

## CAPITAL OUTLAY AGREEMENT



**State of New Mexico  
General Services Department  
State Purchasing Division**

### Contract Cover Page

**Awarded Vendor:**

**0000054457**

**Incorporated County of Los Alamos**

**Los Alamos Department of Public Utilities**

**1000 Central Avenue, Suite 300**

**Los Alamos, New Mexico 87544**

**Email: [philo.shelton@lacnm.us](mailto:philo.shelton@lacnm.us)**

**Telephone No.: (505) 662-8148**

Contract Number: **10-66700-21-27670AF**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **See Contract**

**Ship To:**

**Los Alamos Canyon, Los Alamos, New Mexico**

Procurement Specialist: **Mark Lujan**

Telephone No.: **505-795-2516**

Email: **[Mark.Lujan@state.nm.us](mailto:Mark.Lujan@state.nm.us)**

**Invoice:**

**Per contract.**

**For questions regarding this contract please contact:  
Kate Lacey (505) 946-8863**

**Title: 2021 River Stewardship Program**

**Term: **Final Signature Date** through June 30, 2024**

**The attached Contract is made subject to the “terms and conditions” as indicated.**

NMED Contract No. 22 667 2060 0012

**STATE OF NEW MEXICO  
DEPARTMENT OF ENVIRONMENT  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this [ ] day of [ ], 2022, by and between the Department [New Mexico Environment Department], hereinafter called the “Department” or abbreviation such as “NMED” and the Incorporated County of Los Alamos, Department of Public Utilities, hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

WHEREAS, in Chapter 138, Section 21 of New Mexico Laws 2021, the Legislature made an appropriation to the Department to plan, design and construct projects to improve surface water quality and river habitat statewide, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, in Chapter 82, Section 104 of New Mexico Laws 2020, the Legislature extended the time of expenditure through fiscal year 2022 for an appropriation made to the Department in Chapter 81, Section 44 of New Mexico Laws 2016 to plan, design and construct projects to improve surface water quality and river habitat statewide, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, NMED is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, NMED reserves the right to claim the funds to match its own federal grants under the Clean Water Act and the Grantee shall not claim the funds as match to a federal grant; and

WHEREAS, NMED is authorized by NMSA 1978 §74-6-9(A) to receive and expend funds appropriated for the purpose consistent with the Water Quality Act and the appropriation; and

WHEREAS, NMED and the Grantee desire to enter into this Agreement to accomplish the Project in the most cost effective and administratively efficient manner;

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

DFA-COB Project # A20E4102

Total Appropriation Amount for #A20E4102: \$252,613.00

Appropriation Amount from NMED to Grantee: twenty thousand dollars and zero cents (\$20,000.00)

APPROPRIATION REVERSION DATE: 30-JUN-2022

DFA-COB Project # A21F2386

Total Appropriation Amount for #A21F2386: \$1,500,000.00

Appropriation Amount from NMED to Grantee: two hundred seventy one thousand seven hundred nine dollars and zero cents (\$271,709.00)

APPROPRIATION REVERSION DATE: 30-JUN-2025

In New Mexico Laws of 2016, Chapter 81, Section 44, one million five hundred thousand dollars (\$1,500,000), to plan, design and construct projects that improve surface water quality and river habitat statewide, was reauthorized in New Mexico Laws of 2020, Chapter 82, Section 104 to extend the time of expenditure of the remaining two hundred fifty two thousand six hundred thirteen dollars (\$252,613) through fiscal year 2022.

In New Mexico Laws of 2021, Chapter 138, Section 21, one million five hundred thousand dollars (\$1,500,000), to plan, design and construct projects that improve surface water quality and river habitat statewide.

The Grantee's total reimbursements shall not exceed **two hundred ninety one thousand seven hundred nine dollars and zero cents (\$291,709.00)** (the "Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>1</sup> Grantee

---

<sup>1</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

(hereinafter referred to as “Notice of Obligation”). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee’s expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee’s Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee’s expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as “Third Party Obligations”; and
- (iv) The Grantee’s submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

- (vi) The Grantee’s submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department’s issuance and the Grantee’s receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
  - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
  - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee’s expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
  - d. The date the Department signs the Notice of Obligation is the date that the Department’s Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation,

execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: Incorporated County of Los Alamos, Department of Public Utilities  
Name: Philo S. Shelton III  
Title: Utilities Manager  
Address: 1000 Central Avenue, Suite 130, Los Alamos, NM 87544  
Email: Philo.Shelton@lacnm.us  
Telephone: (505) 662-8148

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: Incorporated County of Los Alamos Department of Public Utilities  
Name: Heather Garcia  
Title: Financial Officer  
Address: 1000 Central Avenue, Suite 130  
Email: Heather.Garcia@lacnm.us  
Telephone: (505) 662-8333

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: New Mexico Environment Department  
Name: Kate Lacey  
Title: River Stewardship Program Coordinator  
Address: Surface Water Quality Bureau, P.O. Box 5469 Santa Fe NM, 87502

Email: Kathryn.Lacey@state.nm.us  
Telephone: 505-946-8863

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2024, the Reversion Date, unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

##### **B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement and the Council of the County. Throughout this Agreement the term “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature or County Council: deauthorization, reauthorization or revocation of a prior authorization. The Legislature or County Council may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department or the County shall early terminate this Agreement for non-appropriation by giving the other party written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The party terminating due to non-appropriation decision as to whether sufficient appropriations or authorizations are available shall be accepted by the other party and shall be final. Each party hereby waives any rights to assert an impairment of contract claim against the other in the event of Early Termination of this Agreement pursuant to Article V(B).

