

**NOTICE OF GRANT AND AGREEMENT AWARD**

1. Award Identifying Number 68-0150-17-202		2. Amendment No.	3. Award/Project Period Date of NRCS Signature - 10/08/2017	4. Type of Award Instrument Cooperative Agreement
5. Agency: Natural Resources Conservation Service (NRCS) (Name and Address) Alaska State Office 800 West Evergreen Avenue, Suite 100 Palmer, AK 99645		6. Recipient Organization: (Name and Address) City of Valdez 212 Chenega Street Valdez, AK 99686		
		DUNS: 067654202	EIN: 92-6000143	
7. NRCS Program Contact: J Scott Crockett, 907-761-7758 scott.crockett@ak.usda.gov	8. NRCS Administrative Contact: Pam Hubacher, 608-662-4422 pam.hubacher@wdc.usda.gov	9. Recipient Program Contact: AnnMarie Lain, 907-834-3450 alain@ci.valdez.ak.us	10. Recipient Admin. Contact: AnnMarie Lain, 907-834-3450 alain@ci.valdez.ak.us	
11. CFDA Number 10.923	12. Authority Emergency Watershed Protection 7 CFR Part 624	13. Type of Action New Agreement		14. Project Director

15. Project Title/Description:  
 Emergency Watershed Protection - City of Valdez, AK. Project #AK-16-008. Financial Assistance. Complete agreement includes this NRCS-ADS-093 and attachments listed on page 2.

16. Entity Type:  Profit  Nonprofit  Higher Education  Federal  State/Local  Indian/Native American  
 Other

17. Select Funding Type:			18. Accounting and Appropriation Data			
<input checked="" type="checkbox"/> Federal	<input checked="" type="checkbox"/> Non-Federal		Financial Code	Amount	Fiscal Year	Treasury Symbol
Original Funds Total:	\$1,340,250	\$535,790	NR.AI.EG08.02.5034. 17XXF (BOC 4115)	\$1,340,250	2017	12X1072
Additional Funds Total:						
Grand Total:	\$1,340,250	\$535,790				

19. APPROVED BUDGET

Personnel	\$	Fringe Benefits	\$
Travel	\$	Equipment	\$
Supplies	\$	Contractual	\$
Construction	\$ 1,876,040	Other	\$
Total Direct Cost	\$	Total Indirect Cost	\$
		Total Non-Federal Funds	\$ 535,790
		Total Federal Funds Awarded	\$ 1,340,250
		Total Approved Budget	\$ 1,876,040

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.

(Continuation)

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68-0150-17-202		Date of NRCS Signature - 10/08/2017	Cooperative Agreement

Name and Title of Authorized Government Representative	Signature	Date
Robert Jones, State Conservationist	<i>Robert M. Jones</i>	07/07/2017
Name and Title of Authorized Recipient Representative	Signature	Date
Elke Doom, City Manager	<i>Elke Doom</i>	5-19-17

**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).

*City of Valdez*  
 Sponsor

This action authorized at an official meeting of  
 the City of Valdez on the  
16th day of May, 2017  
 at \_\_\_\_\_ State  
 of Council Chambers, Valdez, Alaska

X *Elke Doom*  
 (Signature)  
City Manager  
 (Title)

The following attachments are hereby made a part of this agreement:

- Attachment A: Statement of Work
- Attachment B: General Terms and Conditions (Revised January 2017)
- Attachment C: Procurement Standards - 2 CFR 200.317 through 200.326
- Attachment D: Appendix II to 2 CFR Part 200
- Attachment E: NRCS Supplement to OSHA Parts 1910 and 1926 SF-424D Assurances

*Final version*

**STATEMENT OF WORK**

**BETWEEN THE  
U.S. DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE  
AND THE  
CITY OF VALDEZ**

**PROJECT:** City of Valdez, AK Emergency Watershed Protection (“EWP”) FY2017, March 2017 Project #AK-16-008 – Locally Led with Financial Assistance only.

