



U.S. Department of Agriculture
Natural Resources Conservation Service

NRCS-ADS-093

NOTICE OF GRANT AND AGREEMENT AWARD

1. Award Identifying Number NR225C16XXXXC016	2. Amendment Number	3. Award /Project Period Date of Last Signature -10/02/2022	4. Type of award instrument: Cooperative Agreement
5. Agency (Name and Address) Natural Resources Conservation Service 771 Corporate Drive, Suite 300 Lexington, KY 40503		6. Recipient Organization (Name and Address) MARSHALL COUNTY FISCAL COURT MARSHALL COUNTY SHERIFF'S DEPARTMENT 1101 MAIN STREET BENTON KY 42025-1117 UEI Number / DUNS Number: CW2FFU14R2V3 / 077875094 EIN:	
7. NRCS Program Contact Name: ERIC HALEY Phone: Email: Chris.Haley@usda.gov	8. NRCS Administrative Contact Name: Dorothea Martinez Phone: (803) 253-3899 Email: dorothea.martinez@wdc.usda.gov	9. Recipient Program Contact Name: Laurel Matula Phone: (479) 619-8900 Email: ky_marshall@erassist.com	10. Recipient Administrative Contact Name: Laurel Matula Phone: (479) 619-8900 Email: ky_marshall@erassist.com
11. CFDA 10.923	12. Authority 33 U.S.C. 701b-1	13. Type of Action New Agreement	14. Program Director Name: Andrew Lepisto Phone: (270) 527-1321 Email: andy.lepisto@marshallcountky.gov
15. Project Title/ Description: EWP Marshall County, KY DSR# 21-01-22-5073-005 & DSR# 21-01-22-5073-006 for implementation of recovery measures and debris removal.			
16. Entity Type: B = County Government			
17. Select Funding Type			
Select funding type:	☒ Federal		☐ Non-Federal
Original funds total	\$612,722.00		\$0.00
Additional funds total	\$0.00		\$0.00
Grand total	\$612,722.00		\$0.00
18. Approved Budget			

Personnel	\$0.00	Fringe Benefits	\$0.00
Travel	\$0.00	Equipment	\$0.00
Supplies	\$0.00	Contractual	\$0.00
Construction	\$612,722.00	Other	\$0.00
Total Direct Cost	\$612,722.00	Total Indirect Cost	\$0.00
		Total Non-Federal Funds	\$0.00
		Total Federal Funds Awarded	\$612,722.00
		Total Approved Budget	\$612,722.00

This agreement is subject to applicable USDA NRCS statutory provisions and Financial Assistance Regulations. In accepting this award or amendment and any payments made pursuant thereto, the undersigned represents that he or she is duly authorized to act on behalf of the awardee organization, agrees that the award is subject to the applicable provisions of this agreement (and all attachments), and agrees that acceptance of any payments constitutes an agreement by the payee that the amounts, if any, found by NRCS to have been overpaid, will be refunded or credited in full to NRCS.

Name and Title of Authorized Government Representative C. Gregory Stone State Conservationist	Signature	Date
Name and Title of Authorized Recipient Representative Kevin Neal Judge Executive	Signature 	Date <i>8-16-2022</i>

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 522a).

Statement of Work

Purpose

The purpose of this agreement is for the United States Department of Agriculture, Natural Resources Conservation Service, hereinafter referred to as the "NRCS", to provide financial assistance to the Marshall County Fiscal Court, hereinafter referred to as the "Sponsor", for DSR# 21-01-22-5073-005 & DSR# 21-01-22-5073-006 in Marshall County, Kentucky for implementation of recovery measures, that, if left undone, pose a risk to life and/or property.

Objectives

Installation of EWP recovery measures as described here:

DSR 21-01-22-5073-005: Marshall County Fiscal Court Debris Removal

- Debris Removal	\$44,289.00
- Streambank Stabilization Rock Armor	\$44,415.00
- Seeding/Mulching	\$7,196.00
- Mobilization	\$30,120.00

Subtotal: \$126,020.00

DSR 21-01-22-5073-006: Marshall County Fiscal Court, Leed Burd Road Debris Removal

- Debris Removal	\$ 365,085.00
- Seeding and Mulching	\$ 58,082.00
- Mobilization	\$ 63,535.00

Subtotal: \$486,702.00

Budget Narrative

A. The estimated costs for the Project:

1. Total Estimated Project Budget: \$126,020.00 + \$486,702.00 = \$612,722.00

The budget includes:

Construction Costs (100% NRCS + 0% Sponsor): \$612,722.00

2. NRCS pays up to 100 percent of eligible construction costs and Sponsor pays 0 percent of construction costs.

3. These costs are associated with construction activities which are on-the-ground construction costs, and are associated with the installation of the project measures including labor, equipment and materials.