The Grantee’s performance pursuant to this Agreement is contingent upon sufficient appropriations and authorization made by the Council of the County. Throughout this Agreement, the term “non-appropriate” or “non-appropriation” may also include deauthorization, reauthorization, or revocation of previous authorization by the Council of the County. The Council of the County may choose to non-appropriate funds for operation of the Project. If this occurs, the County shall early terminate this Agreement for non-appropriation by giving the Department written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Grantee’s determination as to whether sufficient appropriations or authorizations are available shall be accepted by the Department and shall be final. The Department hereby waives any rights to assert an impairment of contract claim against the Grantee in the event of Early Termination of this Agreement pursuant to Article V(B).

**C. Limitation on Department’s Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department’s sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations, except as may be required to properly operate, maintain, and meet all regulatory and public service requirements consistent with the Work Plan and amounts agreed to in this Agreement. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties, unless Grantee, in its sole professional discretion, determines that the new or further action is necessary to meet its operations, maintenance, or public service requirements; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement, until the matter may be discussed and reviewed by Grantor and Grantee; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.



B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

- A. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

**ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

**ARTICLE VIII. REPORTS**

**A. Database Reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

**B. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:



- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

#### **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

#### **C. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests

for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
  - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of

race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
  - (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

**ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS;  
PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible,

maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Incorporated County of Los Alamos may immediately terminate this Agreement by giving Contractor written notice of such termination. The Incorporated County of Los Alamos’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the Incorporated County of Los Alamos or the New Mexico Environment Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Incorporated County of Los Alamos or the Department”

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a New Mexico Environment Department Grant Agreement. Should the New Mexico Environment Department early terminate the grant agreement, the Incorporated County of Los Alamos may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Incorporated County of Los Alamos only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

- A. Throughout the term of this Agreement, Grantee shall:
1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
  2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
  3. timely submit all required financial reports to its budgetary oversight agency (if any); and
  4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

NMED Contract No. 22 667 2060 0012

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE (INCORPORATED COUNTY OF LOS ALAMOS)**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**NEW MEXICO ENVIRONMENT DEPARTMENT**

\_\_\_\_\_  
By: James C. Kenney, Cabinet Secretary

Date: \_\_\_\_\_

Certifying Financial Sufficiency:

\_\_\_\_\_  
By: Marlene Velasquez, Chief Financial Officer

Date: \_\_\_\_\_

Certifying Legal Sufficiency:

\_\_\_\_\_  
By: Christopher Atencio, Assistant General Counsel

Date: \_\_\_\_\_

The records of the Taxation and Revenue Department reflect that Contractor is registered with the Taxation and Revenue Department of the State to pay gross receipts and compensating taxes:

CRS ID Number: **01-503298-00-1**



NMED Contract No. 22 667 2060 0012

**NOTE: Taxation and Revenue is only verifying the registration and will not confirm or deny  
taxability statements contained in this contract.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Taxation & Revenue Department

This Agreement has been approved by the State Purchasing Agent:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark Hayden, State Purchasing Agent  
State Purchasing Division, General Services Department

NMED Contract No. 22 667 2060 0012

<b>STATE OF NEW MEXICO CAPITAL GRANT PROJECT Request for Payment Form Exhibit 1</b>									
<b>I. Grantee Information</b> (Make sure information is complete & accurate)					<b>II. Payment Computation</b>				
A.	Grantee:				A.	Payment Request No.			
B.	Address:				B.	Grant Amount:			
					C.	AIPP Amount (If Applicable):			
	(Complete Mailing, including Suite, if applicable)				D.	Funds Requested to Date:			
					E.	Amount Requested this Payment:			
					F.	Reversion Amount (If Applicable):			
	City	State	Zip		G.	Grant Balance:			
C.	Phone No:				H.	<input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB (attach wire if first draw)			
D.	Grant No:				I.	<input type="checkbox"/> Final Request for Payment (if Applicable)			
E.	Project Title:								
F.	Grant Expiration Date:								
<b>III. Fiscal Year :</b>									
(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)									
<b>IV. <input type="checkbox"/> Reporting Certification:</b> I hereby certify to the best of my know ledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.									
<b>V. <input type="checkbox"/> Compliance Certification:</b> Under penalty of law , I hereby certify to the best of my know ledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.									
<b>Grantee Fiscal Officer</b> or <b>Fiscal Agent (if applicable)</b>					<b>Grantee Representative</b>				
Printed Name					Printed Name				
Date:					Date:				
<b>(State Agency Use Only)</b>									
Vendor Code:			Fund No.:			Loc No.:			
I certify that the State Agency financial and vendor file information agree with the above submitted information.									
Division Fiscal Officer					Date				
Division Project Manager					Date				

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE**

NMED Contract No. 22 667 2060 0012

**EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee [# 1]**

DATE: [REDACTED]

TO: Department Representative:

[REDACTED], [REDACTED]

FROM: Grantee:

[REDACTED]

Grantee Official Representative:

[REDACTED]

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number:

[REDACTED]

Grant

Termination Date: [REDACTED]

As the designated representative of the Department for Grant Agreement number [REDACTED] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor:

[REDACTED] Keystone Restoration Ecology (KRE)

Third Party Obligation Amount:

[REDACTED]

Vendor or Contractor:

[REDACTED] Natrual Channel Design (NCD)

Third Party Obligation Amount:

[REDACTED]

Vendor or Contractor:

[REDACTED]

Third Party Obligation Amount:

[REDACTED]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable):

[REDACTED]

The Amount of this Notice of Obligation:

