

# STILLWATER CONSERVATION DISTRICT MEETING MINUTES

Columbus Fire Department (944 E. Pike Ave. Columbus, MT)

September 6th, 2022 at 4:00 PM

Meeting called to order at 4:33 pm.

**Supervisors Present:** *Will Downs, (Chairman), Noel Keogh (supervisor), Robert Van Oosten (Vice Chairman), Steve Story*

**Supervisors Absent:** *Butch Behrent (Treasurer), Kenneth Kem*

**Others Present:** *Sharon Flemetis (EWP Project Manager), Garrett Larson (NRCS), Ben Walker, Ashley Thompson, Karen Marts*

## UNAPPROVED MINUTES

Motion to approve minutes from previous meeting: *Bob*

Seconded: *Steve*

Discussion: Vote: *Pass*

## FINANCIAL REPORTS

Motion to approve payment of bills as listed: *Noel*

Seconded: *Bob*

Discussion: Vote: *Pass*

## REPORTS

**Robert "Bob" Van Oosten -**

**Butch Behrent -**

**Will Downs**

**Garrett-**

**Noel Keogh-**

**Sharon Flemetis-** *Have document for review*

## Public Comment (3 Minute Limit)

## 310 APPLICATIONS AND COMPLAINTS

APPL. #	Name	Stream	Project	Received	Approved/denied
22-014	Town ditch	Rosebud			<i>Approved with Modifications M: Noel S: Bob</i>
22-017E	John Gibson	Rosebud	Rock and sand bags to prevent home damage	6/14/2022	<i>275 Deny, M: Bob S: Noel</i>
22-018E	Terry Finley	Stillwater	Temp fix riprap to protect structure	6/14/22	
22-019E	Mitchell Davis	E Rosebud	Rip rap to access house	6/14/2022	<i>Approve As Is, M: Bob S: Noel</i>

22-020E	Will and Patricia Evans	Rosebud	Ext. of MDT riprap at bridge	6/16/2022	<u>275 Deny.</u> <i>M: Bob S: Will</i>
22-021E	Lynn Messenger	Fishtail	Riprap repair to prevent further damage	6/6/2022	

22-022E	<b>Rodney Goodell</b>	Rosebud	Bank Stabilization	6/16/2022	<i>6/27/2022</i>
22-023	Steve/Cindy Merriam	Stillwater	Bank stabilization, debris removal and protection	6/21/2022	
22-024	Mark Korsmo	Stillwater	Loss of all structures, debris removal and protection	6/21/2022	<u>Deny.</u> <i>M: Bob S: Steve</i>
22-029E	Noel Keogh/ Key O Inc.	Stillwater	Bank Stabilization, debris removal to save bridge, 8 structures lost	6/22/2022	<u>275 Approve As Is.</u> <i>M: Will S: Bob Noel Abstained</i>
22-030E	Gerald / Tammy Frye	Rosebud	erosion created foundation damage, Electric exposed	6/22/2022	<u>275 Deny</u> <i>M: Bob S: Steve</i>
22-033E	Lynette/Peter Nygaard	Stillwater		7/1/2022	<u>275 approved as is.</u> <i>M: Noel S: Bob / passed</i>
22-034	Sandra Peck	Stillwater		6/27/2022	
22-035	Afton Lamoreaux	Rosebud-eggen	Bank stabilization	6/27/2022	
22-036	Afton Lamoreaux	Rosebud-house		6/27/2022	
22-037	Chris Clark	Rosebud		6/24/2022	<i>Research another alternative M: Noel tabled</i>
22-028	David Leithead	E Rosebud-Eggen Piper Ditch		6/27/2022	<u>Approve</u> <i>M: Bob S: Noel</i>
22-039	David Leithead	E Rosebud-Rosebud Ditch Headgate		6/27/2022	<u>Approve</u> <i>M: Bob S: Noel</i>
22-043	Kenneth/Venessa Monson	Rosebud	Bank stabilization and debris removal	6/28/2022	<u>Project– Need a plan.</u> <i>M: Noel S: Bob</i>
22-044	Wanda Flanagan	Rosebud	Bank stabilization and debris removal	6/20/2022	

22-045E	Murphy Mills Asset	Rosebud	Rip rap added	6/28/2022	
22-046	Tim Thompson	Stillwater	Bridge lost, needs replaced	6/24/2022	<u>Deny – Need a Plan, M: Bob S: Steve</u>
22-047	Steven Ruffato	Stillwater	Culvert repair	6/28/2022	
22-048	Donald Hutson	Stillwater	Headgate and diversion repairs	6/24/2022	<u>Approved, M: Noel, S: Steve</u>
22-049E	Wanda Wilcox	Stillwater/Rosebud		6/22/2022	<u>Deny, Doesn't meet description of emergency M: Noel S: Bob</u>
22-050E	Arnold Green	Stillwater	Headgate	6/22/2022	<u>275 Deny, No work done, M: Bob S: Noel</u>
22-051E	Hufford Ranch	Stillwater	Access road eroded, rip rap	6/27/2022	<u>275 Deny, M: Steve S: Bob</u>
22-052	Rick Powell	Stillwater	Bank stabilization	6/25/2022	<u>Approve As Is, M: Noel S: Bob</u>
22-053E	Rainbow Ranch	Stillwater	Bridge lost	6/22/2022	

