

MOTION NO. 7921

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A MOTION authorizing the King County executive to enter into agreements with the Washington State Department of Ecology and the City of Bellevue regarding the joint funding by state and local governments for flood control projects pursuant to R.C.W. 86.26.

WHEREAS, representatives of King County, the Washington State Department of Ecology, and the City of Bellevue have reached agreement on the funding of flood control maintenance projects to be completed in the City of Bellevue including the estimated cost and percentage thereof to be borne by the state and by the city, and

WHEREAS, the Washington State Department of Ecology will remit to King County fifty percent of total eligible project costs, and

WHEREAS, King County will pass the state funding on to the City of Bellevue upon satisfactory completion of projects by said city and inspection and acceptance by the Washington State Department of Ecology, and

WHEREAS, reimbursement of maintenance costs requires interagency agreements between the Washington State Department of Ecology, King County, and the City of Bellevue;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

The county executive is hereby authorized to enter into interlocal agreements in substantially the form attached with the Washington State Department of Ecology and the City of Bellevue regarding the financing of flood control maintenance projects.

PASSED this 14<sup>th</sup> day of May, 1990.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Lois North  
Chair

ATTEST:

Gerald A. Pate  
Clerk of the Council

CITY OF BELLEVUE  
DATE 11/9/89  
CITY CLERK [Signature]  
O'Connor  
Ord. 4077

FLOOD ASSISTANCE CONTROL ACCOUNT PROGRAM AGREEMENT

THIS AGREEMENT made and entered into by and between King County, Washington, a political subdivision of the State of Washington, hereinafter referred to as the "County" and the City of Bellevue, a municipal corporation duly authorized and existing by virtue of the laws of the State of Washington, hereinafter referred to as the "City."

WITNESSETH

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the parties are each authorized to enter into an agreement for cooperative action, and

WHEREAS, the King County Council has by Motion No. \_\_\_\_\_ passed on \_\_\_\_\_, 1989, authorized the King County Executive to enter into an agreement with the City of Bellevue for the purpose of financing the Kelsey Creek Channel Improvement Project in accordance with the Flood Control Assistance Account Program (FCAAP) RCW Chapter 86.26 and WAC 173-145.

WHEREAS, City of Bellevue has by appropriate legislative action authorized this agreement, and

WHEREAS, it is in the interest of the public served by both jurisdictions that said project be constructed,

NOW, THEREFORE, IT IS COVENANTED AND AGREED AS FOLLOWS:

1. Purpose. The purpose of this Agreement shall be to assist in financing the Kelsey Creek Channel Improvement Project which is eligible for grant funds from the Washington State Department of Ecology Flood Control Assistance Account Program.

## EXHIBIT 1

SPECIFIC TERMS AND CONDITIONS

The County's obligations to the City of Bellevue under this Agreement shall be limited to passing through to the City any available State funding for the project and fulfilling any further administrative duties required by statute, as set forth below.

A. Project Administration and Execution

1. For purposes of administration of this project, including providing appropriate environmental reviews, the City shall act as lead agency. The City shall be responsible for design, right-of-way acquisition, construction, construction management and any additional work required to furnish a complete project. The City will prepare all plans, specifications and bid documents, obtain all permits, submit the bid documents to the County for technical review, advertise for bids, receive bids, and upon approval, award contracts, provide all inspection, construction management, prepare and pay progress payments to any contractors and complete all project documentation as required by law and by the Washington State Department of Ecology Grant Agreement No. G0090024, hereinafter, the "Grant Agreement", and which is incorporated herein by this reference. The Grant Agreement is administered by the Washington State Department of Ecology, hereinafter referred to as the "Department", which is a third party beneficiary of this agreement between the County and the City. The County shall be responsible for project plan approval, supervising and inspection of project to assure all work is done according to plans and specifications, and for final project inspection in cooperation with the City and the Department.
2. This project will be designed and constructed in accordance with applicable provisions of Chapter 86.26 RCW and Chapter 173-145 WAC. The construction shall conform to the plans and specifications approved by the Department.
3. Payments toward construction will not be made until the plans and specifications have been approved by the Department.
4. The County, as signator with the Department on the Grant Agreement and the City as the lead agency for design construction, construction management and inspection shall abide by the terms of the Grant Agreement. The City will prepare the required documentation for grant reimbursement and will deliver to the County, which will in turn present to the Department for reimbursement to the City.

5. Project conditions include, but are not limited to the following:

Project Amount:	Eligible Project Costs	\$107,897
	State Share	\$ 53,948
	City Share	\$ 53,949

State Maximum Cost Share Rate 50%

Security for performance shall be 10% of each invoice.

Budget deviation shall be 10%.