[REDACTED]

NMED Contract No. 22 667 2060 0012

The Total Amount of all Previously Issued Notices of Obligation:

[REDACTED]

The Total Amount of all Notices of Obligation to Date:

[REDACTED]

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver:

[REDACTED]

Title:

[REDACTED]

Signature:

[REDACTED]

Date:

[REDACTED]

<sup>1</sup> Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

## **Attachment A Work Plan**

### **Los Alamos Canyon Creek Watershed Restoration and Sediment Reduction Project**

#### **Key Personnel**

#### Los Alamos Department of Public Utilities

##### **THOMAS CLAY MOSELEY, Project Manager, Grantee**

**Project Responsibility:** DPU Project Manager / Manage all aspects of the grant and project; including liaising with state & federal agencies such as New Mexico Environment Department (RSP), U.S. Forest Service (SFNF), Army Corps of Engineers, Department of Energy and Tribal Governments for the purpose of environmental assessments and floodplain management. Work closely with subcontractors to ensure the successful execution of the project and grant.

#### JACK RICHARDSON, Deputy Utilities Manager – Gas, Water & Sewer (GWS), Grantee

**Project Responsibility:** DPU Project Supervisor / Oversee the River Stewardship Grant Program grant and project execution.

#### HEATHER GARCIA, Deputy Utilities Manager – Finance, Grantee

**Project Responsibility:** DPU Financial Officer / Oversee the fiscal aspect of the project and grant. Ensure funds are budgeted and encumbered, prepare accounting reports of project/grant funds in accordance with the grant program and generally accepted financial and risk management practices and applicable federal, state and local statutory requirements.

#### PHILO S. SHELTON, III, Utilities Manager, Grantee

**Project Responsibility:** DPU Principal / Commit County resources to ensure the project is successful and the grant is managed properly.

#### Natural Channel Design

##### **MICHAEL KEARLY, Engineer, NCD**

**Project Responsibility:** Provide engineering services on this project.

NMED Contract No. 22 667 2060 0012

ALLEN HADEN, Principal Ecologist and Owner NCD

**Project Responsibility:** Coordinate assessment and design efforts with KRE and Grantee.

Keystone Restoration Ecology

STEVE VROOMAN, Principal Ecologist and Owner, KRE

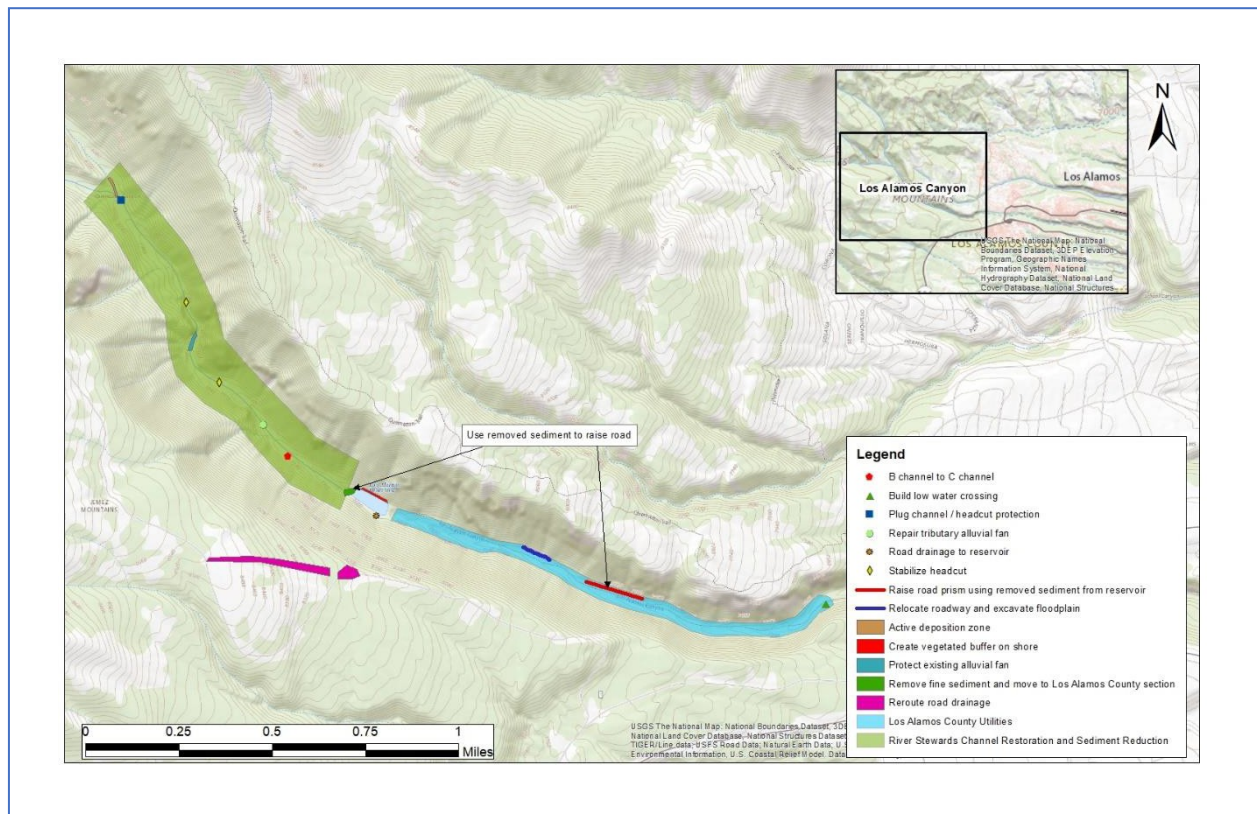
**Project Responsibility:** Collaborate on assessment, design, and construction services.