22-058	Mark Korsmo	Stillwater		6/30/2022	<u>Approve, M: Bob S: Noel</u>
22-059E	Buffalo Jump	Stillwater	Rip rap added	6/23/2022	<u>275 Approved, M: Noel S: Bob</u>
22-060E	Miller Scollard	Stillwater	Debris removal, fence repair and new roads	6/18/2022	<u>Deny, No work, M: Steve S: Bob</u>
22-061E	Owl Butte Grazing	Stillwater	Debris removal, new roads and rip rap	6/18/2022	<u>Deny, no work, M: Noel S: Steve</u>
22-062E	Stacy Biel	Stillwater	Well and septic tank compromised, water damage to garage, trenches dug to divert water	6/22/2022	<u>Approve As Is, M: Bob S: Noel</u>
22-063	Terry Ekwortzel	Stillwater	Bank stabilization, remove sandbar	6/30/2022	

22-068	Will and Patricia Evans	Rosebud	Bank stabilization, reconstruct parking area and access road	6/24/2022	<u>Deny.</u> M: Noel S: Bob
22-069	Will and Patricia Evans	Rosebud	Bank stabilization	6/25/2022	<u>Deny.</u> M: Noel S: Bob
22-070	Will and Patricia Evans	Rosebud	Bank Stabilization	6/26/2022	<u>Deny.</u> M: Noel S: Bob
22-073E	Bill Pascoe	Stillwater	Rip rap	6/23/2022	<u>Approve As Is.</u> M: Will S: Bob
22-074E	Mark Shupe	Rosebud	Install diversion wall to save house	7/11/2022	<u>Approve As Is.</u> M: Bob S: Steve
22-077E	David Pals	Stillwater	Replace bridge surface and road edge	6/24/2022	<u>Approved with Modification of relief channel.</u> M: Bob S: Noel
22-078	Wayne Clark	Yellowstone	Streambank stabilization, debris removal	6/29/2022	<u>Deny.</u> M: Noel S: Bob
22-082	Cherie Hovevar	E. Rosebud	Streambank stabilization	7/4/2022	<u>Deny.</u> M: Noel S: Bob
22-083	David Lueneburg	Stillwater	Streambank stabilization	7/02/2022	<u>Make a Project, request info on how long keyed in.</u> M: Steve S: Noel
22-085	Noel Keogh	Stillwater	Riprap for bridge stabilization	7/7/2022	<u>Deny.</u> M: Bob S: Steve Noel Abstained
22-086	Noel Keogh	Stillwater	Replace blocks and lower end of bridge	7/7/2022	<u>Deny.</u> M: Bob S: Steve Noel Abstained
22-088E	Setab Corp. Deborah DePietro	Fishtail Creek	Bridge repair, rip rap	7/5/2022	<u>Approve As Is.</u> M: Steve S: Bob
22-090	Clifton Miller	E. Rosebud	Replace rip rap	7/8/2022	<u>Deny.</u> M: Bob S: Noel
22-091E	Gerald/Susan Nelson	Stillwater	Replace rip rap	6/30/2022	<u>Deny.</u> M: Steve S: Bob
22-092E	Gerald/Susan Nelson	Stillwater	Culvert repair	6/30/2022	
22-093E	Murphy Mills Asset	Horse Creek	Diversion repair	7/11/2022	
22-094E	Murphy Mill Asset	Rosebud	Rip rap repair	7/11/2022	
22-095	Stephan Harris	Stillwater	Bank stabilization to secure house	6/29/2022	<u>Make a Project.</u> M: Noel S: Bob
22-096	Stillwater Mine	Stillwater		7/08/2022	
22-097E	Bert Lane	Stillwater		6/20/2022	<u>Deny.</u> M: Bob S: Noel
22-098E	Ashley Chancellor	Rosebud	Bank stabilization, rip rap	6/17/2022	<u>Approve As Is.</u> M: Steve S: Bob
22-103E	Wanda Flanagan	Rosebud	Clear debris, cut down trees	7/12/2022	
22-104	Tom Steen	Stillwater	Bank stabilization	7/19/2022	<u>Make a Project, need a plan.</u> M: Noel S: Bob
22-111E	Hermione Charlton Broken Horn Ranch	Stillwater	Bank stabilization	7/25/2022	
22-112	Hermione Charlton Broken Horn Ranch	Stillwater	Bank Stabilization	7/25/2022	
22-116	Patrick Padon	Stillwater	Rip rap bank to prevent home flooding	8/3/2022	<u>Tabled.</u> M: Noel S: Bob
22-117	Darryl Thompson/ Dolan Subdivision	Stillwater	Repair road, excavate "high water relief swell"	8/3/2022	<u>Approved.</u> M: Steve S: Bob
22-118	Marvin and Auson Schieldt	Rosebud	Stabilize river bank	8/4/2022	<u>Make Project – request plan</u> M: Noel S: Bob
22-119E	Stephen Aadland	E. Rosebud	Access to island to replace fence and debris cleanup	8/5/2022	<u>Deny.</u> M: Noel S: Bob
22-121	Darryl Thompson/ Dolan Subdivision	Stillwater	Rip rap replacement/repair	8/8/2022	<u>Tabled.</u> M: Noel S: Bob