The effective date of this Agreement is July 1, 1989. Any work performed prior to the effective date of this agreement without prior written authorization and specified in the Scope of Work will be at the sole expense and risk of the City.

The Project described herein must be completed on or before June 30, 1991.

This Agreement shall expire no later than June 30, 1991.

B. Scope of Work

1. Project Title: Kelsey Creek Channel Improvement (Bellevue)
2. Project Location: Sec 33 T25N R5E
3. Project Description: To prevent severe stream bank erosion and to remove obstruction to fish passage by improving stream channel. Bioengineering techniques will be used.

4. Budget:

a. Estimated Costs for Eligible Work Items

<u>Work Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Cost</u>
Excavation	CYd	1,100	\$ 20	\$ 22,000
Log Weirs	ea	4	3,500	14,000
Bioengineered Bank Protection	ft	600	25	15,000
Temp. Erosion and Sediment Control	LS	1	5,000	5,000
Water Control	LS	1	5,000	5,000
Heavy Loose Riprap	CYd	50	40	2,000
Remove/Replace Fence	ft	300	15	4,500
Restoration	SYd	1,700	3	<u>5,000</u>
TOTAL WORK ITEMS:				\$ 72,500

5. Major Project Elements:Estimated Eligible Costs

(1) Work Items	\$ 72,500
(2) Mobilization (@ 4% of \$72,500)	<u>2,900</u>
Subtotal:	\$ 74,500
(3) Sales Tax (@ 8.1% of \$74,500)	6,107
(4) Engineering & Administration (@ 35% of \$74,500)	<u>26,390</u>
TOTAL ELIGIBLE PROJECT COST:	\$107,897

C. Special Terms and Conditions1. Minority and Women's Business Participation

The City agrees to utilize to the maximum extent possible, minority-owned and women-owned businesses in purchases and contracts under this Agreement initiated after the effective date of this Agreement.

The City agrees to include in all bid packages and requests for proposals (RFP) and purchase orders the following minimum goals expressed as a percentage of the total dollars available for the purchase or contract:

- o Minority owned business participation: 10%
- o Women owned business participation: 6%

The City agrees to require ALL prospective bidders or persons submitting qualifications to:

- a. Include qualified minority and women's businesses on solicitation lists;
- b. Ensure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies;
- c. Divide the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified minority and women's businesses;
- d. Establish delivery schedules, where requirements of the work permit, which will encourage participation of qualified minority and women's businesses; and
- e. Use the services and assistance of the State Office of Minority and Women's Business Enterprises, and the Office of Minority Business Enterprises of the U.S. Department of Commerce as appropriate.

The City agrees to provide to the County, on forms provided by the Department, written assurance that affirmative steps were taken in awarding contracts and approving subcontractor selections.

The City agrees to report to the County at the time of submitting each Invoice, on forms provided by the Department, made to qualified firms. The report will address:

- a. Name and State OMWBE certification number of qualified minority and women's businesses working on the project;
- b. Dollar amount of contracts awarded to qualified minority and women's businesses; and
- c. Amount of funds disbursed to qualified minority and women's businesses.

2. Deviation from Budget

Payment will be disallowed when the City's request deviates from any of the budget objects in the Agreement by more than a cumulative ten (10) percent of the total project cost without prior written approval of the County and the Department.

3. Failure to Commence Work

In the event the City fails to commence work on the project funded herein within four months after the effective date of the Grant Agreement, or by any date mutually agreed upon in writing for commencement of work, the County reserves the right to terminate this Agreement.

4. All Writings Contained Herein

This Agreement, including Exhibits I and II, and the Department's current edition of "Financial Guidelines for Grants Management" contain the entire understanding between the parties, and there are no other understandings or representations set forth or incorporated by reference herein. No subsequent modification(s) or amendment(s) of this Agreement shall be of any force or effect unless in writing, signed by Authorized representatives of the City and County and made a part of this Agreement.

GENERAL TERMS AND CONDITIONS

The City, hereinafter referred to as the Grantee, will comply with the following requirements of the Washington State Department of Ecology, hereinafter referred to as the Department, and King County, hereinafter referred to as the County.

**A. GRANTEE PERFORMANCE**

All activities for which grant funds are to be used shall be accomplished by the Grantee and Grantee's employees. The Grantee shall not assign or subcontract performance to others unless specifically authorized in writing by the Department and by King County.

**B. SUBGRANTEE COMPLIANCE**

The Grantee must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

**C. THIRD PARTY BENEFICIARY**

The Grantee shall ensure that all subcontracts entered into by the Grantee pursuant to this agreement, the State of Washington, and King County are named as express third-party beneficiaries of such subcontracts with full rights as such.