JEN VROOMAN, Project Manager and Owner, KRE

**Project Responsibility:** Construction Management, Project Management, oversight and billing.

Project Location

Los Alamos Canyon Creek is a tributary to the Rio Grande located in the HUC 130201011303. The project coordinates are 35°53'02" N, 106°21'15" W. The project location includes 15,000 feet (3 miles) of Los Alamos Canyon Creek, tributary canyons and the Los Alamos Reservoir.



## Map

*This project will restore about 3 stream miles of Los Alamos Canyon Creek and 150 acres of associated riparian area and floodplain.*

## Project Background

The project area includes several assessment units found in the 2020-2022 State of New Mexico Clean Water Act 303(d)/305(b) Integrated Report List of Assessed Surface Waters. One Assessment Unit (AU) of 3.8 miles labeled Los Alamos Canyon (DP Canyon to Upper Land Boundary) was given the category 5.5c, and was found impaired for Cyanide, PCBs, Selenium, Mercury, and Gross Alpha. The upstream reaches from the DOE boundary to the headwaters, including Los Alamos Reservoir, include several reaches in AU IR Category 3/3a or 2, indicating either insufficient data or attaining with no data.



The project area is on property owned by DOE and Santa Fe National Forest Los Alamos Canyon Road and Reservoir are widely used by the public for hiking, swimming and general recreation. The Los Alamos Reservoir is the only surface water in Los Alamos County with the exception of the Rio Grande River, and is heavily used for recreation during the summer months. Years of filling with sediment and sediment removal have left the reservoir with steep, eroding banks, little shade, and poor water quality.

The project area was severely burned by both the Cerro Grande and Los Conchas wildfires in 2000 and 2011. The upper watershed of Los Alamos Canyon was almost completely denuded from forest cover. Elimination of forest canopy and ground cover increased runoff rates in the watershed by orders of magnitude. Floods of 300 cfs in Los Alamos Canyon were seen in 2001 after the Cerro Grande Fire. The stream gage at the Ice Rink downstream was destroyed on Aug 21, 2011, after the Los Conchas Fire.

The Sep 12-13, 2013, rainfall event nick-named the Pineapple Express caused extreme damage to the front range of Colorado and caused a 1000-year flood event in canyons burned by the Los Conchas fire in 2011. Between 5-8 inches of rain fell in a two-day period and the estimated flood event was 3100 cfs.

This flood caused the deposition of 15,000 yards of sediment in the Los Alamos Reservoir, and moved about 4000 yards of soil from the reservoir access road and deposited it downstream in the impaired reach between the LANL boundary and DP canyon. This flood caused extreme amounts of damage to the watershed including headcutting, channel evulsion, gullyng, and deposition of debris fans.



*Looking upstream from Reservoir after 2013 flood event, no channel visible*



*Road becomes Creek after 2013 flood event*

Consequently, increased runoff created an enormous amount of erosion in Los Alamos Canyon that continues to contribute hundreds of yards of sediment each year to the Creek. The channel in the upper watershed is extremely destabilized, with areas of deep gullying, headcutting and bank erosion. The channel below the reservoir is also destabilized, with some portions of the Creek now being at a higher elevation than the road, lengthy gullies, and piles of sediment that have been deposited upon the floodplain.

Without treatment and restoration of the watershed and channel erosion of the access road, channel banks and bed of Los Alamos Canyon creek will continue to occur, and continual maintenance of the road will cause additional destabilization of the Creek. Sediment is continually dredged from the reservoir and used for road repairs and this sediment continues to be eroded in large flood events and deposited downstream in highly impaired and contaminated portions of Los Alamos Creek.

## Planning Document

Los Alamos National Laboratory has created a document titled “Watershed Management on the Pajarito Plateau, Past, Present and Future”. This is available at:

<https://digital.library.unt.edu/ark:/67531/metadc725186/>

The Los Alamos County Utilities Department applied for and received a FEMA Hazard Mitigation grant for the restoration of the road, protection of a buried pipeline, and the protection of the road with 2000 feet of gabion barriers. This project was titled “Los Alamos County Reservoir Road Project and was scheduled to begin to construction in 2021. However, funding

was taken from FEMA for the border wall and the project was cancelled. The EA for the project was completed with a determination of FONSI for the USFS and FEMA. This document is included in the appendices.

Los Alamos County Utilities and Los Alamos County had together matched \$500,000 to the FEMA Hazard Mitigation Grant, and this funding remains to be matched to a River Stewardship Grant. Los Alamos County funds will be used for restoration of the reservoir, reservoir amenities, road rehabilitation and bioengineering of road embankment protection using boulder rock vanes. River Stewardship funds are being requested to perform watershed restoration treatments above and below the reservoir, and to restore the channel form to prevent further erosion and deposition.

### **Rationale**

Los Alamos County Utilities recently went through a FEMA design process to restore the reservoir road and protect the pipe from future flood events. This project was approved by FEMA and almost all environmental clearances were completed. However, the previous federal administration removed funding from New Mexico and other states to fund the “border wall”. Los Alamos County was offered the funding under the conditions that the over 2M dollar project be completed in 6 months, over the wintertime. Los Alamos County withdrew their application and started investigating how this important project could be completed.

LA County has negotiated a price agreement with NCD and Keystone, and decided to obligate the FEMA “match” of \$500,000 to a project to restore the reservoir, protect and re-build the road, and enhance public access and use. This funding will be used as match for a River Stewardship grant to restore the watershed, channel and floodplain of Los Alamos Canyon Creek. The goals of the project include watershed restoration, recreation enhancement and protection of the highly impaired downstream portions of Los Alamos Canyon Creek from future flood events and excessive sedimentation that may cause erosion and release of contaminants.