4. The Sponsor will contribute funds toward the total construction costs in either direct cash expenditures, the value of non-cash materials or services, or in-kind contributions. The value of any in-kind contribution shall be agreed to in writing prior to implementation.

Responsibilities of the Parties:

A. Sponsor will—

1. Accomplish construction of the EWP project measures by contracting, in-kind construction services, or a combination of both.

2. Ensure and certify by signing this agreement that its cost share obligation is from a non-Federal source.

3. Designate a project liaison to serve between the Sponsor and NRCS and identify that person's contact information with this executed agreement. Any change in the project liaison during the terms of this agreement must be immediately

communicated to NRCS.

4. Appoint a contracting officer and an authorized representative who will have authority to act for the contracting officer, listing their duties, responsibilities, and authorities. Furnish such information in writing to the NRCS Government Representative.
5. Comply with the terms and conditions of this agreement and the attached general terms and conditions except those that are not applicable to State and local governments.
6. Acquire adequate real property rights (land and water), permits and licenses in accordance with local, state, and Federal laws necessary for the installation of EWP project measures at no cost to NRCS prior to construction. This includes any rights associated with required environmental mitigation. Costs related to land rights and permits are the Sponsor's responsibility and ineligible for reimbursement.
7. Accept all financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits and licenses needed for the Project.
8. Provide the agreed-to portion of the actual, eligible and approved construction cost. These costs may be in the form of cash, in-kind construction services, or a combination of both. Final construction items that are eligible construction costs will be agreed upon during the pre-construction conference. These costs consist of costs from contracts awarded to contractors and eligible Sponsor in-kind construction costs for materials, labor, and equipment. The Sponsor shall provide NRCS documentation to support all eligible construction costs. Construction costs incurred prior to the Sponsor and NRCS signing this agreement are ineligible and will not be reimbursed.
9. Be responsible for 100 percent of all ineligible construction costs and 100 percent of any unapproved upgrade to increase the level of protection over and above that described in the DSR.
10. Contract for services and construction in accordance with the Code of Federal Regulations (CFR), 2 CFR § 200.317 through 200.326, applicable State regulations, and the Sponsor's procurement regulations, as appropriate. (See general terms and conditions attached to this agreement for a link to the CFR.) In accordance with 2 CFR § 200.326, contracts must contain the applicable provisions described in Appendix II to Part 200. Davis-Bacon Act would not apply under this Federal program legislation.
11. The contracts for construction described in this Agreement shall not be awarded to the Sponsor or to any firm in which any Sponsor's official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms. Reference 2 CFR § 200.318 regarding standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts.
12. For contracts, provide NRCS a copy of solicitation notice, bid abstract, and notice of contract award, or other basis of cost and accomplishment.
13. For in-kind construction services (materials, labor, and/or equipment supplied by the Sponsor), develop a Plan of Operations describing the construction services to be performed including estimated quantities and values. The Plan of Operations shall be concurred in by NRCS at the pre-construction conference. In-kind construction services for equipment shall not exceed published FEMA equipment rates unless otherwise documented and concurred in advance by NRCS.
14. The following documentation is required to support the Sponsor's request for reimbursement of in-kind construction services:
 - a. Invoices covering actual costs of materials used in constructing the eligible EWP project measures.
 - b. Records documenting the type, quality, and quantities of materials actually used in constructing the eligible EWP project measures.
 - c. Daily time records for each employee showing name, classification, wage rate, hours, and dates actually employed for constructing the eligible EWP project measures.
 - d. Equipment operating records showing the type and size of equipment, hourly rate, actual hours of operation and dates used to install the eligible EWP project measures. Equipment idle time is not eligible in-kind construction services, even if on the job site, and should not be included in the equipment operating records.
15. Prior to commencement of work and/or solicitation of bids, submit for NRCS review and concurrence a Quality Assurance Plan (QAP). The QAP shall outline technical and administrative expertise required to ensure the EWP project measures are installed in accordance with the plans and specifications, identify individuals with the expertise, describe items to be inspected, list equipment required for inspection, outline the frequency and timing of inspection (continuous or periodic), outline inspection procedures, and record keeping requirements. A copy of the final QAP shall be provided

to NRCS prior to commencement of construction.

16. Provide construction inspection in accordance with the QAP.

17. Prepare and submit for NRCS concurrence an Operation and Maintenance (O&M) Plan, if applicable, prior to commence of work. The O&M Plan shall describe the activities the Sponsor will do to ensure the project performs as designed. Upon completion of the project measures, the Sponsor shall assume responsibility for O&M.

18. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns as well as copies of all permits, licenses, and other documents required by Federal, state, and local statutes and ordinances prior to solicitation for installation of the EWP project measures. All modifications to the plans and specifications shall be reviewed and concurred on by NRCS.

19. Ensure that any special requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.

20. The Sponsor must secure at its own expense all Federal, State, and local permits and licenses necessary for completion of the work described in this agreement as well as any necessary natural resource rights and provide copies of all permits and licenses obtained to NRCS.

21. Will arrange and pay for any necessary location, removal, or relocation of utilities. EWP program regulations prohibit NRCS from reimbursing the Sponsor or otherwise paying for any such costs; nor do the costs qualify as a Sponsor cost-share contribution.

22. Ensure that technical and engineering standards and specifications of NRCS are adhered to during construction of the Project, as interpreted by NRCS Program/Technical Contact. Provide NRCS Program/Technical Contact progress reports as necessary and agreed to. Progress reports should include technical on-site inspections of work accomplished for the period, work planned, results of material tests, deficient work products and/or tests with corrective actions taken, modifications anticipated, technical problems encountered, contractual issues and other relevant information.

23. Ensure that all contractors on NRCS assisted projects are performing their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). The Sponsor is responsible for periodically checking the contractor's compliance with safety requirements.

24. Arrange for and conduct final inspection of completed project with NRCS to determine whether all work has been performed in accordance with contractual requirements.

25. Pay the contractor(s) for work performed in accordance with the agreement and submit a SF-270, "Request for Advance or Reimbursement" to the Farm Production and Conservation (FPAC) Grants and Agreements Division staff via email to: FPAC.BC.GAD@usda.gov with a copy to the Designated Program/Technical contact with all documentation to support the request. Payments will be withheld until all required documentation is submitted and complete.

a. The required supporting documentation for reimbursement of construction costs include invoices and proof of payment to the contractor showing the items and quantities installed and certified by the engineer of record along with any supporting documentation such as quantity calculations, rock weight tickets, etc.

b. The required supporting documentation for reimbursement of in-kind construction expenses will include employee time sheets, employee hourly rate, equipment operating logs, equipment hourly rate, and material quantities and invoices.

26. Ensure that information in the System for Award Management (SAM) is current and accurate until the final financial report (SF-425) under this award or final payment is received, whichever is later.

27. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this Agreement. This includes, but is not limited to disputes, claims, protests of award, source evaluation, and litigation that may result from the Project. Such actions will be at the expense of the Sponsor, including any legal expenses. The Sponsor will advise, consult with, and obtain prior written concurrence of NRCS on any litigation matters in which NRCS could have a financial interest.

28. Sponsor must indemnify and hold NRCS harmless to the extent permitted by State law for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the Sponsor in connection with its acquisition and management of the Emergency Watershed Protection Program pursuant to this agreement. Further, the Sponsor agrees that NRCS will have no responsibility for acts and omissions of the Sponsor, its agents, successors, assigns, employees, contractors, or lessees in connection with the acquisition and management of the

Emergency Watershed Protection Program pursuant to this agreement that result in violation of any laws and regulations that are now or that may in the future become applicable.

29. Retain all records dealing with the award and administration of the contract(s) for 3 years from the date of the Sponsor's submission of the final request for reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the 3-year period, records are to be retained until the litigation is resolved or the end of the 3-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcriptions.

30. Be liable to the NRCS for damages sustained by the NRCS as a result of the contractor failing to complete the work within the specified time. The damages will be based upon the additional costs incurred by the NRCS resulting from the contractor not completing the work within the allowable performance period. These costs include but are not limited to personnel costs, travel, etc. The NRCS will have the right to withhold such amount out of any monies that may be then due or that may become due and payable to the Sponsor. This liability is not applicable to the extent that the contract performance time is extended by court judgment unless such judgment results from actions of the Sponsor not concurred in by NRCS.

31. Take necessary legal action, including bringing suit, to collect from the contractor any monies due in connection with the contract, or upon request of NRCS, assign and transfer to NRCS any or all claims, demands, and causes of action of every kind whatsoever that the Sponsor has against the contractor or his or her sureties.

32. Submit performance reports on an annual basis to the ezFedGrants system or to Farm Production and Conservation (FPAC) Grants and Agreements Division staff via email to: FPAC.BC.GAD@usda.gov with a copy to the Designated Program/Technical contact. Reports are due 30 calendar days after the reporting period.

33. Submit SF-425 Financial Reports on an annual basis to the ezFedGrants system or to Farm Production and Conservation (FPAC) Grants and Agreements Division via email to: FPAC.BC.GAD@usda.gov.