**D. CONTRACTING FOR SERVICES (BIDDING)**

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by state law. The Grantee shall not advertise for bids for construction until receipt of written approval from the Department. No contract shall be awarded or rejected until approved in writing by the Department. Grantee shall retain copies of all bids received and contracts awarded, for inspection and use by the Department.

**E. ASSIGNMENTS**

No right or claim of the Grantee arising under this agreement shall be transferred or assigned by the Grantee.

**F. COMPLIANCE WITH ALL LAWS**

1. The Grantee shall comply fully with all applicable federal, state and local laws, orders, regulations and permits.

Prior to commencement of any construction, the Grantee shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the County and the Department that all approvals and permits have been secured, and make copies available to the Department upon request.

2. Discrimination. The County and the Grantee agree to be bound by all federal and state laws, regulations, and policies against discrimination. The Grantee further agrees to affirmatively support the Department's minority contract procurement program to ensure, to the maximum extent possible, the participation of women and minority owned businesses in all subcontracts awarded under this agreement. The Grantee shall report to the County and the Department the percent of grant funds available to women or minority owned businesses.
3. Wages and Job Safety. The Grantee agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
4. Industrial Insurance. The Grantee certifies full compliance with all applicable state industrial insurance requirements. If the Grantee fails to comply with such laws, the County or the Department have the right to immediately terminate this agreement for cause as provided in Section K1, herein.

**G. KICKBACKS**

The Grantee is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled, or receive any fee, commission or gift in return for award of a subcontract hereunder.

**H. AUDITS AND INSPECTIONS**

1. The Grantee shall maintain complete program and financial records relating to this agreement. All grant records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the Grantee. Such records shall clearly indicate total receipts and expenditures by fund source and and object classification.

2. All grant records shall be open for audit or inspection by the Department or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the Grantee shall provide clarification and/or make adjustments accordingly.
3. All work performed under this agreement and any equipment purchased, shall be made available to the Department and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant termination or dispute resolution hereunder.
4. Grantee shall meet the provisions in OMB Circular A-128 (Audit of State and Local Governments) or OMB Circular A-110 (Uniform Requirements for Grants to Universities, Hospitals and Other Non-Profit Organizations) if the Grantee receives federal funds in excess of \$25,000. The Grantee must forward a copy of the state auditor's audit along with the Grantee response and the final corrective action plan as approved by the SAO to the Department within ninety (90) days of the date of the audit report.

#### I. PERFORMANCE REPORTING

The Grantee shall submit progress reports to the County and the Department on a quarterly basis or such other schedule as set forth in the Special Conditions. The Grantee shall also report in writing to the County and the Department any problems, delays or adverse conditions which will materially affect their ability to meet project objectives, time schedules or project tasks within the established time periods. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the County or the Department to resolve the situation.

Quarterly reports shall cover the periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within twenty (20) days following the end of the quarter being reported.

#### J. COMPENSATION

1. Method of Compensation. Payment shall be made on a reimbursable basis at least quarterly and no more often than once per month. Each voucher shall be submitted to the County along with documentation of the work performed, expenses incurred and the progress of the project. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the Grantee and certified as satisfactory by the Department. Requests for payment will be submitted by the Grantee on Washington State voucher request forms provided by the County.

The voucher request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the state voucher request form are found in "Financial Guidelines for Grants Management," Chapter 6, published by the Department. A copy of this guideline shall be furnished to the Grantee. When voucher requests are approved by the County and the Department, payments will be made to the mutually agreed upon designee.

Payment requests shall be submitted to the County and directed to the Department's Project Officer assigned to administer this agreement.

2. Budget Deviation. Deviations in budget amounts may be allowed, with prior approval from the Department. Payment by the County for project tasks described in the Scope of Work will be disallowed when the Grantee's request for reimbursement exceeds the state maximum cost share amount for that task by more than ten percent (10%) when multiplied by the appropriate cost share rate. Despite the foregoing, in no event will the County provide reimbursement in excess of the state's share of the total eligible cost without a written amendment to this agreement.
3. Period of Compensation. Grant payments shall only be made for action of the Grantee pursuant to the grant agreement and performed within the effective dates of this agreement unless those dates are specifically modified in writing as provided herein.
4. Final Request(s) for Payment. The Grantee must submit final requests for compensation within forty-five (45) days after satisfactory completion of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.
5. Performance Guarantee. The Department shall withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the Grantee's performance. Monies withheld by the Department may be paid to the Grantee when the project(s) described herein, or a portion thereof, have been completed if in the Department's sole discretion such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J herein.
6. Unauthorized Expenditures. All payments to the Grantee shall be subject to final audit by the Department and any authorized expenditure(s) charged to this grant shall be refunded to the Department by the Grantee.
7. Mileage and Per Diem. If mileage and per diem are paid to the employees of the Grantee or other public entities, it shall not exceed the amount allowed under state regulation.
8. Indirect Costs. No reimbursement for indirect costs will be allowed unless provided for and defined in the Scope of Work hereunder.

