

MOTION NO. 8354

A Motion ratifying and adopting the execution by the County Executive of a contract with the State of Washington Department of Community Development Divison of Emergency Management for the receipt of funds from the Federal Emergency Management Agency (FEMA) for disaster relief, and the authorization of an executive agent.

WHEREAS, The winter storm of December 21 - 31 1990 had disastrous effects on the County and its citizens, and

WHEREAS, State and Federal aid to mitigate those effects as much as possible was made available, and

WHEREAS, Rapid processing of contract documents to insure the timely flow of such aid was necessary, and

WHEREAS, the designation of an executive agent for the county was necessary in timely fashion to receive such funds, and

WHEREAS, King County is desirous of memorializing the execution of such documents and appointment of the executive agent under the Interlocal Cooperation Act, RCW Chapter 39.34;

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

The execution by the King County executive of contract 8096-91-645-500 with the Washington State Department of Community Development, and the appointment of an executive agent for the receipt of funds thereunder, copies of which are attached and incorporated by this reference, is hereby ratified, adopted and approved.

PASSED this 29th day of July, 1991.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Lois North
Chair

ATTEST:

Ronald A. Peterson
Clerk of the Council

STATE OF WASHINGTON
DEPARTMENT OF COMMUNITY DEVELOPMENT
DIVISION OF EMERGENCY MANAGEMENT

CONTRACT 0896 - 91 - 645 - 500

This contract is made and entered into by and between the DEPARTMENT OF COMMUNITY DEVELOPMENT, a department of the State of Washington, hereinafter referred to as the DEPARTMENT, and

King county
hereinafter referred to as the APPLICANT.

Under the authority of Presidential Major Disaster Declaration FEMA-0896-DR-WA, the DEPARTMENT is contracting with the APPLICANT for those eligible costs and activities necessary for the repair and restoration of public facilities damaged by storm which began on December 21, 1990, and hereto agree as follows:

PART I: FUNDING

The DEPARTMENT will administer the disaster assistance program and will commit the required State match pursuant to the FEMA-STATE AGREEMENT, which is incorporated by reference into this contract, to any eligible projects for the APPLICANT which are identified under the auspices of the Presidential Major Disaster Declaration FEMA-0896-DR-WA. It is understood that no final dollar figure is committed to at the time that this contract is executed, but that financial commitments will be made by amendments to the project application as Damage Survey Reports are completed in the field and projects authorized by State and Federal officials.

The APPLICANT will commit the required local match pursuant to the FEMA-STATE AGREEMENT to any eligible projects for the APPLICANT which are identified under the Presidential Major Disaster Declaration FEMA-0896-DR-WA.

PART II: TERMS AND CONDITIONS

Payment

The DEPARTMENT, using funds granted for the purposes of the Presidential Major Disaster Declaration from the Federal Emergency Management Agency (FEMA) and the State of Washington, shall issue payments to the APPLICANT as follows:

1. **Advances:** Advance of funds may be made to the APPLICANT upon submission and approval of a letter of request from the APPLICANT to the Governor's Authorized Representative.
2. **Final payment:** Final payment will be made upon submission by the APPLICANT of form DEM-001 (2/89), STATEMENT OF DOCUMENTATION IN SUPPORT OF AMOUNT CLAIMED FOR

FINANCIAL DISASTER ASSISTANCE within 60 days of completion of project(s) and completion of all final inspections by the DEPARTMENT and the Federal Emergency Management Agency. Final payment may also be conditioned upon a financial review, if determined necessary by the DEPARTMENT or by FEMA. Adjustments to the final payment may be made following any audits conducted by the Washington State Auditors Office or the United States Inspector General.

3. Funding shall not exceed the total Federal and State contribution eligible for the repair and restoration costs under this Presidential Major Disaster Declaration FEMA-0896-DR-WA.

Time of Performance

Activities payable under this contract and to be performed by the APPLICANT under this contract shall be those activities which occurred on or subsequent to the incident period defined in the Federal/State agreement and shall terminate upon completion of the project(s) approved by Federal and State officials, including completion of close out and audit. This period shall be referred to as the "Contract Period".

Waivers

No conditions or provisions of this contract can be waived unless approved by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision of the contract, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this contract.

Assignability

The APPLICANT shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation).

Conflict of Interest

No officer or employee of the DEPARTMENT; no member, officer, or employee of the APPLICANT or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such locality or localities who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this contract agreement.

The APPLICANT shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this provision.

Political Activity

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue

Recovery of Funds

In the event that the APPLICANT fails to complete the project(s), fails to expend or is over advanced Federal and/or State funds in accordance with Federal or State disaster assistance laws or programs, or as found by audit or investigation to be owing to the State, the Governor's Authorized Representative reserves the right to recapture funds in accordance with Federal or State laws and requirements. Repayment by the APPLICANT of contract funds under this recovery provision shall occur within 30 days of demand. In the event that the DEPARTMENT is required to institute legal proceedings to enforce this recovery provision, the DEPARTMENT shall be entitled to its costs thereof, including reasonable attorney fees.