34. Submit payment requests to the ezFedGrants system or to Farm Production and Conservation (FPAC) Grants and Agreements Division via email to: FPAC.BC.GAD@usda.gov with a copy to the Designated Program/Technical contact on a monthly or quarterly basis. Refer to the General Terms and Conditions for more information regarding payment requests.

B. NRCS will—

1. Assist Sponsor in establishing design parameters; determine eligible construction costs during the pre-construction conference.

2. Designate a Government Representative (GR) to serve as liaison with the Sponsor and identify that person's contact information with this executed agreement.

3. Designate a Quality Assurance Representative (QAR) to assist GR in executing agreement.

4. Review, comment and concur in preliminary and final plans, specifications, O&M Plan, Plan of Operations (if required) and QAP.

5. Make periodic site visits during the installation of the EWP project measures to review construction progress, document conformance to engineering plans and specifications, and provide any necessary clarification on the Sponsor's responsibilities.

6. Upon notification of the completion of the EWP project measures, NRCS shall promptly review the performance of the Sponsor to determine if the requirements of this agreement and fund expenditures as agreed have been met.

7. Make payment to the Sponsor covering NRCS' share of the cost upon receipt and approval of Form SF-270 and supporting documentation, withholding the amount of damages sustained by NRCS as provided for in this agreement. In the event there are questions regarding the SF-270 and supporting documentation, NRCS will contact the Sponsor in a timely manner to resolve concerns.

C. MUTUALLY AGREED

The furnishing of financial, administrative, and/or technical assistance above the original funding amount by NRCS is contingent on there being sufficient unobligated and uncommitted funding in the Emergency Watershed Protection Program that is available for obligation in the year in which the assistance will be provided. NRCS may not make commitments in excess of funds authorized by law or made administratively available. Congress may impose

obligational limits on program funding that constrains NRCS's ability to provide such assistance.

1. In the event of default of a construction contract awarded pursuant to this agreement, any additional funds properly allocable as construction costs required to ensure completion of the job are to be provided in the same ratio as construction funds are contributed by the parties under the terms of this agreement. Any excess costs including interest resulting from a judgment collected from the defaulting contractor, or his or her surety, will be prorated between the Sponsor and NRCS in the same ratio as construction funds are contributed under the terms of the agreement.
2. Additional funds, including interest properly allocable as construction costs as determined by NRCS, required as a result of decision of the CO or a court judgment in favor of a claimant will be provided in the same ratio as construction funds are contributed under the terms of this agreement. NRCS will not be obligated to contribute funds under any agreement or commitment made by the Sponsor without prior concurrence of NRCS.
3. The State Conservationist may make adjustments in the estimated cost to NRCS set forth in this agreement for constructing the EWP measures. Such adjustments may increase or decrease the amount of estimated funds that are related to differences between such estimated cost and the amount of the awarded contract or to changes, differing site conditions, quantity variations, or other actions taken under the provisions of the contract. No adjustment will be made to change the cost sharing assistance provided by NRCS as set forth in this agreement, nor reduce funds below the amount required to carry out NRCS' share of the contract.
4. Except for item 4. above (last sentence), this document may be revised as mutually agreed through a written amendment duly executed by authorized officials of all signatory parties to this agreement.
5. NRCS, at its sole discretion, may refuse to cost share should the Sponsor, in administering the contract, elect to proceed without obtaining concurrence as set out in this agreement.
6. Once the project is completed and all requests for reimbursement submitted, any excess funding remaining in the agreement will be de-obligated from the agreement.
7. If inconsistencies arise between the language in the Statement of Work (SOW) in the agreement and the general terms and conditions, the language in the SOW takes precedence.

Expected Accomplishments and Deliverables

The following accomplishments and deliverable will be provided to NRCS.

1. Approved Plan of Operations (if applicable).
2. One copy of the quality assurance plan.
3. One copy of the operation and maintenance plan.
4. One copy of the notice of solicitation, bid abstract, and notice of award.
5. Certification that the project was installed in accordance with the plans and specifications.
6. Quantities of the units of work applied for each site within 30 days of completion of construction.

Resources Required

See the Responsibilities of the Parties section for required resources, if applicable.

Milestones

Milestones shall include, but not limited to, the following items:

1. Acquire needed real property rights and permits prior to start of construction.
2. Pre-construction conference within 45 days of signing agreement.
3. Obtain permits.
4. Completing quality assurance plan.
5. Solicit bids.
6. Award contract(s).
7. Issue notice to proceed.
8. Complete construction and close-out activities.

GENERAL TERMS AND CONDITIONS

Please reference the below link(s) for the General Terms and Conditions pertaining to this award:
<https://www.fpacbc.usda.gov/about/grants-and-agreements/award-terms-and-conditions/index.html>