## K. TERMINATION

1. For Cause. The obligation of the County to the Grantee is contingent upon satisfactory performance by the Grantee of all of its obligations under this agreement. In the event the Grantee unjustifiably fails, in the opinion of the Department, to perform any obligation required of it by this agreement, the County may refuse to pay any further funds thereunder and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys drawings, maps, models, photographs, and reports or other materials prepared by the Grantee under this agreement, at the option of the Department, shall become its property and the Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the Grantee shall not be relieved of any liability to the County or the Department for damages sustained by the County or the Department and/or the State of Washington because of any breach of agreement by the Grantee under this agreement, at the option of the Department, shall become its property and the Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

2. Insufficient Funds. The obligation of the County to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the County is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K1 above.
3. Failure to Commence Work. In the event the Grantee fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date mutually agreed upon in writing for commencement of work, the County reserves the right to terminate this agreement.
4. Waiver. Waiver of any Grantee default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms and of this agreement unless stated as such in writing by the authorized representative of the Department.

## L. PROPERTY RIGHTS

1. Copyrights and Patents. When the Grantee creates any copyrightable materials or invents any patentable property, the Grantee may copyright or patent the same but the Department retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Where federal funding is involved, the federal government has a proprietary interest in patent rights to any inventions that may be developed by the Grantee. As such, the federal grantor agency in the absence of legislation otherwise, will allocate patent rights in accordance with the memorandum and statement of government patent policy (36 F.R. 165887-16892) issued by the President on August 23, 1971.

2. Publications. When the Grantee or persons employed by the Grantee use or publish information of the County and/or Department; present papers, lectures, or seminars involving information supplied by the County or Department; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the County and/or Department.
3. Tangible Property Rights. The Department's current edition of "Financial Guidelines for Grants Management," Chapter 4, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the Department in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. Personal Property Furnished by the Department. When the Department provides personal property with an acquisition cost of \$300.00 or more per unit and a useful life of more than three years, directly to the Grantee for use in performance of the project, it shall be returned to the Department prior to final payment by the Department. The Grantee shall make payment in cash or by setoff to the Department for use of such property. If said property is lost, stolen or damaged while in the Grantee's possession, the Department shall be reimbursed in cash or by setoff by the Grantee for the fair market value of such property.
5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
  - a. Prior to disbursement of funds provided for in this agreement, the Grantee shall establish that the cost of land/or facilities is fair and reasonable.
  - b. The Grantee shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.

6. **Conversions.** Regardless of the contract termination date shown on the cover sheet, the Grantee shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the Department. Such approval may be conditioned upon payment to the Department of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

**M. RECOVERY OF PAYMENTS TO GRANTEE**

The right of the Grantee to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the Grantee fails, for any reason, to perform obligations required of it by this agreement, the Grantee may, at the County's sole discretion, be required to repay to the County all grant funds disbursed to the Grantee for those parts of the project that are rendered worthless in the opinion of the County or the Department by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the County demands repayment of funds. If payments have been discontinued by the County due to insufficient funds as in Section K2 above, the Grantee shall not be obligated to repay monies which had been paid to the Grantee prior to such termination. Any property acquired under this agreement, at the option of the Department, may become the Department's property and the Grantee's liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

**N. PROJECT APPROVAL**

The extent and character of all work and services to be performed under this agreement by the Grantee shall be subject to the review and approval of the Department and the County through the Department's Project Officer or other designated official to whom the Grantee shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Department's Project Officer or other designated official as to the extent and character of the work to be done shall govern. The Grantee shall have the right to appeal decisions as provided below.

**O. DISPUTES**

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Department's Project Officer or other designated official who shall provide a written statement of decision to the Grantee. The decision of the Department's Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the Grantee mails or otherwise furnishes to the Director of the Department a written appeal.

In connection with appeal of any proceeding under this clause, the Grantee shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the Grantee shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

**P. CONFLICT OF INTEREST**

No officer, member, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

**Q. INDEMNIFICATION**

1. The Department shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
2. To the extent that the Constitution and laws of the State of Washington permit, the Grantee shall indemnify and hold the County and the Department harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of the Grantee arising out of this agreement, except for such damage, claim, or liability resulting from the negligent act or omission of the County or the Department.

**R. GOVERNING LAW**

This agreement shall be governed by the laws of the State of Washington.

**S. SEVERABILITY**

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

## T. PRECEDENCE

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State regulations; (b) Scope of Work; (c) Special Terms and Conditions, and any terms incorporated therein by reference; and (d) the General Terms and Conditions.