22-122	William and Rhonda Golden	Stillwater	Replace flooded drainfield	8/8/2022	<u>Deny, Not a Project</u> M: Bob S: Steve
22-123	Dennis and Roxanne Trees	E. Rosebud	Rip rap, debris cleanup, dredge channel	8/8/2022	<u>Tabled to study</u> M: Noel S: Bob
22-124	Steve Blank	Stillwater	Rip rap	8/4/2022	<u>Tabled,</u> M: Noel S: Bob
22-129E	Donald Hutson	Stillwater	Headgate dry, diversion damaged	8/10/2022	<u>Approved,</u> M: Noel S: Bob
22-131E	Stillwater Vet	Rosebud	Remove beaver dam/debris in old channel	8/26/2022	<u>Tabled</u>
22-135	Arnold Green Meadow Ranch	Stillwater	Rip rap above and below spillway of headgate	8/29/2022	<u>Make a project</u> M: Bob S: Steve
22-137	Spenser Kuhn/ Olympus Technical	Stillwater	Remove debris Stillwater Mine and Custer Nat'l Forest		<u>Approved,</u> M: Noel S: Bob

## OLDBUSINESS

## NEW BUSINESS

### Yellowstone Bank signature cards- Updated by Board

EWP Landowner Agreement Approved as is, M: Steve S: Bob See Attached

Fee Schedule for EWP – 15% of 25% of Landowner Construction Costs Approved as is, M: Steve S:Bob See Attached

Procurement procedure for flood recovery – Declare flood status as Emergency Event M: Steve S: Bob See attached

EWP Contractor Agreement - Approved as is, M: Steve S: Bob See Attached

Invitation for Bid, Approved as is and to put in the local newspapers M: Bob S: Noel See attached

Kylie Appointed to Board Approved, M: Bob S: Noel

Ben Walker Appointed as Associate Member of Board Approved, M: Noel S: Bob

### SAVE THE DATE:

**October 4<sup>th</sup> – SCD Board Meeting**

MOTION TO ADJOURN THE MEETING: Noel

SECONDED: Bob

MEETING ADJOURNED AT 9:20 pm

*Approved on 10/04/22*

# EWP Contractor Agreement

This Agreement ("Contract") is made this 27th Day of March, 2023, between  
\_\_\_\_\_  
("Contractor"), and **STILLWATER**  
**CONSERVATION DISTRICT**("Sponsor"), Post Office Box 48; Columbus, MT 59019

The work described in Section 1 below shall be performed in accordance with all plans, specifications and other Contract documents for the project known as:

\_\_\_\_\_ **EWP Program Sponsored by Stillwater Conservation District**  
Engineering plan done by \_\_\_\_\_

**SECTION 1. SCOPE** The Contractor agrees to furnish all labor, materials, equipment and other facilities required to complete the following work: As stated in the Engineering plans and Joint Application.

**SECTION 2. PRICE AND PAYMENT** The **Sponsor** agrees to pay the Contractor for the strict performance of the work, the sum not to exceed \$\_\_\_\_\_. Subject to adjustments for changes in the work as may be agreed to by the **Sponsor** and the Contractor, as may be required under this Contract.

The **Sponsor** agrees to pay the Contractor once Invoiced and that work is completed to the standard of the Engineer and NRCS. Payments will be payable within 60 days of being signed off by the Project Engineer and NRCS approval, as funding is reimbursed to the **Sponsor** under the EWP program through the NRCS. Before payments, the Landowner must sign off on the work performed for payment processing as well.

Any costs beyond the agreed upon amount of \$\_\_\_\_\_ must be pre-approved, or payment of the difference will be the responsibility of the landowner.

**SECTION 3. ENTIRE AGREEMENT.** This agreement represents the entire agreement between the Contractor and the **Sponsor** regarding the work described in Section 1 and supersedes any prior written or oral agreements or representations as to that work.

**SECTION 4. TIME.** Time is of the essence of this agreement. The Contractor shall provide the **Sponsor** with a progress and completion schedule and shall conform to that schedule, including any changes to that schedule agreed to between the **Sponsor** and the Contractor or required by circumstances beyond Contractor's control.