Los Alamos Canyon Creek is the closest perennial water to the community of Los Alamos and the Los Alamos Reservoir is the only impoundment or lake within 30 miles of the community. The area is highly used by hikers, bikers, and families, and is especially popular for swimming during the summer months. If the sediment and phosphorus contributions from deposition into the reservoir can be addressed, the reservoir could once again support a small fishery for recreation. The people of Los Alamos County have a strong emotional attachment to the LA Canyon Creek & Reservoir area. It was and remains a high priority for the community; as evidenced by the numerous efforts to maintain this area, throughout the many post-fire flood damaging events. Most of the project is USFS lands, however, a long-term plan to transfer the Reservoir and downstream lands to the County has been in the discussion phases for many years, in which case it could be maintained by the LA County Open Space Program. There is public access to the entire area, including DOE and USFS lands. Wildlife has historically been abundant in this reach of Los Alamos Canyon Creek with consistent sightings of bear, deer and elk as well as affording excellent birding opportunities.

### **Planning**

#### **Permits, Certifications and Clearances**

The USFS will require NEPA (ESA and NHPA) compliance for restoration on USFS lands. In addition, the DOE will require a floodplain assessment as part of their NEPA process. This project will be under the management of Los Alamos County Utilities Department, and they have received



NEPA compliance for the road rehabilitation and protection portion of the project. A preliminary meeting was held in Sep 2020 with the USFS Espanola Ranger District Ranger, Sandy Hurlocker, and the biologist, Justin Mapula. An additional meeting was held on June 10<sup>th</sup>, 2021, with LA County Utilities, the USFS and project consultants.

The area is potential habitat, but not critical habitat, for the Jemez Mountain Salamander and will require a review by the USFWS and a determination of impact. A habitat survey was performed by Ecosphere Environmental Services and Section 7 consultation completed. A determination of “may affect but is not likely to adversely affect” was made for the Jemez Mountain Salamander and the Mexican Spotted Owl. The proposed action was determined to have “no affect on four other listed species including Zuni fleabane, Southwestern Willow Flycatcher, Yellow-billed cuckoo and New Mexico Meadow Jumping Mouse. Further studies may be needed for our proposed increase in project scope, however the impact of bioengineering techniques and the size of the construction operation will be notably less than the proposed FEMA project.

Additional cultural surveys will be needed, especially in areas below the Los Alamos Reservoir. Since the upper watershed has been completely eroded and redeposited by the 2013 flood, little surveys will likely be needed.

### **Stakeholders and Community Support**

Los Alamos County created an “On-Call RFQ for Environmental Consulting and Constructing and Natural Channel Design Engineering and Keystone Restoration Ecology were chosen as one of two teams. NCD and KRE then performed restoration at Graduation Canyon, a small tributary of Pueblo Canyon near the Los Alamos Airport. Since then, over a year and half of planning has gone into preparing for a River Stewardship Grant Application for Los Alamos Canyon. Los Alamos County has contracted Keystone Restoration Ecology as the project manager for a watershed-scale restoration project.

Pajarito Environmental Education Center (PEEC) has offered to provide support and assistance for this project. Charles “Chick” Keller, PEEC botanist, will assist in rare plant survey and restoration efforts in the upper watershed and will help ensure minimal environmental impact. PEEC also has access to a cadre of youth volunteers who will assist in planting willows and cottonwoods in the upper watershed of Los Alamos Canyon.

### **Long Term Support and Monitoring**

Since the Department of Public Utilities (DPU) is the lead County department for this project the usual detailed and extensive public outreach for a major DPU project will be completed by DPU. DPU, as the responsible party for dam inspection on the Los Alamos Reservoir, has an existing obligation for regular inspection and reporting on the dam and this reporting mechanism will be upgraded to include monitoring of watershed restoration integrity by virtue of visual evidence of access road and/or pipeline & conduit erosion damage with communication of any visual damage to the County Open Space Program for initiation of maintenance activities as required.



*Impaired channel of Los Alamos Canyon Creek, eroding banks contribute sediment downstream*



*Looking upstream at fan entering reservoir, Los Alamos County intends to enhance this recreational resource by restoring upstream watershed including revegetation of fan*

## **Project Goals and Design Methods**

Post wildfire flooding in Los Alamos Canyon has increased hydraulic discharge from the watershed and increased sediment sources and transport from the headwaters downstream to important infrastructure on DOE and Los Alamos County lands. Importantly, increases in sediment and peak discharge are leading to damage to important water storage, road and pipeline infrastructure. The frequent maintenance required to keep the infrastructure operable is not only expensive but requires frequent disturbance to important stream and riparian habitat. The overarching goal of project is to repair stream channel geometry in order to reduce sediment production from bank and streambed erosion. This goal will be met by meeting specific objectives in two areas in the watershed.