This Agreement is entered into by and between the U. S. Department of Agriculture, Natural Resources Conservation Service, hereinafter referred to as the “NRCS”, and City of Valdez, AK, hereinafter referred to as the “Sponsor”.

**I. PURPOSE**

The purpose of this Agreement is to provide financial assistance to implement recovery measures that, if left undone, pose a risk to life and/or property.

**II. AUTHORITY**

Under the provisions of Section 216 of Public Law 81-516, Emergency Watershed Protection Program, and Title IV of the Agricultural Credit Act of 1978, Public Law 95-334, NRCS is authorized to assist the Sponsor in relieving hazards created by natural disasters that cause a sudden impairment of a watershed.

**III. OBJECTIVES**

The objective of this Agreement is to remove watershed impairments caused by the July 2016 jökulhlaup (glacial outburst) event that are creating a serious threat to life and property through a locally awarded and administered construction contract. The design and installation of EWP measures are detailed in the damage survey report (DSR) and listed below:

Damage Survey Report (DSR) No.	Description	Estimated Construction Cost
DSR#:AK-16-008	<b>Valdez Glacier Stream dike and riprap, NRCS design minimum</b>	\$1,787,000
	<b>Construction cost beyond NRCS design minimum (non-cost-sharable)</b>	\$89,040
<b>Total Estimated Construction Cost</b>		<b>\$1,876,040</b>

- A. The Damage Survey Report (“DSR”) is established through discussions between the Sponsor and NRCS. It defines the site, work to be completed, and estimated construction costs for this project.
  
- B. It is agreed that the total estimated construction cost is: \$1,876,040. Based on this estimate:
  - 1. NRCS will contribute Financial Assistance funds (“FA”) in the amount of \$1,340,250 (up to 75 percent of total cost-sharable construction costs of \$1,787,000) as reimbursement to the Sponsor for approved on-the-ground construction costs. Construction costs are associated with the installation of the project measures including labor, equipment, and materials.
  - 2. There are no Technical Assistance funds (“TA”) associated with this Agreement.
  - 3. The Sponsor will contribute funds in the amount of \$535,790 (\$446,750, which is 25 percent of the total cost-sharable construction costs, plus an additional \$89,040, which is 100% of all non-cost-sharable construction costs) in either direct cash expenditures, the value of non-cash materials or services.
  - 4. The Sponsor will be responsible for all non-cost-shareable costs for all construction that exceeds the NRCS minimum design requirement. The Sponsor requests that the constructed dike be widened to accommodate a road on top of the dike. In addition to widening the top of dike, they also request an on-ramp and off-ramp suitable to traffic. EWP funds may not be used to reconstruct roads; therefore, the additional earthfill yardage to widen the dike and construct the on- and off-ramps is not a cost-sharable construction cost. As such, the cost of these items are to be borne solely by the Sponsor. The non-cost-sharable earthfill yardage is currently estimated at 4,452 cubic yards, but this quantity is subject to variation.

#### **IV. RESPONSIBILITIES OF THE PARTIES**

- A. THE SPONSOR WILL:
  - 1. Accomplish construction of the EWP project measures by contracting.
  - 2. Ensure the contacts listed on the Notice of Award form work closely with the NRCS in carrying out the terms and conditions of the Agreement. They will complete proper documents to ensure payment of funds by NRCS as requested to complete the objectives of the Agreement and will be the representative for the Sponsor in all matters concerning this Agreement.
  - 3. Comply with the applicable requirements in Attachment B, “General Terms and Conditions,” of this Agreement.

4. Comply with all laws, regulations, Executive Orders, and other applicable terms and conditions referenced and incorporated as attachments to this Agreement.
5. Acquire and provide certification to NRCS that 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 have been obtained at no cost to NRCS prior to construction. This includes any rights associated with required environmental mitigation. Sponsors shall provide such certification on Form NRCS-ADS-78, Assurances Relating to Real Property Acquisition, or equivalent. Sponsors shall also provide an attorney's opinion supporting this certification, or equivalent. Costs related to land rights and permits are the Sponsor's responsibility, and are ineligible for reimbursement or as consideration as in-kind contribution.
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 25% of the actual, eligible and approved, construction cost, as outlined in Section III.B.

