

September 9, 1986
9663A/BL:ple

Introduced By: Gary Grant

Proposed No.: 86-487

MOTION NO. 6619

A MOTION authorizing the King County Executive to enter into an agreement with the City of Kent regarding the financing of maintenance on flood control projects.

WHEREAS, the State of Washington, pursuant to R.C.W. 86.26, has established a state and local participating flood control maintenance policy, and

WHEREAS, R.C.W. 86.26.007 establishes an assistance account to fund maintenance of eligible flood control projects, to be administered by the Washington State Department of Ecology, and

WHEREAS, representatives of King County, the Washington State Department of Ecology, and the City of Kent have negotiated and reached agreement on the maintenance projects in the City of Kent eligible for state funding, and

WHEREAS, the Washington State Department of Ecology will reimburse King County for fifty percent of total eligible project maintenance costs, as set forth under the provisions of R.C.W. 86.26.100, and

WHEREAS, reimbursement of maintenance costs requires formal interagency agreements between King County and the recipient agency pursuant to R.C.W. 86.26.100 and W.A.C. 173-145-070, and

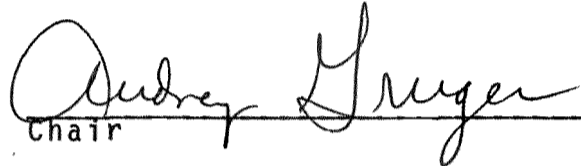
WHEREAS, a proposed interlocal agreement which would satisfy requirements of R.C.W. 86.26.100 and W.A.C. 173-145-070 has been transmitted to the council with a request that the county executive be authorized to execute said agreement;

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

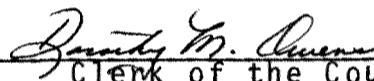
2 The county executive is hereby authorized to enter into
3 interlocal agreements with the City of Kent and the Washington
4 State Department of Ecology regarding the financing of
5 maintenance on flood control projects, in substantially the same
6 form as attached to this motion and incorporated herein by
7 reference.

8 PASSED this 15th day of September, 1986.

9 KING COUNTY COUNCIL
10 KING COUNTY, WASHINGTON

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12 Chair

13 ATTEST:

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16 Clerk of the Council

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Flood Control Assistance Account Program (FCAAP)
Grant Agreement
Between
State of Washington Department of Ecology
and
King County

THIS is a binding agreement entered into by and between the State of Washington, Department of Ecology, hereinafter referred to as the "DEPARTMENT," and King County, hereinafter referred to as the "GRANTEE."

GRANTEE'S legal address and telephone number:

King County Department of Public Works
900 King County Administration Bldg.
500 Fourth Avenue
Seattle, WA 98104
Phone: (206) 344-2517

THE PURPOSE of this agreement is to provide funds to the GRANTEE from the DEPARTMENT to perform the work described in Appendix A pursuant to Chapter 86.26 RCW and Chapter 173-145 WAC, and to aid in fulfilling the DEPARTMENT'S obligations under said chapter.

IT IS THEREFORE MUTUALLY AGREED THAT:

A. DEPARTMENT'S PERFORMANCE

The DEPARTMENT has found that the GRANTEE satisfies the applicable provisions of Chapter 86.26 RCW and Chapter 173-145 WAC, and the requirements of the DEPARTMENT. Having determined the proposed project is eligible for funds from the DEPARTMENT, the DEPARTMENT hereby offers a grant not to exceed the dollar amount specified in Appendix A (Budget Information) to the GRANTEE subject to the GRANTEE'S agreement to carry out its terms and conditions. This agreement is to aid in the financing of the project described in the attached Appendix A. No additional payment shall be made under this agreement except by written amendment.

B. PAYMENT OF GRANT FUNDS TO GRANTEE

1. Payment for major project elements described in Appendix A will be disallowed when the GRANTEE'S actual costs exceed that element's estimated total eligible cost by more than ten (10) percent without prior written approval.

The DEPARTMENT will not provide reimbursement in excess of the DEPARTMENT'S share of the total eligible project cost. The DEPARTMENT'S share shall not exceed fifty (50) percent of the total eligible project cost of \$100,000 in cash, including Washington State Sales Tax, where applicable.