USFS lands upstream of the reservoir objectives -

- Provide stream bank and headcut repairs to reduce sediment sources in areas that have highest sediment sources
- Restore form and function to aggrading alluvial fans from steep tributary channels
- Enhance and repair naturally aggrading segments of channel to reduce sediment transport to downstream reaches and the reservoir
- Plant willows and cottonwoods to provide streambank protection and shading for the Creek

DOE and Los Alamos County Lands below Reservoir objectives –

- Repair stream channel and floodplain geometry to reduce erosion of road way prism and pipeline
- Utilize natural channel design techniques to protect the road prism from erosion during discharge events
- Provide safe areas for utilities locations and recreational uses that are compatible with function of stream channel within a narrow valley corridor

When fully implemented these activities are expected to provide several measurable benefits. These are:

- Reduction in the number and extent of needed repairs to the reservoir and roadway. This includes, reservoir dredging and grading repairs to the roadway and pipeline. It is expected that the need for repair expenditures will drop to pre fire levels with little need to disturb aquatic resources.
- Reduction in bank erosion and streambed disturbance will lead to a more rapid increase in density and diversity of riparian vegetation in the corridor. Habitat quality and density should increase once erosion of stream banks has been slowed.
- There should be an improved quality of user experience for recreation. Improved shade, safety and access are expected to be noted in community feedback.

Initial activities in the grant will include a detailed mapping of the project area for Rosgen stream type, valley type, bank erosion estimates (from BANCs model) as well as stream bed instability from shear stress. This will be combined with estimates of peak streamflow in the post fire hydraulic regime to determine rates of bank erosion and relative sediment transport within



specific reaches. The design team will utilize this information to target specific areas with impaired stream function for repair or enhancement. Specific functions that will be addressed include:

- Vertical incision (headcuts)
- High bank erosion rates
- Low entrenchment ratios (lack of access to floodplain)
- Lack of appropriate riparian vegetation

Likely practices that would be utilized to improve stream function include:

- Native rock cross vane weirs for grade control and reduction of bank erosion. Rock vanes are built of sized native rock in a “V” across the channel to retain channel grade and shape by centering shear stress in the center of the channel bed. Cross vanes are sized according to the stresses expected from the stream and main channel cross vanes would have to be installed with an excavator. Appropriate sized rock may have to be furnished from off site. The number and placement of weirs are dependent on the results of the assessment but they will be utilized at low water crossings, in areas where the road bed and channel are close proximity and to stabilize headcuts.
- One rock dams for grade control and to improve access to floodplain. One rock dams are utilized for grade control to increase bed height, slow sediment transport and improve bed stability. Depending on the size of material required (determined by channel assessment) they can be built with hand crews or using an excavator. The number and location of the one rock dams will be determined by the field assessment. However, the upper watershed has multiple areas where the channel is beginning to incise and loose connection with the adjoining floodplain.
- Restoration of appropriate channel dimensions to reduce bank erosion and improve sediment transport. This practice is pertinent to the entire length of the drainage. Appropriate width to depth ratios for the active channel and the elevation and width of the adjoining floodplain are especially important. Use of regional curves for predicting stable channel conditions as well as utilizing portions of the existing channel that are deemed stable will provide the appropriate dimensions. The channel can be excavated or manipulated with weirs and one rock dams to achieve the correct dimensions. This practice is widespread but will be heavily utilized downstream of the reservoir where the channel has been heavily eroded and manipulated in a reaction to flood damage to the road.
- Plug and spread to block water from headcuts, reduces stress and encourage sediment accumulation in appropriate settings. The upper watershed has several areas where excess energy is being focused on the channel and causes both incision and channel widening. This practice uses an excavator to plug the channel and spread flows away from the problem area, reducing stress and erosion.
- Restoration of channel alignment in areas where it has been moved to make way for the roadway. This practice requires the use of an excavator to rebuild the channel where it has been heavily eroded or manipulated near the roadway. It includes ensuring that the floodplain is of proper width and elevation relative to the active channel. Channel



restoration is most needed in the reach downstream of the reservoir where the pipeline, channel and roadway all converge. The reach is approximately 2000 feet long.

- Improved low water crossings using native rock. This practice involves utilizing a cross vane weir as described above to form a low water crossing for the road through the stream. Heavy rock is buried in the crossing to provide a solid base for trucks and machinery to cross. The cross vane provides grade control as well as width depth control over the reach. At least one low water crossing is anticipated on the access road near the existing crossing. Another may be required depending on the results of the stream assessment.
- Use of reservoir dredge materials to cover pipeline and increase elevation of the roadway above the streambed. Materials dredged from the upper reservoir not only provide more storage in the reservoir but can provide an excellent material for elevating the road way and burying the pipeline to prevent further damage. A close survey of the roadway will determine the amount of material needed, but approximately 2000 cubic yards of material is anticipated at this time. The material will be placed on the pipeline and the roadway will be formed on the top of the material. Los Alamos County matching funds are planned to be utilized to produce the materials from dredging and placing them on the pipeline/roadway. River Stewardship funds will be utilized to shape them correctly and protect them in place as described below.
- Use of logs and native rock to reduce and deflect flood stress on roadway prism. This practice will protect the newly built road prism by building vane arms with large rock and trees. The vane arms are shaped to deflect shear stress away from the toe of the road prism and prevent erosion along the edge of the floodplain. This practice will be utilized most in the areas where new fill has been added to build the roadway and areas where the stream and floodplain have been rerouted away from the road.
- Planting of native willow and cottonwoods (with native grasses) to provide bioengineering elements for erosion control while improving habitat quality and extent. All areas of high disturbance (either from flooding or construction) will be planted with native vegetation. Cottonwood and willow will be used extensively along riparian areas and in areas where shade is needed to enhance recreational and habitat value. Native grasses will be utilized for erosion control in drier settings.
- Move, trails, roadway and restoration use areas away from high hazard areas as needed. Several areas around and below the reservoir have trails and the access road placed where they are prone to erosion and flooding. The plan will focus on keeping these travel ways away from high scour areas and relocate them to drier areas or areas where shear stress can be managed successfully

It is expected that most of these practices will require the use of heavy machinery to implement. Some areas with limited access and smaller watershed size may be improved through the use of hand crews. It is recognized that the entire work area is an environmentally sensitive area. Equipment operators will be made aware of marked areas of limits of disturbance, vegetation to be left in place and other site characteristics prior to work. Weed free equipment and materials will be specially requested on the plans as well as other best management practices noted by the cooperating agencies.