Eligible construction costs are for work described on the drawings and specifications and not specifically defined in this Agreement as ineligible or non-cost-sharable items. These costs consist of costs from contracts awarded to contractors. 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 or shown on the drawings and specifications.
9. For contracts, provide NRCS a copy of solicitation notice, bid abstract, and notice of contract award, or other basis of cost and accomplishment.
10. 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 writing by NRCS. Construction services for equipment shall not exceed rates considered fair and reasonable by the NRCS Program/Technical Contact.
11. Prepare all contractual documents and contract for the project measures in accordance with 2 CFR § 200.317-326 (Attachment) and clauses referenced

in Appendix II, Part 200, (Attachment), applicable State requirements, and the Sponsor's procurement regulations.

12. Ensure that any special requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
13. 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 in-kind contribution.
14. Ensure that drawings and specifications prepared by NRCS are adhered to during construction of the project, as interpreted by NRCS Program/Technical Contact and the on-site NRCS construction inspector. Provide NRCS Program/Technical Contact progress reports as necessary and agreed to. Inform NRCS of modifications anticipated, contractual issues encountered, and other relevant information.
15. Ensure that all contractors on NRCS assisted projects are performing their work in accordance with OSHA regulations, NRCS Supplement to OSHA Parts 1910 and 1926 (Attachment), and the Contract Work Hours and Safety Standards Act (40 USC 327-330) 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.
16. Complete and submit (on Sponsor letterhead) accrual information to the NRCS Program/Technical Contact no later than 15 days prior to the end of the quarter (submit by March 15, June 15, September 15, and December 15). NRCS requires quarterly accrual information on the value of the work that has been performed or will be performed by the end of the quarter (March 31, June 30, September 30, December 31), but for which an SF 270 has not yet been submitted.
17. Arrange for and conduct final inspection of completed project with NRCS to determine whether all work has been performed in accordance with contractual requirements.
18. Pay the contractor(s) as provided in the contract(s).
19. Submit copies of billings for reimbursement to NRCS on Form SF-270, "Request for Advance or Reimbursement", on a monthly, but not less than quarterly (March, June, September, and December) basis to the NRCS

Program/Technical Contact. Final payment request shall be submitted within 90 calendar days of completion of the EWP project measures. All requests for reimbursement shall include all appropriate and complete documentation to support the reimbursement request. Payments will be withheld until all required documentation is submitted and complete.

20. 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, etc.
21. Be responsible for ensuring their System for Award Management (SAM) registration is active throughout the life of the agreement so that reimbursements are not delayed. NRCS cannot process a reimbursement to the Sponsor unless the Sponsor is registered in SAM.
22. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the construction contract 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.
23. Receive payment under this Agreement using electronic funds transfer (EFT) procedures in accordance with 31 C.F.R. § 208.
24. Be responsible, without recourse to NRCS or USDA, for the settlement and satisfaction of all contractual and legal issues arising out of arrangements entered into between the Sponsor and third parties to carry out the approved project. Matters concerning violation of law should be referred to the Federal, State, or local authority having proper jurisdiction.
25. Hold and save NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by the Sponsor under this agreement or resulting from the work provided for in this agreement to the extent allowed by law.
26. Retain all records dealing with the award and administration of contract(s) for three (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 three (3) year period, the records are to be retained until the litigation is resolved or the end of the three (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 U.S. Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcripts.