- a. Work can commence on the date this contract is fully enforced with both **Sponsors** and Contractors signatures.
- b. All work must be completed before \_\_\_\_\_

**SECTION 5. CHANGES IN WORK.** The work shall be subject to changes or additions, deletions or revisions by the **Sponsor**. The Contractor will be notified by

receipt of written additions and/or revised drawings, specifications, exhibits or written orders

The Contractor shall not be obligated to perform changes in the work or additional work until the **Sponsor** has approved, in writing, the changes to the Contract price and the Contract time.

**SECTION 6. INSPECTION OF THE WORK**. The Contractor shall make the work accessible at all reasonable time for inspection by the **Sponsor**. The Contractor shall inspect all material and equipment delivered to the job site by others to be used or incorporated in the Contractor's work.

**SECTION 7. PERMITS, LICENSES AND REGULATIONS**

The **Sponsor** shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the performance of the Work. **Sponsor** will give a digital copy of all permits prior to work starting. Contractor will be responsible for the Storm Water Pollution Prevention Plan (SWPPP) through DEQ.

**SECTION 8. TERMINATION**. Notwithstanding any other provision of this Agreement, the **Sponsor** reserves the right to terminate the Agreement in its entirety without cause if such termination is deemed by the sponsor to be in the public interest, provided that ten (10) calendar days prior written note is given to the Contractor of the Sponsor's intent to terminate.

**SECTION 9. INDEMNIFICATION** Contractor shall indemnify the **Sponsor** against claims, demands, lawsuits and liabilities arising out of or connected to property damage or personal injury caused, or alleged to be caused, by Contractor or its subcontractors, suppliers, employees, agents or representatives. Contractor shall provide the following coverage:

**Casualty Insurance**

- a. Worker's Compensation and Employer's Liability Insurance;
- b. Commercial General Liability Insurance, including coverage for Contractor's owned, hired and non-owned equipment
- c. Automobile Liability Insurance, including coverage for Contractor's owned, hired, and non-owned vehicles
- d. Proof of Montana State Business License

**SECTION 10. ARBITRATION**. Any controversy or claim arising out of or relating to this Contract or its alleged breach, which cannot be resolved by mutual agreement, shall be settled by arbitration in accordance with JAMS Rules in effect on the date of the Contract, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. **Sponsor** and Contractor agree that, should Contractor be potentially or actually a party to a lawsuit or arbitration arising out of or connected to this Contract, **Sponsor** shall appear in, and be bound by the decision in, that lawsuit or arbitration. The prevailing party in any action or proceeding to enforce this Contract

shall recover its reasonable attorney's fees and costs (including expert witnesses) in that action or proceeding.

**Section 11. State of Montana Payment CGR.** The sponsor will deduct 1% of the Invoice/Bill amount and pay to the State of Montana for the 1% Contractor's Gross Receipts Tax.

**SPONSOR: STILLWATER CONSERVATION DISTRICT**

P.O Box 48  
Columbus, MT 59019

\_\_\_\_\_  
Sharon Flemetis, EWP Project Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Will Downs, Chairman

\_\_\_\_\_  
Date

**CONTRACTOR:** \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\* \_\_\_\_\_  
(Contractor's License Number)

Stillwater  
Conservation  
District

# **Sponsor-Landowner Contract for Emergency Watershed Protection (EWP) – RECOVERY 2022**

## **Stillwater Conservation District**

### **Contract No.**

This Agreement is made and entered into effective this 5th day of August, 2022, by and between Stillwater Conservation District, Montana a body politic, hereinafter referred to as the “**Sponsor**,” and \_\_\_\_\_ hereinafter referred to as the “**Landowner**.”

Section 1. **PURPOSE**. The purpose of this Agreement is to establish a contractual relationship between the Sponsor and the Landowner under which emergency watershed protection assistance and aid may be obtained from the USDA Natural Resources Conservation Service, hereinafter referred to as “**NRCS**” on the basis of 75% federal money and 25% local matching funds for a project to secure all materials and equipment and install the emergency watershed protection measures on Site # 1 located at:

**County:** Stillwater    **State:** Montana

**Latitude:**      **Longitude:**

**Section:**      **Township:**      **Range:**

**Drainage Name:**      **Reach:**

**Damage Description:**

hereinafter “project,” for an agreed-to-price of \$ \_\_\_\_\_ in accordance with specification that are provided by NRCS. The measures are to be installed in locations as described on the attached plan and in accordance with the attached schedule. Sponsor will charge Landowner a contract administration fee based upon 15% of the local match. The 15% contract administration fee shall be in addition to the local match.