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IT IS THEREFORE MUTUALLY AGREED THAT:

A. DEPARTMENT'S PERFORMANCE

The DEPARTMENT has found that the GRANTEE satisfies the applicable provisions of Chapter 86.26 RCW and Chapter 173-145 WAC, and the requirements of the DEPARTMENT. Having determined the proposed project is eligible for funds from the DEPARTMENT, the DEPARTMENT hereby offers a grant not to exceed the dollar amount specified in Appendix A (Budget Information) to the GRANTEE subject to the GRANTEE's agreement to carry out its terms and conditions. This agreement is to aid in the financing of the project described in the attached Appendix A. No additional payment shall be made under this agreement except by written amendment.

B. PAYMENT OF GRANT FUNDS TO GRANTEE

1. Payment for major project elements described in Appendix A will be disallowed when the GRANTEE's actual costs exceed that element's estimated total eligible cost by more than ten (10) percent without prior written approval.

The DEPARTMENT will not provide reimbursement in excess of the DEPARTMENT's share of the total eligible project cost. The DEPARTMENT's share shall not exceed fifty (50) percent of the total eligible project cost of \$50,000 in cash, including Washington State Sales Tax, where applicable.

2. Requests for payment of eligible funds will be submitted by the GRANTEE on state voucher request forms provided by the DEPARTMENT. Each voucher shall be submitted to the DEPARTMENT along with information which documents the work performed, activities undertaken, and the progress of the project. The voucher request form and supportive documents must itemize all allowable costs by major elements as described in Appendix A. A general guideline for completion of the voucher request form and supportive documents is included in this agreement as Appendix B. Vouchers and supportive documents shall be submitted to: 6619

Department of Ecology
Mail Stop PV-11
Olympia, WA 98504
Attention: Jerry Louthain

3. Payment requests will be submitted at least quarterly and not more often than monthly on a reimbursable basis.
4. All payments are conditioned upon submission to the DEPARTMENT of the above-mentioned itemized state voucher request form, certified by the GRANTEE. All payments will be for delivery of materials and/or services performed within the effective dates of this agreement unless a written modification is obtained.
5. The DEPARTMENT shall reimburse the GRANTEE for fifty (50) percent of the total eligible project cost set forth in Appendix A except for the amount withheld as security for GRANTEE'S performance as specified in Section B.6.
6. Ten (10) percent of each reimbursement payment shall be withheld by the DEPARTMENT as security for GRANTEE'S performance. Monies withheld by the DEPARTMENT as security under the provisions of this paragraph will be paid to the GRANTEE when the project(s) described in Appendix A have been completed, or portions thereof approved according to this agreement.
7. When voucher requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.
8. The GRANTEE shall submit final request(s) for compensation within thirty (30) days after satisfactory completion of the project specified in Appendix A.
9. All payments to the GRANTEE shall be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) shall be refunded to the DEPARTMENT by the GRANTEE.

C. EFFECTIVE DATE AND TIME FOR PERFORMANCE

The effective date of this grant agreement shall be July 1, 1985. Any work performed prior to the effective date of this agreement will be at the sole expense and risk of the GRANTEE.

This agreement shall terminate on June 30, 1987.

D. KICKBACKS

The GRANTEE is prohibited from inducing by any means any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he/she is otherwise entitled by Department of Labor regulations.

E. BIDDING

The GRANTEE shall not advertise for bids for construction until receipt of written approval from the Contract Officer. Contracts for construction and purchase of equipment shall be awarded through a process of competitive bidding, if required by State law. No contract shall be awarded until approved in writing by the DEPARTMENT. The GRANTEE shall retain copies of all bids and contracts awarded for inspection and use by the DEPARTMENT.

F. CONVERSIONS

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 State assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that proportion of the proceeds of the sale, lease, or other conversion, or encumbrance which monies granted pursuant to this agreement bore to the original acquisition, purchase, or construction cost.

G. TERMINATION

1. For Cause: The obligation of the DEPARTMENT 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 to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds thereunder and/or terminate this agreement by giving written notice of termination. A notice shall be given at least five (5) 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.

Notwithstanding the above, the GRANTEE shall not be relieved of liability to the DEPARTMENT for damages sustained by the DEPARTMENT because of any breach of agreement by the GRANTEE. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the GRANTEE is determined.

