Information disclosed: (i) was in Recipient's possession prior to receipt from Discloser, (ii) is publicly known or readily ascertainable by legal means, (iii) is lawfully received by Recipient from a third party without a duty of confidentiality, (iv) is disclosed by Discloser to a third party without a duty of confidentiality on the third party, (v) is independently developed or learned by Recipient, or (vi) is disclosed by Recipient with Discloser's prior written approval.
 - d) **Recipient** – the party receiving Confidential Information.
3. **Obligations** – Recipient shall protect and ensure its participating subcontractors, agents, or associates shall protect all Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Recipient uses to protect its own information of a like nature. If any person or entity requests or demands, by subpoena or otherwise, all or any portion of the Confidential Information provided by one party to another, the party receiving such request shall immediately notify the Discloser of such request or demand. The party receiving the request or demand shall independently determine whether the information sought is subject to disclosure under applicable law including the New Mexico Inspection of Public Records Act. If the party receiving the request or demand determines that the information is subject to disclosure, it shall notify the Discloser of its intent to permit the disclosure with sufficient time to permit the Discloser to invoke the jurisdiction of an appropriate court or administrative body to raise any legitimate objections or defenses it may have to the disclosure. In the absence of an appropriate order prohibiting the disclosure, the party receiving the request or demand shall permit and proceed with the disclosure without incurring any duty, obligation or liability to the Discloser.

**Exhibit D
Federal Forms**

	American Iron and Steel (AIS) Final Certification	Form #C5
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Upon execution of this certification the Contractor hereby certifies that all of the iron and steel products used in this project were produced in the United States except those for which an appropriate waiver(s) has been approved by the U.S. Environmental Protection Agency, and that no changes or substitutions to the individual certifications provided by the contractor have been made.

This statement relates to a contract between _____ and _____
(owner) (contractor)

in conjunction with _____ funded with monies made available by the New Mexico
(project name)

Drinking Water State Revolving Loan Fund.

Signature Date

Name and Title of Signer (Please type or print)
Attachment A

	Davis-Bacon Compliance Certification	Form #C10
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Assistance Recipients must submit this form to NMED with every payment request for a DWSRF-funded project.

Project Name: _____

Period From: _____ **To:** _____

Davis-Bacon Compliance Certification

Based on a review of payroll reports for the specified weeks, I certify to the best of my knowledge and belief that the above referenced project:

Complies with with the requirements of 29 CFR 5.5(a)(1) and that all laborers and mechanics employed by contractors and subcontractors engaged in contracts for the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by the State Water Pollution Control Revolving Fund are paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Name of DWSRF Assistance Recipient

Date

Signature of Authorized Official (Assistance Recipient)

Signature of Contractor's Authorized Representative

Date

Printed Name of Contractor's Authorized Representative

"As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week."

- 3. Contract and Subcontract Provisions (3)(ii)(A) of the EPA Grant Terms and Conditions, Wage Rate Requirements Under FY2010 Appropriations.

	American Iron & Steel Compliance Certification	Form #C11
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Assistance Recipients must submit this form to NMED with every payment request for a DWSRF-funded project.

Project Name: _____

Pay Application #: _____

American Iron & Steel Compliance Certification

The Contractor acknowledges that it understands the goods and services paid for under this Pay Application are being funded with monies made available by the New Mexico Drinking Water State Revolving Fund and that statutory requirements require that all of the iron and steel products used in the project must be produced in the United States in accordance with "Subpart J – American Iron and Steel Requirements." The Contractor hereby represents and warrants to and for the benefit of the Owner and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved or the product is incidental as described the De Minimis section of Subpart J, (c) the Contractor will provide verified information, product certifications, or assurance of compliance with this paragraph as requested by the Owner, and (d) information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or State to recover damages from the Contractor for any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Owner). If the Contractor has no direct contractual privity with NMED, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that NMED is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of NMED.

Signature of Contractor's Authorized Representative

Date

Printed Name of Contractor's Authorized Representative

Date _____

I, _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____ on the _____
(Contractor or Subcontractor); that during the payroll period commencing on the _____
(Building or Work) _____ day of _____, _____, and ending the _____ day of _____, _____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor) weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ – in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ – Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
REMARKS:	
NAME AND TITLE	SIGNATURE
THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 3729 OF TITLE 31 OF THE UNITED STATES CODE.	

	Davis-Bacon Act Final Certification	Form #C13
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The Contractor acknowledges to and for the benefit of the _____ (“Owner”) and the New Mexico Environment Department (NMED) that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as the Davis-Bacon Act that requires all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the federal prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area as determined by the Secretary of Labor.

The Contractor hereby represents and warrants to and for the benefit of the Owner and NMED that (a) the Contractor has reviewed and understands the Davis-Bacon Act requirements, (b) as such has compensated all contractors and subcontractors performing work on this project not less than the prevailing wage and fringe benefits for corresponding classes as determined by the Secretary of Labor, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, as may be requested by the Owner or NMED. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or NMED to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Owner or NMED resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from NMED or any damages owed to NMED by the Owner). If the Contractor has no direct contractual privity with NMED, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that NMED is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of NMED.

This statement relates to the contract between _____ (owner) and _____ (contractor) in conjunction with _____ (project name) funded with monies made available by the New Mexico Drinking Water State Revolving Fund.

_____ Signature	_____ Date
_____ Name and Title of Signer (Please type or print)	