Section 2. **TERM**. The Agreement is effective on the date of last signing. The Landowner agrees that the project is to be completed by December 2022. The Landowner shall complete work on the project and maintain the project for the useful life of the project at which time the Agreement shall terminate, unless terminated earlier pursuant to Section 11. **Breach/Termination**.

Section 3. LIASION. All communications with the Sponsor shall be with Sharon Flemetis, District Administrator, 334 North 9<sup>th</sup> St, Columbus, MT 59019 406-322-5359 ext. 101. All communications with the Landowner shall be with .

Section 4. SPONSOR'S COMMITMENTS. The Sponsor agrees:

- A. To work with Landowner to obtain the 75% federal cost share from NRCS for the project.
- B. To make payments from the 75% federal cost share based on an invoice for the cost of labor and equipment submitted on an itemized billing statement by Landowner or Landowner's contractor, provided, however, that no payments shall be made until the work has been inspected and accepted under Section III. I. of Agreement No. 30-02-22-5044-0 and reimbursement has been received from NRCS. Sponsor will not unduly delay submission to the NRCS Government Representative the SF-270, Request for Reimbursement following receipt of the itemized billing statement. The SF-270 shall be submitted to NRCS following completion of the project and inspection and acceptance by NRCS engineering staff.
- C. To provide Landowner with a standard agreement to be used in contracts entered into with a third party to do all or a part of the project.
- D. To coordinate with Landowner and NRCS for the provision of authorized assistance from NRCS, including design, plan drawings and specifications of carrying out the Plan of Operations NRCS-LPT-11.
- E. To pay suppliers, employees, and such other personnel as may be required to carry out the work on the project in a timely manner.

Section. 5. LANDOWNER COMMITMENT. Landowner agrees:

- A. To contribute 25% local match (\$ .00) for the project. Landowner may provide the non-Federal share of the cost-share in the form of cash, in-kind goods and/or services or any combination of cash and in-kind goods and/or services, as approved by the Sponsor. It is understood and agreed that the obligation to contribute the 25% local match is the sole responsibility of Landowner. Landowner shall be responsible for all costs, if any, over the estimated 75% federal contribution estimated for the project. It is understood and agreed that Sponsor has no obligation to contribute any costs, if any, over the estimated 75% federal contribution. Prior to beginning construction of the project Landowner must pay the 25% Local Match to the Sponsor to ensure completion of the project.
- B. In addition of the 25% local match there is also a 15% ( .00) of the local match as the contract administration fee. The total amount of reimbursement from NRCS will not exceed \$ .00.
- C. To pay any Engineering cost over \$ .00, if the Sponsor has any expenses for the engineering plans for this project.
- D. To ensure the local match and Administration fee are paid, the sponsor will require half of the required payment at the time of signing this contract. Other half of payment will be due before construction starts.
- E. To ensure competent personnel to carry out and maintain the project. To enter into contracts when necessary to complete the project. Landowner agrees to conduct all

- procurement of services and materials in a manner that provides, to the maximum extent possible, free and open competition.
- F. To install the emergency watershed protection measures and complete all work on the project no later than December 2022.
  - G. To comply with or require its contractors and/or subcontractors to comply with NRCS provided designs and specifications. The work must be carried out in accordance with the Plan of Operations and Schedule of Operations prepared by Sponsor, as concurred in by NRCS. Landowner agrees to acquire the concurrence of NRCS prior to any change in the Plan of Operations or the Schedule of Operations.
  - H. To acquire, or cause to be acquired, all applicable federal, state and local permits to undertake and complete the project and to comply with all applicable federal, state, and local laws, statutes and ordinances and all applicable rules, regulations, and standards established by Sponsor. Landowner agrees to comply with all ordinances and laws pertaining to the installation of the project.
  - I. To acquire all real property rights and interest necessary to install, operate, maintain and allow for the inspection of the project. To provide the necessary documentation for Sponsor to make a certification on Form NRCS-ADS-78 that real property rights have been obtained. Landowner agrees to provide documentation on the attached "Landowner Assurances Relating to Real Property Acquisition" form.
  - J. To be responsible for any excess costs or other consequences in the event the real property rights are found to be inadequate during the installation process.
  - K. To accept all financial and other responsibility for excess costs resulting from Landowner's failure to obtain, or Landowner's delay in obtaining, adequate land and water rights, permits, and licenses required for completing the project.
  - L. To submit an itemized statement for cost of labor and equipment and/or copies of paid invoices from contractors if a contractor installs a component of the project.
  - M. To accept and complete all of the responsibilities assigned to Sponsor set forth in Section I. A. of the Operation & Maintenance Agreement for Stillwater Conservation District EWP Projects attached to this Agreement.
  - N. To be responsible for the operation and maintenance costs of the project. Landowner agrees to operate and maintain the project at no cost to Sponsor or NRCS in the future.
  - O. To fully cooperate with Sponsor and NRCS in arranging for and conducting final inspection of the project after completion of the project. It is agreed and understood that NRCS shall determine whether all work has been performed in accordance with NRCS's specification and the Plan of Operation.
  - P. To cooperate with Sponsor in submitting the SF-270, Request for Reimbursement, by providing Sponsor with the documentation that will permit NRCS to reasonably assure itself that the costs were incurred and adequately documented.
  - Q. If during the term of the Agreement Landowner engages in a Plan practice and fails to complete the practice as required by the Plan then no payment will be made.
  - R. To retain all records dealing with direct supervision, labor, equipment and materials used in the project for 3 years from the date of Sponsor's submission of the final request for payment or until Sponsor's and/or NRCS's final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the 3-year period, the records are to be retained until the litigation is resolved or until 3 years whichever is longer. All records must be available to the Comptroller