2. Insufficient Funds: The obligation of the DEPARTMENT to make payments is contingent upon the availability of such funds through legislative appropriation and State allotment.

H. RECOVERY OF PAYMENTS TO GRANTEE

The right of the GRANTEE to retain monies paid to it as reimbursement payments is contingent upon satisfactory completion of the project described in Appendix A. In the event that the GRANTEE fails to perform any obligation required of it by this agreement, and does not complete the project described in Appendix A, the GRANTEE shall repay to the DEPARTMENT all grant funds disbursed to the GRANTEE. In addition, the GRANTEE shall pay interest on the amount of outstanding funds disbursed computed at 12 percent per annum. Interest shall accrue from the time the DEPARTMENT demands repayment of funds. 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 any such property.

I. COMPLIANCE WITH APPLICABLE LAWS, AND REGULATIONS

1. The GRANTEE shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits, such as, but not limited to, compliance with State Environmental Policy Act, Shoreline Management Act, and the State Flood Control Zone Act. Plans and specifications approved by the County Engineer must be submitted to the DEPARTMENT for approval in consultation with the departments of Fisheries and Game. Prior to construction, the GRANTEE shall secure the necessary permits required by authorities having jurisdiction over the project, provide assurance that all permits have been secured, and make copies available to the DEPARTMENT if requested.
2. Discrimination, Labor, and Job Safety - The GRANTEE shall fully comply with all applicable federal, state, and local laws, and regulations related to discrimination, labor, and job safety. Further, the GRANTEE shall affirmatively support the State Minority and Women Owned Businesses policies.
3. Industrial Insurance - The GRANTEE certifies full compliance with all state industrial insurance laws where applicable. If the GRANTEE fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section H.1., herein.

J. INDEMNIFICATION

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other overhead costs related to the project described herein, except as provided in Appendix B.
2. To the extent the Constitution and Laws of the State of Washington permit, the GRANTEE shall indemnify and hold harmless the DEPARTMENT from any claim of liability arising out of the project described in this agreement, or from operation of the facilities or equipment obtained.

K. CONTRACT OFFICER

1. The extent and character of all work and services to be performed by the GRANTEE shall be subject to the review and approval of the DEPARTMENT through the Contract Officer to whom the GRANTEE shall report and be responsible. In the event that there shall be any dispute with regard to the extent and character of the work to be done, the determination of the Contract Officer as to the extent and character of the work to be done shall govern. The GRANTEE shall have the right to appeal as provided for below.
2. For the purpose of this agreement, the Contract Officer shall be Jerry Louthain unless otherwise changed in writing by the Assistant Director of the Office of Water and Land Resources.

L. 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 Contract Officer, who shall provide a written statement of decision to the GRANTEE. The decision of the Contract Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such statement, the GRANTEE mails or otherwise furnishes to the Contract Officer a written appeal addressed to the Director of the DEPARTMENT. In connection with appeal of any proceeding under this clause, the GRANTEE shall be afforded an 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 under Chapter 43.21B RCW. Pending final decision of a dispute hereunder, the GRANTEE shall proceed diligently with the performance of the agreement and in accordance with the decision rendered.

M. AUDITS AND INSPECTIONS

1. The GRANTEE shall maintain complete program and financial records relating to the construction or purchases of equipment financed in part by this agreement. Engineering documentation and field inspection reports of all construction work accomplished with this agreement shall be maintained by the GRANTEE. Such records shall clearly indicate total receipts and expenditures by fund source and object classification. All records shall be available to the DEPARTMENT for such use as the DEPARTMENT sees fit.
2. Engineering documentation of construction, and all financial records prepared by the GRANTEE shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative for a period of at least three years after the final grant payment or any dispute hereunder; and in the event any such audits determine discrepancies in the financial records adjustments and/or clarification shall be made 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 thereafter, or following any dispute thereunder.
4. The GRANTEE shall keep all records in a manner which will provide an audit trail to the expenditures for which State support is provided, and all records shall be kept in a common file so as to facilitate audits and inspections.

N. MISCELLANEOUS PROVISIONS

1. Copyrights and Patents: When the GRANTEE creates any copyrightable material(s), 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 governmental purposes.
2. Tangible Property Rights: The DEPARTMENT's current edition of "Financial Guidelines for Grants Management," Ch. 4, shall control the utilization 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.

