

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number  
**23-1402**

SAP Number

## San Bernardino County Flood Control District

<b>Department Contract Representative</b>	Michael Fam, P.E.
<b>Telephone Number</b>	(909) 387-8121
<b>Contractor</b>	<b>NRCS</b>
<b>Contractor Representative</b>	Greg Norris
<b>Telephone Number</b>	(530) 792-5609
<b>Contract Term</b>	
<b>Original Contract Amount</b>	\$90,420
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	\$90,420
<b>Cost Center</b>	

**Briefly describe the general nature of the contract:**

*The USDA – NRCS and DISTRICT have developed an non-exigency grant award agreement for channel excavation and clearing and K-rail installation to mitigate flood risks and damages created by the storms after the El Dorado Fire in the Yucaipa, Oak Glen, and Forest Falls areas.*

*Per this Agreement, NRCS will cost share up to \$90,420. The District will contribute the remaining share of \$27,400.*

**FOR COUNTY USE ONLY**

Approved as to Legal Form

**SEE ATTACHED**

▶  
Sophie A. Curtis, Deputy County Counsel

Date \_\_\_\_\_

Reviewed for Contract Compliance

▶ *Andy Silao*  
Andy Silao, P.E.

Date *5/25/2023*

Reviewed/Approved by District

▶ *Brendon Biggs*  
Brendon Biggs, Chief Flood Control Engineer

Date *5/25/23*

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Approved as to Legal Form

▶ *Sophie Curtis*

Sophie A. Curtis, Deputy County Counsel

Date May 24, 2023

Reviewed for Contract Compliance

▶ Andy Silao, P.E.

Date \_\_\_\_\_

Reviewed/Approved by District

▶ Brendon Biggs, Chief Flood Control Engineer

Date \_\_\_\_\_



U.S. Department of Agriculture  
Natural Resources Conservation Service


NRCS-ADS-093

**NOTICE OF GRANT AND AGREEMENT AWARD**

1. Award Identifying Number  NR239104XXXXC010	2. Amendment Number	3. Award /Project Period  Date of NRCS signature - 11/30/2023	4. Type of award instrument:  Cooperative Agreement
5. Agency (Name and Address)  Natural Resources Conservation Service 430 G Street, Suite 4164 Davis, CA 95616		6. Recipient Organization (Name and Address)  SAN BERNARDINO COUNTY FCD 825 E. 3RD STREET SAN BERNARDINO CA 92415-0835  UEI Number / DUNS Number: CFXEZ75TPJ84 / 137823139 EIN:	
7. NRCS Program Contact  Name: Gregory Norris Phone: (530) 792-5609 Email: greg.norris@ca.usda.gov	8. NRCS Administrative Contact  Name: MOIRA SANFORD Phone: (614) 255-2495 Email: moira.sanford@usda.gov	9. Recipient Program Contact  Name: Michael Fam Phone: (909) 387-8121 Email: mfam@dpw.sbcounty.gov	10. Recipient Administrative Contact  Name: Brendon Biggs Phone: (909) 387-7906 Email: bbiggs@dpw.sbcounty.gov
11. CFDA  10.923	12. Authority  33 U.S.C. 701b-1	13. Type of Action  New Agreement	14. Program Director  Name: Brendon Biggs Phone: (909) 387-7906 Email: bbiggs@dpw.sbcounty.gov
15. Project Title/ Description: EWP Project 5225, CA, San Bernardino County Flood Control District, DSR 06-08-23-5225-042 Non-ex Ph 2 Oak Glen Forest Falls, channel clearing due to Debris Flows Post El Dorado Fire, 6000027224			
16. Entity Type: D = Special District Government			
17. Select Funding Type			
Select funding type:	<input checked="" type="checkbox"/> Federal	<input checked="" type="checkbox"/> Non-Federal	
Original funds total	\$90,420.00	\$27,400.00	
Additional funds total	\$0.00	\$0.00	
Grand total	\$90,420.00	\$27,400.00	
18. Approved Budget			

Personnel	\$0.00	Fringe Benefits	\$0.00
Travel	\$0.00	Equipment	\$0.00
Supplies	\$0.00	Contractual	\$0.00
Construction	\$82,200.00	Other	\$8,220.00
Total Direct Cost	\$90,420.00	Total Indirect Cost	\$0.00
		Total Non-Federal Funds	\$27,400.00
		Total Federal Funds Awarded	\$90,420.00
		Total Approved Budget	\$117,820.00

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 Carlos Suarez State Conservationist	Signature <b>CARLOS SUAREZ OLIVA</b> <small>Digitally signed by CARLOS SUAREZ OLIVA  Date: 2023.05.17 12:01:54 -07'00'</small>	Date
Name and Title of Authorized Recipient Representative Brendon Biggs Chief Flood Control Engineer	Signature 	Date 5/15/2023

**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 technical and financial assistance to the County of San Bernardino Public Works, hereinafter referred to as the "Sponsor", for EWPP DSR # 06-08-23-5225-042 in San Bernardino County, CA for implementation of recovery measures, that, if left undone, pose a risk to life and/or property.

### Objectives

The design and installation of EWPP measures as detailed in the individual Damage Survey Reports (DSR) and described here:

- 06-08-23-5225-042 – channel clearing - \$117,820

### Budget Narrative

The official budget described in this Budget Narrative will be considered the total budget as last approved by the Federal awarding agency for this award.