General of the United States or his duly authorized representative and accredited representatives of the Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpt and transcripts.

- S. To assign this Agreement to the buyer of the property in the event Landowner sells the property to which the project is appurtenant. If an assignment is not made, Landowner agrees to remain responsible for all maintenance costs of the project through the term of this Agreement.

Section 6. LAW AND VENUE. Any action at law or suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Montana. This Agreement shall be governed by the laws of the State of Montana, both as to interpretation and performance. In the event of litigation concerning the terms of this Agreement venue shall be in the 13<sup>th</sup> Judicial District in and for the County of Yellowstone.

Section 7. INDEMNITY AND LIABILITY/INSURANCE. Landowner agrees that the project is an emergency action taken to protect Landowner's land and property. Landowner agrees to indemnify Sponsor and NRCS, their officials, agents, and employees, and hold harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense and attorney's fees, on account of bodily or personal injuries, death, or damage to property arising out of activities undertaken to complete the project, the failure of any installed emergency watershed protection measures, or omissions of services or in any way resulting from the acts or omission of Landowner and/or its agents, employees, contractors, subcontractors or its representatives under this Agreement, all to the extent of Landowner's negligence.

Landowner or its Contractor, if any, shall maintain in full force and effect during the term of this Agreement: (a) General Liability Insurance, with limits of at least \$1,500,000 combined Bodily Injury and Property Damage; and (b) Automobile Liability Insurance covering all owned, non-owned and hired vehicles with limits of at least \$750,000 for each person and \$1,500,000 for each occurrence Bodily Injury, sickness or death, and \$1,500,000 Property Damage, or their equivalents.

In any contract entered into by Landowner, Landowner shall provide for an Indemnity and Liability clause that will hold harmless Sponsor and NRCS and that will require Contractor to maintain the same level of insurance coverage required in this section for Landowner.

No work under this Agreement may be initiated until a copy of Landowner's or Contractor's liability coverage has been provided to the Sponsor.

Section 8. PERSONNEL. It is mutually agreed that Landowner is conducting work as the landowner and not as a contractor and is not an employee of Sponsor and is not covered by the Workers' Compensation laws applicable to Sponsor as employer.

In any contract entered into by Landowner, Landowner shall require a Personnel clause stating that the contractor is not an employee of Sponsor and is not covered by the

Workers' Compensation laws applicable to Sponsor as employer. It must further state that contractor must have an Independent Contractor Exemption or have Worker's Compensation coverage. No work under a contract may be initiated until a copy of the contractor's Worker's Compensation coverage or an Independent Contractor Exemption has been provided to Sponsor.

Section 9. MONITORING AND ACCESS. Landowner acknowledges Sponsor or NRCS may monitor and inspect all phases and aspects of Landowner or Landowner's contractor's performance. Because the funds are from public funds, public access to the project site and project records must be available. Public access may be made upon 24-hour notice to Landowner and Sponsor. A District Supervisor must accompany the person requesting access and access must be made in the least intrusive manner as possible as determined by Sponsor. Public access to records shall be made at the Sponsor's office in Columbus, Montana. Landowner shall accommodate requests through Sponsor for public access to the site and records with due consideration for safety, private property rights, and convenience of Landowner, requesting person, NRCS, and Sponsor.

Section 10. MODIFICATIONS. This instrument contains the entire Agreement between the parties, and no statement, promises, or inducements made by either party, or agents of either party, which are not contained in this Agreement shall be valid or binding and this Agreement may not be enlarged, modified or altered except as provided in this Agreement. No letter, telegram, or other communication passing between the parties to this Agreement, concerning any matter during the term of this Agreement shall be deemed a part of this Agreement unless it is distinctly stated in such letter, telegram, or communication that it is to constitute part of this Agreement, and such letter, telegram, or communication is attached as an appendix to this Agreement and is signed by the authorized representative of each of the parties to this Agreement. If executed properly under this section, modifications of this Agreement do not need independent consideration to be legally enforceable.

Section 11. BREACH/TERMINATION. Upon breach of any of the terms and conditions of this Agreement by Landowner, Sponsor may terminate this Agreement in whole or in part and have any and all remedies at law or equity. Sponsor shall notify Landowner, in writing, of the determination for termination, together with the effective date.