27. Be responsible for all administrative expenses (including but shall not be limited to facilities, clerical expenses), and legal counsel necessary including the fees of such attorney(s) deemed necessary by NRCS to resolve any legal matters.
28. Submit requests for a time extension to the agreement (if necessary) in writing no less than thirty (30) days prior to the expiration date of the agreement specified in Section VI. See Attachment B, General Terms and Conditions. Submit the written, signed request to the NRCS Program/Technical Contact in addition to the Administrative Contact.
29. By signing the Agreement, the Sponsor assures the Department of Agriculture that the program or activities provided for under this Agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

B. THE NRCS WILL:

1. Reimburse the Sponsor up to 75 percent of the actual approved cost of construction as explained in Section III, not to exceed \$1,340,250.
2. Prepare final plans, specifications, operation and maintenance plan and quality assurance plan (QAP); review and concur in the Plan of Operations (if required). Provide copies to the Sponsor.
3. Not be substantially involved with the construction contract award or contractual administration of this Agreement, but will provide advice and counsel as needed.
4. 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.
5. Provide construction inspection in accordance with the QAP during the installation of the EWP project measures to monitor construction progress, document conformance to engineering plans and specifications, and provide any necessary clarification on the technical details to the Sponsor.
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. 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. IT IS MUTUALLY AGREED:

1. This agreement may become null and void 90 calendar days after the date NRCS has signed and executed this agreement if a solicitation for bids has not been publicly advertised or a contract has not been awarded.
2. The furnishing of financial, administrative and/or technical assistance above the original funding amount by NRCS is contingent on sufficient unobligated and/or uncommitted funding in the EWP program that is available for obligation in the year in which the assistance will be provided. NRCS cannot make commitments in excess of funds authorized by law or made administratively available. Congress may impose obligational limits on program funding that constrains NRCS' ability to provide such assistance.
3. The furnishing of the administrative and technical services by NRCS is contingent upon the continuing availability of appropriations by the Congress from which payment may be made and shall not obligate NRCS if the Congress fails to so appropriate.
4. 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.
5. 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.
6. The State Conservationist may make adjustments in the estimated cost to NRCS for constructing the EWP project 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 nor reduce funds below the amount required to carry out NRCS' share of the contract.
7. Once the project is completed and all requests for reimbursement submitted, any excess funding remaining in the Agreement (over and above the NRCS commitment of up to 75 percent of actual eligible construction costs and within the not-to-exceed amount) will be de-obligated from the Agreement.

8. NRCS, at its sole discretion, may refuse to cost share should the Sponsor, in administering the contract, elect to proceed without complying with their responsibilities as set out in this Agreement.
9. If inconsistencies arise between the language in Attachment A – Statement of Work and other attachments to this Agreement, the language in the Statement of Work takes precedence.

## **V. EXPECTED ACCOMPLISHMENTS AND DELIVERABLES**

The following accomplishments and deliverables will be provided to NRCS.

1. Signed NRCS-ADS-78 supported by an attorney's opinion, or equivalent.
2. One copy of the notice of solicitation, bid abstract, and notice of award.
3. Copy of all permits obtained for the project.
4. Copy of the critical path schedule submitted by the contractor.
5. The originals of all survey books, quality control reports, and other documentation stated within the specifications as being delivered to the CO, Engineer, or NRCS at the conclusion of the project or at any point during the construction of the project.

## **VI. PERIOD OF PERFORMANCE**

This Agreement is effective as of the date of final signature by USDA/NRCS on NRCS-ADS-093 form, Notice of Grant and Agreement Award, and continues in full force and effect through October 8, 2017. The Agreement may be amended to extend the date.

## **VII. RESOURCES REQUIRED**

### **A. Sponsor:**

- Administrative personnel to provide contracting services and/or procurement of items/services needed to implement the Agreement, obtain land rights, and other administrative requirements identified in the Agreement.
- Office space and associated office equipment needed by the Sponsor to prepare reports, prepare payment requests, etc.
- Equipment and personnel if identified in a Plan of Operations.

### **B. NRCS**

- Technical and administrative personnel to provided assistance to support the implementation of the Agreement.
- Technical personnel to develop technically sound and feasible solutions to restore the site and develop engineering plans and specifications and equipment, and personnel to provide construction inspection.

## **VIII. MILESTONES**

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

1. Acquire needed real property rights and permits (signed NRCS-ADS-78 supported by an attorney's opinion, or equivalent.) prior to start of construction

2. Obtaining permits
3. Solicit bids
4. Award contract
5. Issue notice to proceed
6. Final checkout
7. Final billing