3. Conflict of Interest: No officer, member, agent, or employee 6619 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.
4. Assignments: No right or claim of the GRANTEE arising under this agreement shall be transferred or assigned by the GRANTEE.
5. 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 of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.
6. Subgrantee Compliance: The GRANTEE is responsible for ensuring that all subgrantees, contractors, etc., comply with the terms of this agreement.

O. ALL WRITINGS CONTAINED HEREIN

This agreement, appendices, 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 GRANTEE and DEPARTMENT and made a part of this agreement; EXCEPT, that in relation to change of Contract Officer as set forth in Section K the DEPARTMENT may modify or amend this agreement without the signature of the GRANTEE.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

GRANTEE

DATE
ASSISTANT DEPUTY DIRECTOR
DEPARTMENT OF ECOLOGY

DATE
GRANTEE TITLE
ORGANIZATION

Approved as to form this ___ day
of _____, 19__.

ASSISTANT ATTORNEY GENERAL

Grant No. _____

Accounting Data _____

APPENDIX A

SPECIAL CONDITIONS

Design/Construction. 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.

Payments toward construction will not be made until the plans and specifications have been approved by the DEPARTMENT.

Construction Schedule. Within thirty (30) days after the award of the construction contract, the GRANTEE will submit to the DEPARTMENT a copy of the actual construction schedule, by month, for the entire construction period.

PROJECT DESCRIPTION

MUNICIPAL CORPORATION (Applicant) City of Kent

GRANTEE Name: King County

Project Title: Green River Bank Riprap, South 212th Street Bridge Vicinity

Project Description:

This project consists of providing bank protection to reduce the risk of future slope failure and to repair existing undercut areas. The existing slope shall be finished to not greater than 1:1 to provide stability and to eliminate existing undercut areas. The slopes will then be covered with a geotextile and a cross rock filter layer. A riprap layer shall then be placed at a maximum slope of 1.25:1. Existing asphalt pathways shall be restored.

Project Completion Date: _____

Estimated Costs for Eligible Work Items

<u>Work Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Cost</u>
Riprap	Tons	3955	20	\$79,100
Crushed Rock	Tons	504	15	7,560
Geotextile	Sq. Yd.	1314	3.50	4,600
Excavation	CY	270	12	3,240
Asphalt Paving	Tons	50	40	2,000

Total \$96,500

APPENDIX A

BUDGET INFORMATION

6619

MAJOR PROJECT ELEMENTS

Estimated Eligible Cost

1. Work Items	\$ 96,500.00
2. Inspection fee	2,000.00
3. Equipment rental	500.00
4. Miscellaneous	1,000.00
TOTAL ESTIMATED ELIGIBLE PROJECT COST	<u>\$100,000.00</u>

Appendix B

Flood Control Assistance Account Project Grant Agreement

GUIDELINE:
SUBMISSION OF A19-1 VOUCHER
AND SUPPORTIVE DOCUMENTS

The purpose of this appendix is to assist the CONTRACTOR/GRANTEE in determining allowable items of cost. If the CONTRACTOR/GRANTEE fails to name an item of cost in the request for payment, this does not imply it is either allowable or unallowable; rather, determination of allowability shall be based upon the treatment of similar or related items of cost.

1. Factors Allowing Cost

In order to be allowable, costs must:

- a. Be necessary and reasonable and not be a general expense,
- b. Not be prohibited by any laws or regulations,
- c. Conform to any cost limitations or exclusions,
- d. Be consistent with state and federal (when applicable) policies, regulations and procedures,
- e. Be given consistent treatment through uniform accounting principles,
- f. Not be allocated to or included as a cost of any other state/federally financed program, past, or present,
- g. Be net of all allowable credits.

2. Certification

To assure expenditures are proper, vouchers requesting payment must be certified by the CONTRACTOR/GRANTEE. Form A19-1 has a certification provision which must be signed by the CONTRACTOR/GRANTEE or its authorized representative before payment will be allowed.

3. Credits

The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the CONTRACTOR/GRANTEE, must be credited to the DEPARTMENT, either as a cost reduction, or by cash refund, as appropriate.

4. Unforeseen/Emergency Expenditures

A contingency line item providing a specified amount for reimbursements for unforeseen expenditures may be made only with the prior written approval of the DEPARTMENT.