Section 12. RECOVERY OF FEDERAL COST SHARE/SUSPENSION OF AGREEMENT. If Landowner, its heirs or assigns, fails to comply with any of the conditions of this Agreement, or, if after inspection and approval by NRCS of the project, fails to maintain the project as required by the terms of this Agreement, upon notification from Sponsor, Landowner shall return the federal cost share of the project, or portion thereof as determined by Sponsor. Landowner agrees to pay all cost and fees, including attorney fees, incurred by the Sponsor in obtaining the return of the federal cost share.

This Agreement may be temporarily suspended by Sponsor if it determines that corrective action by Landowner is needed to meet the provisions of this Agreement. Sponsor may suspend this Agreement when it is evident that a termination is pending.

Section 12. WAIVER. A waiver of any particular provision of this Agreement by Sponsor shall not be construed as a waiver of any other provision, nor shall any such waiver otherwise preclude Sponsor from insisting on strict compliance with this Agreement in other circumstances.

Section 13. CONTINGENT FUNDING. The furnishing of financial and other assistance by Sponsor and NRCS is contingent upon the continuing availability of appropriations by Congress from which payment of the federal cost share may be made and shall not obligate NRCS or the Sponsor if Congress fails to so appropriate.

Section 13. TIME. Time is of the essence.

Section 14. CONTENTS. This Agreement consists of pages 1- 6 plus Attachments.

In WITNESS THEREOF, the parties have set their signatures hereto on the day and date set forth above.

Sponsor

Stillwater Conservation District  
334 North 9<sup>th</sup> St. / PO Box 48  
Columbus, MT 59019

Landowners

By:\_\_\_\_\_

By:\_\_\_\_\_

BY:\_\_\_\_\_

By:\_\_\_\_\_

Attest\_\_\_\_\_

Attest: :\_\_\_\_\_

Landowner will be responsible for a total of \$ .00 plus any Engineering expenses over \$ .00 under this agreement.

## INVITATION FOR BIDS

Notice is hereby given that the Stillwater & Carbon Conservation District is requesting bids for the June 2022 Flood Recovery Projects, also known as the EWP Projects in Stillwater and Carbon County. Engineering plans and copies of permits can be picked up at the Stillwater CD Office for detailed information on each project.

At the Office of the  
Stillwater Conservation District  
334 North 9<sup>th</sup> Street  
Post Office Box 48  
Columbus, Montana 59019

Specifications for the Bids will be available for review at the Stillwater Conservation District Office and copies will be available for a nonrefundable fee of \$10.00. Persons with disabilities who need an alternative format of this document in order to participate in the Invitation for Bids process should contact Sharon Flemetis, Stillwater Conservation District Administrator, 334 North 9<sup>th</sup> Street, Columbus, Montana, 59019; telephone number (406) 322-5359, Extension 101. Stillwater Conservation District will make every effort to comply with such request.

Insurance as required shall be provided by the successful Bidder(s) and a certificate(s) of the insurance shall be provided. Montana Prevailing Wage rates shall apply. The successful Bidder shall comply with all applicable Local, State, and Federal ordinances, regulations, and requirements. The successful Bidder shall comply with all applicable Federal regulations and requirements, which include but are not limited to Section 3 Clause, Equal Opportunity Clause, Executive Order 11246 and 11624, Federal Labor Standards and Civil Rights Act.

Accordingly, the Stillwater Conservation District reserves the right to negotiate an agreement based upon available project funds and fair and reasonable compensation for the scope of work and services proposed. Stillwater Conservation District reserves the right to reject all bids. Stillwater Conservation District also reserves the right to reject any and all nonconforming, non-responsive, unbalanced, or conditional bids, and to reject the bid of any Bidder if the Stillwater Conservation District believes that it would not be in the best interest of the Stillwater Conservation District to make an award to that Bidder. Stillwater Conservation District also reserves the right to waive informalities.

Questions regarding the documents shall be submitted in writing to Sharon Flemetis, EWP Project Manager, Stillwater/Carbon Conservation District, 334 N. 9<sup>th</sup> St, Columbus, MT, or by email to [Sharon.flemetis@mt.nacdnet.net](mailto:Sharon.flemetis@mt.nacdnet.net)

## INVITATION FOR BIDS

Notice is hereby given that the Stillwater & Carbon Conservation Districts are requesting bids for the June 2022 Flood Recovery Projects, also known as the EWP Projects in Stillwater and Carbon County. Engineering plans and copies of permits can be picked up at the Carbon CD Office for detailed information on each project.