NCD Engineering and Keystone Restoration Ecology are leaders in the field of fluvial geomorphology in the desert southwest and have led many trainings for professionals, including specific trainings to road engineers at the NM Department of Transportation for NMED SWQB. NCD and KRE specialize in post-fire restoration of landscape form and function using natural channel design methods. Their techniques utilize natural materials and the understanding of channel form and process to restore function and habitat to the landscape.

## Implementation and Monitoring

### Task Descriptions

The table below outlines project tasks needed to achieve project goals in a chronological order. In the column of responsible person/s the following abbreviations are used. New Mexico Environment Department Surface Water Quality Project Manager is referred to as “the Agency” and Los Alamos Department of Public Utilities is referred to as “Grantee”. Subcontractors Natural Channel Design is “NCD” and Keystone Restoration Ecology is “KRE”. “ACoE” refers to Army Corps of Engineers and “USFS” refers to United States Forest Service.

<b>TASK</b>	<b>DATES</b>	<b>TASK DESCRIPTION</b>	<b>MEASURES OF SUCCESS</b>	<b>DELIVERABLES</b>	<b>RESPONSIBLE PERSON/S</b>
1. Official project approval	Jan 2022	Complete contract execution and Notice to Proceed	Completed Contract with KRE	Fully executed contract and Notice to Proceed	the Agency and Grantee
2. Communicate with the Agency Project Officer	Ongoing	Project Coordinator will maintain an open dialog with the Agency about activities and progress through phone and email correspondence.	Ongoing communication	Email/phone correspondence	Grantee, Mosely
3. Track budget	Ongoing	Project Coordinator will document spending to accurately track the budget	Budget Tracking	Updates in progress reports	Grantee, Mosely, Garcia

<b>TASK</b>	<b>DATES</b>	<b>TASK DESCRIPTION</b>	<b>MEASURES OF SUCCESS</b>	<b>DELIVERABLES</b>	<b>RESPONSIBLE PERSON/S</b>
4. Progress reports and reimbursement requests	Semi-annually by June 30 and Dec 31	Project Coordinator will prepare and submit semi-annual progress reports and reimbursement requests as needed	Semi-annual reports and reimbursement requests submitted on time and approved by the Agency	Completed reports and requests	Grantee
5. Project kickoff meeting	Feb 2022	Project Team will meet with the Agency, USFS to discuss project, NEPA requirements, and timeline	Completed Meeting, work integrated into USFS program of work	Meeting notes	Grantee, USFS, NCD, KRE, the Agency
6. Assessment	Feb – May 2022	Field assessment visits to conduct Rosgen Level II channel surveys, determine peak flows, and sediment source mapping.	Completed Assessment	hydrology memo to the Agency/ Grantee	NCD, KRE
7. Pre-Monitoring	Feb – May 2023	Photopoints established and photographed, geomorphology surveys, initial BEHI (Bank Erosion Hazard Index) measurements	Pre-monitoring data shared with the Agency as raw data and data analyzed in brief report.	Copies of data and analyses	NCD, KRE
8. Conceptual Restoration Design	May – Sept 2022	Determine activity locations, restoration activities and quantities to be reviewed by project partners.	Completed Design, approved by the Agency	Approved Design by the Agency/Grantee	NCD, KRE

<b>TASK</b>	<b>DATES</b>	<b>TASK DESCRIPTION</b>	<b>MEASURES OF SUCCESS</b>	<b>DELIVERABLES</b>	<b>RESPONSIBLE PERSON/S</b>
9. Archaeological Clearances	Aug – Nov 2022	Project areas surveyed and complete report for LA Co approval and SHPO submission	Completed survey, reports to the Agency/Grantee	Archaeological Survey and Draft Report to LA Co.	Algonquin Consultants
10. Biological Clearances	Aug – Nov 2022	Biologist will coordinate with LA Co and USFS to complete field survey and associated reports.	BA to the Agency/Grantee	Biological Assessment, ESA consultation	Ecosphere Environmental Services
11. Apply/Obtain 404 permit and 401 certification	Nov 2022	Wetland delineation and application materials prepared for Army Corps of Engineers 404 permit. Consolidate NHPA and NEPA clearances. Permit submitted by LA Co.	Completed 404/401 permits and sharing information with the Agency	404 Permit / 401 Certification ACoE verification letter	KRE, NCD and Grantee
12. Final Design	Feb 2023	Final scope of work will be determined incorporating conceptual design review, archaeology, biological assessment and USFWS comments	Approved final scope of work by the Agency	Construction ready drawings for project design submitted to the Agency	NCD, KRE

TASK	DATES	TASK DESCRIPTION	MEASURES OF SUCCESS	DELIVERABLES	RESPONSIBLE PERSON/S
13. Stream Restoration Implementation	March – Oct 2023	Equipment and crews mobilized to implement restoration design. the Agency will be notified at least 14 days prior to implementation.	Written authorization received by the Agency to proceed prior to construction/approval of construction at end of implementation	Site walk through with the Agency	KRE, NCD
14. Post Monitoring – 1st year	Oct 2023	Photopoints photographed, geomorphology cross section surveys, and BEHI surveys	Completed monitoring, raw data and analyses to the Agency	Year-1 Army Corps permit report	NCD, KRE
15. Post monitoring – 2 <sup>nd</sup> year	April – May 2024	Re-survey and re-take photopoints, analyze data, and prepare Army Corps report.	Completed monitoring, report to the Agency, ACOE	Year 2 Army Corps report; monitoring results will be included in the Agency Final Report	NCD, KRE
16. Submit final report	June 2024	Project Coordinator will work with partners to complete the final report for the Agency	Final Report Submitted and approved by the Agency	Final report	Grantee, NCD, KRE

## Monitoring

Monitoring of project success will focus on sediment reduction, stream stability, riparian habitat quality, recreational quality and reduction in maintenance efforts. Several different methods are proposed for monitoring. Methods and monitoring focus are provided below.