5. Allowable Expenditures

No request for payment will be honored for those expenditures incurred before the commencement date of the agreement, or after termination of such agreement, unless otherwise agreed upon in writing.

6. Contract Provisions Controlling

Where any discrepancies between the specific provisions of the agreement and the applicable cost principles arise, the agreement provisions shall apply.

The DEPARTMENT will not provide reimbursement in excess of the DEPARTMENT'S share of the total eligible project cost.

7. Phone Number

The CONTRACTOR/GRANTEE must include his business phone number along with the documents requesting payment to expedite processing should questions arise.

8. Instructions - Form A19-1

Specific instructions for filling out the A19-1 voucher and supportive documents are found in "Financial Guidelines for Grants Management," Chapter 6, published by the Washington State Department of Ecology (WDOE). A copy of this text is available from the DEPARTMENT and is furnished with the Pre-Application package.

9. Cost Object Breakdown

The documents supporting each request for payment must have a brief concise breakdown of each cost object under the agreement, along with a brief explanation for the charges.

10. Allowable Costs

Generally, whether costs are allowable depends upon cost principles applicable to the particular project agreement. However, certain costs are commonly allowed. These include:

- advertising
- compensation for personal services
- construction inspection
- depreciation and use allowances
- employee fringe benefits
- employee morale, health and welfare
- maintenance and repair
- materials and supplies
- taxes
- transportation
- travel related directly to this grant

Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

Where any questions involving allowability of costs arise, the DEPARTMENT contracts officer should be consulted; otherwise, certain costs may be disallowed.

11. Payroll and Distribution of Time

Amounts charged for personal service, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with the generally accepted practice of the state or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one cost objective must be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort. Such time records must be certified by the project director. Such certified records are the only allowable source document for charging and reporting personnel expenditures.

12. Costs Allowable With Prior Written Approval

Certain costs require prior written approval of the DEPARTMENT. Costs requiring prior approval include indirect costs, some direct costs such as equipment, insurance and indemnification, and preagreement costs. Again, reference to cost principles and consultation with DEPARTMENT officials should eliminate any questions and possible rejection of incurred costs.

13. Unallowable Costs

Certain costs are commonly disallowed. These unallowable costs include:

- bad debts
- contingencies
- contributions and donations
- entertainment
- finances and penalties
- interest and other financial costs
- project planning work
- project design work
- underrecovery of costs under grant agreements
- See Section XI, D.3., "Financial Guidelines For Grants Management"

Once again, whether a cost is unallowable depends upon the applicable cost principles to the agreement. Failure to clarify any question whether a cost is unallowable or allowable may result in its disallowance by the DEPARTMENT.

Interlocal Agreement for
Flood Control Assistance Account Program (FCAAP)
Between
King County
and
City of Kent

THIS is a binding agreement entered into by and between the County of King, hereinafter referred to as the COUNTY, and City of Kent, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the CITY.

CITY'S legal address and telephone number:

City of Kent
220 Fourth Ave. S.
Kent, Washington 98032

THE PURPOSE of this agreement is to provide funds from the State of Washington, Department of Ecology, hereinafter referred to as the "DEPARTMENT", to the CITY from the COUNTY to perform the flood control maintenance work described in Appendix A2 pursuant to Chapter 86.26 RCW and Chapter 173.145 WAC, and to aid in fulfilling the CITY'S obligations under said chapter pursuant to the Interlocal Cooperation Act, RCW 39.34, et seq.

IT IS THEREFORE MUTUALLY AGREED THAT:

1. COUNTY'S PERFORMANCE

The COUNTY has found that the CITY satisfies the applicable provisions of Chapter 86.26 RCW and Chapter 173-145 WAC, and the requirements of the DEPARTMENT. Having determined the proposed project is eligible for funds from the DEPARTMENT, the DEPARTMENT hereby offers a grant to be administered through the COUNTY not to exceed the dollar amount specified in Appendix A3 (Budget Information) to the CITY subject to the following terms and conditions. This agreement is to aid in the financing of the project described in the attached Appendix A2. No additional payment shall be made under this agreement except by written amendment.

2. PAYMENT OF GRANT FUNDS TO CITY

2.1 Payment for major project elements described in Appendix A3 will be disallowed when the CITY'S actual costs exceed that element's estimated total eligible cost by more than ten (10) percent without prior written approval by the COUNTY.