At the Office of the  
Carbon Conservation District  
606 Front Ave.  
Post Office Box 510  
Joliet, Montana 59041

Specifications for the Bids will be available for review at the Carbon Conservation District Office and copies will be available for a nonrefundable fee of \$10.00. Persons with disabilities who need an alternative format of this document in order to participate in the Invitation for Bids process should contact Sharon Flemetis, Stillwater Conservation District Administrator, 334 North 9<sup>th</sup> Street, Columbus, Montana, 59019; telephone number (406) 322-5359, Extension 101. Stillwater Conservation District will make every effort to comply with such request.

Insurance as required shall be provided by the successful Bidder(s) and a certificate(s) of the insurance shall be provided. Montana Prevailing Wage rates shall apply. The successful Bidder shall comply with all applicable Local, State, and Federal ordinances, regulations, and requirements. The successful Bidder shall comply with all applicable Federal regulations and requirements, which include but are not limited to Section 3 Clause, Equal Opportunity Clause, Executive Order 11246 and 11624, Federal Labor Standards and Civil Rights Act.

Accordingly, the Carbon Conservation District reserves the right to negotiate an agreement based upon available project funds and fair and reasonable compensation for the scope of work and services proposed. Carbon Conservation District reserves the right to reject all bids. Carbon Conservation District also reserves the right to reject any and all nonconforming, non-responsive, unbalanced, or conditional bids, and to reject the bid of any Bidder if the Carbon Conservation District believes that it would not be in the best interest of the Carbon Conservation District to make an award to that Bidder. Carbon Conservation District also reserves the right to waive informalities.

Questions regarding the documents shall be submitted in writing to Sharon Flemetis, EWP Project Manager, Stillwater/Carbon Conservation District, 334 N. 9<sup>th</sup> St, Columbus, MT, or by email to [Sharon.flemetis@mt.nacdnet.net](mailto:Sharon.flemetis@mt.nacdnet.net)



**Stillwater Conservation District**  
P.O. Box 48  
Columbus, MT 59019  
Office: (406) 322-5359 ext. 101  
Email: [sharon.flemetis@mt.nacdn.net](mailto:sharon.flemetis@mt.nacdn.net)  
[www.stillwatercd.org](http://www.stillwatercd.org)

## Stillwater Conservation District Procurement Process

Under the advisement from the DRNC attorney, the Stillwater Conservation District had a meeting September 6, 2022 in regards to the Procurement process for the EWP program. It was voted on that due to the fact it was declared an emergency by governor and that the EWP funds were being used to help with the recovery of the June 2022 Flood event, that these procedures would be followed.

### ***Exemptions From Advertising And Bidding***

**76-15-1011. Exemptions from advertising and bidding.** (1) When immediate delivery of supplies, equipment, or services is required in an emergency, including but not limited to fire, flood, explosion, storm, earthquake, riot, or insurrection, the provisions of **76-15-1005** and **76-15-1006** do not apply if:

- (a) the supervisors act, by majority vote in an open meeting, in a manner that best meets the emergency and serves the public interest; and
- (b) the emergency is declared and recorded in the minutes of the board of supervisors meeting.
- (2) Supplies or services may be purchased without bid from government agencies if purchased at a substantial savings.
- (3) Contracts may be entered into by direct negotiations for the purchase of vehicles, machinery, equipment, materials, or supplies or for construction, repair, restoration, or maintenance under Title 76, chapter 15, for which the cost is less than the limit provided in **7-5-2301**.
- (4) Vehicles, machinery, equipment, materials, or supplies may be rented if the rental results in a substantial savings over purchase.

At the beginning we advertised in the newspapers that Invitation for Bid documents could be picked up at either office for a small cost of printing. We did not have much luck with contractors coming in. It was hard for them to make it into the office during business hours due to the amount of recovery that was happening. Due to the feedback, it was decided that we would make it easier for contractors to put bids in. The Stillwater and Carbon CD created a protected, share file location on the web. We advertised in the Stillwater and Carbon newspapers and shared it on CD's Facebook pages. Any Contractor wishing to receive Invitations for Bids emails should call or stop into the local Conservation District Office. A year later and it is still working. We have over 30 local or near by contractors on the list that receives emails from us anytime we add another project for bids.

The Engineer plans and the Bid Schedule was loaded with a closing date for each project. Once a contractor was chosen, we gathered information such as W-9, Proof of Liability, proof of Contractors License for Montana. When everything was in and they had an onsite preconstruction meeting with the engineer, we would sign into an agreement with the lowest bidder that was able to do the work within the time frame that was needed. The other requirement that the Board voted on was that the contractor had to be in good standings with the district, meaning no 310 violations on record.

By July 2022, the Stillwater Conservation District had 49 projects in the EWP program. Engineering needed to be done for all the projects. At first NRCS was engineering them but then became overwhelmed with the number of projects that were being added each day. So NRCS asked us to help with finding local engineer firms if they could help. That SCD could use some of the Technical Assistance Funds that the district would get for sponsoring the program to the communities. This amount was never over 80,000 dollars. However, the Construction cost would be.