The APPLICANT shall be responsible for pursuing recovery of monies paid under this contract in providing disaster assistance against any party that might be liable, and further the APPLICANT shall cooperate in a reasonable manner with the State and the United States in efforts to recover expenditures under this contract.

In the event the APPLICANT obtains recovery from a responsible party, the APPLICANT shall first be reimbursed its reasonable costs of litigation from such recovered funds. The APPLICANT shall pay to the State the proportionate State and Federal share of all project funds recovered in excess of costs of litigation.

Indemnification

The APPLICANT, and its employees, contractor(s) and sub-contractor(s) shall hold harmless the United States, and its agents and employees, the State of Washington and its agents and employees from and against all claims, damages, losses and expenses arising out of or resulting from the approved work, regardless of whether or not such claim, damage, loss or expense is caused entirely or in part by the United States or the State of Washington.

Insurance

The APPLICANT will comply with the insurance requirements of Public Law 93-288, and obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired or constructed with this assistance.

In the event that the APPLICANT subcontracts for engineering services, the APPLICANT shall require that the engineering firm be covered by errors and omissions insurance in an amount not less than the amount of the firm's subcontract. If the firm is unable to obtain errors and omissions insurance, the firm shall post a bond with the APPLICANT for the benefit of the APPLICANT for not less than the amount of its subcontract. Such insurance or bond shall remain in effect for the entire term of the subcontract. The subcontract shall provide that cancellation or lapse of the bond or insurance during the term of the subcontract shall constitute a material breach of the subcontract and cause for subcontract termination. The APPLICANT shall cause the subcontractor to provide it with a 30 day notice of cancellation issued by the insurance company.

Close-out

It shall be the responsibility of the DEPARTMENT to issue close-out instructions to the APPLICANT upon completion of the project(s).

PART III: APPLICANT ASSURANCES

In addition to the Terms and Conditions specified herein, the APPLICANT also agrees to the following assurances:

1. The APPLICANT hereby assures and certifies that they will comply with State and Federal laws and regulations, including but not limited to the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended; 44 CFR Part 13, 44 CFR Part 206 (interim rules), and the Washington State Disaster Assistance Manual dated February 1989. These regulations and requirements are hereby incorporated into this contract by reference.
2. The emergency or disaster relief work for which Federal or State assistance is requested herein does not or will not duplicate benefits received for the same loss from any other source.
3. The APPLICANT will operate and maintain the facilities in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operations of such facilities.

4. The APPLICANT will, for any repairs or construction financed herewith, comply with applicable standards of safety, decency and sanitation and in conformity with applicable codes, specifications and standards, and will evaluate the hazards in areas in which the proceeds of the grant are to be used and take appropriate action to mitigate such hazards, including safe land use and construction practices.
5. The APPLICANT will not enter into a contract with a contractor who is on the General Services Administration (GSA) Consolidated List of Debarred, Suspended and Ineligible Contractors.
6. The APPLICANT will comply with minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.
7. The APPLICANT shall comply with Federal and State laws against discrimination.
8. The APPLICANT shall utilize certified minority-owned and women-owned businesses (MWBE's) to the maximum extent possible in the performance of this contract.

PART IV: ENTIRE AGREEMENT

This agreement contains the terms and conditions agreed to by the DEPARTMENT and the APPLICANT. Any additional terms and conditions imposed by the Federal Emergency Management Agency or the DEPARTMENT will be incorporated into an amendment to this contract and require written approval by both parties to this contract.

PART V: GOVERNING LAW AND VENUE

This contract shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Washington. Venue of any suit between the parties arising out of this contract shall be the Superior Court of Thurston County, Washington.

PART VI: SEVERABILITY

In the event any term or condition of this contract or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this contract which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this contract are declared severable.

IN WITNESS WHEREOF, the DEPARTMENT and the APPLICANT have executed this contract as of the date and year written below.

Tim Arnold, Assistant Director
Department of Community
Development

DATE: _____



Applicant Signature
Printed Name Tim Hill
Title King County Executive
Organization King County

DATE: APR 2 1991

Mailing address 400 King County Courthouse
Seattle, WA 98104

Phone (206) 296-4040

Federal Tax Identification # 91-6001327

APPROVED AS TO FORM

Larry Watters
Assistant Attorney General

DATE: March 18, 1991

Contact Applicant Agent:

Mike Hagan
King County Police
Office of Emergency Management
16623 S.E. 176th Pl.
Renton, WA 98058

(206)-296-3853