- Photo point monitoring will focus on growth and density of planted riparian habitat as well as the functional integrity of structures built in the stream. Photos will be focused on major structures as well as across areas where there is a high density of structures or revegetation. Site selection will be determined as the design is developed. Photos for each site will be accompanied by a short caption describing the results of the repeat photos. Structures are expected to remain functionally intact and increased stream stability is expected to improve riparian plant survival, growth and dispersal.
- Cross sections of the stream channel and floodplain will be surveyed to determine changes in cross sectional area, width, depth and entrenchment. It is expected that channel dimension will not change significantly enough to change channel classification criteria. Alluvial fan cross sections are expected to aggrade with sediment deposition in response to runoff events.
- Selected sections of channel bank will be monitored using BEHI methods to determine bank erosion hazard index. It is expected that all studied banks will show improved BEHI scores and reduced sediment input into the channel system.
- Importantly, Los Alamos County Public Works will monitor their expenses for maintenance of the road and pipeline in response to rainfall events. It is expected that maintenance needs and overall costs will decline rapidly due to the project.
- Los Alamos County Recreation Department will utilize customer service interviews and questionnaires to determine the public satisfaction with the recreational experience and habitat quality

Photos, cross sections, and BEHI data is scheduled to be taken three times during the project. Initially during the assessment period, just after construction of the project and finally one growing season after installation. Post monsoons is generally the best time to monitor both channel and vegetation condition. However, monitoring will be initiated immediately after significant flow events to determine if repairs or maintenance are required.



**COST RESPONSE FORM**

**Include all costs, including all gross receipts taxes. Add lines if needed to provide categories not listed, and to provide budget details.**

<b>BUDGET CATEGORIES</b>	<b>RSP Funds</b>	<b>Other Funds (specify source)</b>	<b>TOTAL</b>
<b>Personnel and Benefits:</b>			
Project Manager – Thomas Clay Moseley, LADPU ~185 hrs @ \$65.00/hr		\$12,000	\$12,000
Project Superintendent – Jack Richardson, LADPU ~68.5 hrs @ \$95/hr		\$ 6,500	\$ 6,500
Project Financial Officer – Heather Garcia, LADPU ~81.25 hrs @ \$80/hr		\$ 6,500	\$ 6,500
<b>Equipment Rental:</b>			
Construction equipment, field equipment			
<b>Travel:</b>			
Mileage: 5,893 miles at \$0.56/mi for both NCD and KRE	\$ 3,300		\$ 3,300
Per Diem: 20 days @ \$61/day for both NCD and KRE	\$ 1,220		\$ 1,220
<b>Supplies:</b>			
Field supplies/ rocks/ logs/ fencing/ seed / plants / signs			
- Rock for road crossing funded by LADPU		\$31,101	\$31,101
<b>Contractual: Direct Labor, Outside Services; include all applicable gross receipts tax</b>			
– Natural Channel Design: Hydrology/Hydraulics assessment, design and construction drawings, 404 permit application 100 Field hrs @ \$97.48/hr - \$9,748; 286 Engineering hrs. @ \$121.00 - \$34,606	\$44,354		\$44,354
– Natural Channel Design: funded by LADPU for reservoir and road protection 184 Engineering hrs. @ \$121.00		\$22,264	\$22,264
– Keystone Restoration Ecology (KRE): Assessment surveys, design, 404 permit, 260 hrs @ \$94.00/hr	\$24,440		\$24,440
- EcoSphere Environmental Services: Biological Surveys and Clearances	\$12,500		\$12,500
- Algonquin Consultants: Cultural Survey Class III, Resource Recording, Report Draft, Final Report	\$12,500		\$12,500

NMED Contract No. 22 667 2060 0012

<b>Contractual continued</b>			
- Keystone Restoration Ecology Construction Services: <i>Management and supervision – 160 hrs @ \$94 - \$15,040</i>	\$15,040		\$15,040
- <i>Hand crew – 256 hrs @ \$50/hr - \$12,800</i>	\$12,800		\$12,800
- <i>Machine rental – 935 hrs @ \$85/hr - \$79,475</i>	\$79,475		\$79,475
- <i>Operator – 935 hrs @ \$80/hr - \$74,800</i>	\$74,800		\$74,800
- KRE Construction: <i>funded by LADPU to implement low water road crossing, grade control and road protection</i>		\$147,240	\$147,240
- Parker Construction – <i>Complete reservoir dredging, re-locate access road and recreation enhancements</i>		\$222,000	\$222,000
- KRE – <i>Monitoring reports 184hrs @ \$94.00</i>	\$11,280	\$6,016	\$17,296
<b>Other:</b>			
Gross Receipts Tax: <i>Contractor services tax paid by LADPU</i>		\$21,000	\$21,000
<b>TOTAL</b>	<b>\$291,709</b>	<b>\$474,621</b>	<b>\$766,330</b>