Amounts included in this budget narrative are estimates. Reimbursement will be based on actual expenditures, not to exceed the amount obligated.

Total Estimated Project Budget: \$117,820

The budget includes:

Financial Assistance (FA) Costs:

Construction Costs (75% NRCS \$82,200 + 25% Sponsor \$27,400): \$109,600

Technical Assistance (TA) Costs:

100% NRCS (7.5% of total construction cost): \$8,220

1. NRCS pays up to 75 percent of eligible construction costs and Sponsor pays 25 percent of construction costs. NRCS will contribute up to 7.5 percent of the total construction cost for contract administration and construction management costs. It is possible that technical and administrative costs will exceed this amount, requiring the Sponsor to contribute resources to complete technical and administrative work
2. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for financial assistance (FA) and one for technical assistance (TA). FA costs are associated with construction activities; TA costs are associated with services. These expenditures shall be accounted for separately in order for expenses to be eligible for reimbursement.
3. NRCS will provide FA for actual costs as reimbursement to the Sponsor for approved on-the-ground construction costs, subject to above limits. If costs are reduced, reimbursement will be reduced accordingly. Construction costs are associated with the installation of the project measures including labor, equipment and materials.
4. NRCS will provide TA reimbursement to the Sponsor for technical and administrative costs directly charged to the project, subject to the above limits. If costs are reduced, reimbursement will be reduced accordingly. These costs include
  - a. engineering costs include, but not limited to, developing a project design that includes construction drawings and specifications, an operation and maintenance plan, a quality assurance/inspection plan and an engineer's estimate of the project installation costs in addition to providing necessary quality assurance during construction.
  - b. contract administration costs include, but not limited to, soliciting, evaluating, awarding and administering contracts for construction and engineering services, including project management, verifying invoices and record keeping.
5. 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:**

**SPONSOR RESPONSIBILITIES**

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.

1. Perform the work and produce the deliverables as outlined in this Statement of Work.
2. Comply with the applicable version of the General Terms and Conditions.
3. Accomplish construction of the EWP project measures by contracting, in-kind construction services, or a combination of both.
4. Ensure and certify by signing this agreement that its cost share obligation is from a non-Federal source.
5. 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.
6. 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.
7. 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-design 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.
8. 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.
9. Account for and report FA and TA expenditures separately in order for expenses to be eligible for reimbursement. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for TA and one for FA, requiring this separation.
10. The contracts for design services and 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.
11. 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-design conference. In-kind construction services for equipment shall not exceed published FEMA equipment rates unless otherwise documented and concurred in advance by NRCS.
12. 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.

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

14. 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.

15. 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.

16. 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.

17. 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.

18. Provide PE-certified as-built drawings and quantities for the project. A copy of the as-built drawings will be submitted to the NRCS Program/Technical Contact.

19. Pay the contractor(s) for all work performed in accordance with the agreement and submit a SF 270, "Request for Advance and Reimbursement," with all documentation to support the request. Payments will be withheld until all required documentation is submitted and complete.

20. 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.

21. 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.

22. 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.

23. 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.

24. Submit reports and payment requests to the ezFedGrants system or the Farm Production and Conservation (FPAC) Grants and Agreements Division via email to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov) as outlined in the applicable version of the General Terms and Conditions. For payments ezFedGrants does not have a process for construction line items. Reporting frequency is as follows:

Performance reports: annual

SF425 Financial Reports: annual

**NRCS RESPONSIBILITIES**

1. Assist Sponsor in establishing design parameters; determine eligible construction costs during the pre-design conference.
2. If applicable designate a Government representative (GR) to serve as liaison with the Sponsor and identify that person's contact information with this executed agreement.
3. Review, comment and concur in preliminary and final plans, specifications, O&M Plan, Plan of Operations (if required) and QAP.
4. 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.
5. 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.
6. 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.

#### **SPECIAL PROVISIONS**

1. 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.
2. 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.
3. 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.
4. 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.
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.

#### **Expected Accomplishments and Deliverables**

1. Prepare design, construction specifications, and drawings in accordance with standard engineering principles that comply with NRCS programmatic requirements; and/or contract/install the designed construction. Any design services will be by a professional registered engineer. Sponsor will obtain NRCS review and concurrence on the design, construction plans, and specifications. The Sponsor must ensure description of work is reviewed, concurred, and approved by NRCS. A copy of the final signed and sealed plans and specifications shall be provided to NRCS.
2. Contract for services and construction in accordance with the Code of Federal Regulations (CFR), 2 CFR § 200.317



through 200.327, 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 § 200.327, contracts must contain the applicable provisions described in Appendix II to Part 200. Davis-Bacon Act would not apply under this Federal program legislation.

3. 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.

4. Prepare and submit for NRCS concurrence an Operation and Maintenance (O&M) Plan, if applicable, prior to commencement 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.

5. 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.

6. Provide construction inspection in accordance with the QAP.

7. Arrange for and conduct final inspection of completed project with NRCS to determine whether all work has been performed in accordance with contractual requirements. Provide a PE certification that the Project was installed in accordance with approved plans and specifications.

#### **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. Obtaining permits: 60 days
2. Completing quality assurance plan: 3 days (while obtaining permits)
3. Solicit bids: already complete 30 days
4. Award contract: 2 day
5. Date of estimated completion of construction: 120 days
6. Complete close-out activities: 7 days

## **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>