The COUNTY will not provide reimbursement in excess of the DEPARTMENT'S share of the total eligible project cost. The DEPARTMENT'S share shall not exceed fifty (50) percent of the total eligible project cost of \$100,000 in cash, including Washington State Sales Tax, where applicable.

- 2.2 Requests for payment of eligible funds will be submitted by the CITY on state voucher request forms provided by the COUNTY. Each voucher shall be submitted to the COUNTY along with information which documents the work performed, activities undertaken, and the progress of the project. The voucher request form and supportive documents must itemize all allowable costs by major elements as described in Appendix A3. A general guideline for completion of the voucher request form and supportive documents is included in this agreement as Appendix B. Vouchers and supportive documents shall be submitted to:

King County Department of Public Works
Surface Water Management
Facilities Maintenance
155 Monroe Avenue N.E.
Renton, WA 98056
Phone: (206) 255-2531
Attn: Jerry Creek, Manager

- 2.3 Payment requests will be submitted at least quarterly and not more often than monthly on a reimbursable basis.
- 2.4 All payments are conditioned upon submission to the COUNTY of the above-mentioned itemized state voucher request form, certified by the CITY. All payments will be for delivery of materials and/or services performed within the effective dates of this agreement unless a written modification is obtained.
- 2.5 The COUNTY shall reimburse the CITY for fifty (50) percent of the total eligible project cost set forth in Appendix A3 except for the amount withheld as security for CITY'S performance as specified in Section 2.6.
- 2.6 Ten (10) percent of each reimbursement payment shall be withheld by the COUNTY as security for CITY's performance. Monies withheld by the COUNTY as security under the provisions of this paragraph will be paid to the CITY when the project described in Appendix A2 has been completed, or portions thereof approved according to this agreement.
- 2.7 When voucher requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.
- 2.8 The CITY shall submit final request(s) for compensation within thirty (30) days after satisfactory completion of the Project specified in Appendix A2.
- 2.9 All payments to the CITY shall be subject to final audit by the COUNTY and any unauthorized expenditure(s) shall be refunded to the COUNTY by the CITY.

3. EFFECTIVE DATE AND DURATION

The effective date of this grant agreement shall be 1 July 1985. Any work performed prior to the effective date of this agreement will be at the sole expense and risk of the CITY. This agreement shall terminate on June 30, 1987.

4. KICKBACKS

The CITY is prohibited from inducing by any means any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he/she is otherwise entitled by Department of Labor regulations.

5. BIDDING

The CITY shall not advertise for bids for construction until receipt of written approval from the Contract Officer. Contracts for construction and purchase of equipment shall be awarded through a process of competitive bidding, if required by State law. No contract shall be awarded until approved in writing by the COUNTY. The CITY shall retain copies of all bids and contracts awarded for inspection and use by the COUNTY.

6. CONVERSIONS

The CITY 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 State assistance was originally approved without prior written approval of the COUNTY. Such approval may be conditioned upon payment to the COUNTY of that proportion of the proceeds of the sale, lease, or other conversion, or encumbrance which monies granted pursuant to this agreement bore to the original acquisition, purchase, or construction cost.

7. TERMINATION

7.1 For Cause: The obligation of the COUNTY to the CITY is contingent upon satisfactory performance by the CITY of all of its obligations under this agreement. In the event the CITY fails 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 notice shall be given at least five (5) 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 CITY under this agreement, at the option of the COUNTY, shall become its property, and the CITY shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the CITY shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY because of any breach of agreement by the CITY. The COUNTY may withhold payments for the purpose of setoff until such time as the exact amount of damages due the COUNTY from the CITY is determined.

- 7.2 Insufficient Funds: The obligation of the COUNTY to make payments is contingent upon the availability of such funds through legislative appropriation and State allotment.

8. RECOVERY OF PAYMENTS TO CITY

The right of the CITY to retain monies paid to it as reimbursement Payments is contingent upon satisfactory completion of the project described in Appendix A2. In the event that the CITY fails to perform any obligation required of it by this agreement, and does not complete the project described in Appendix A2, the CITY shall repay to the COUNTY all grant funds disbursed to the CITY. In addition, the CITY shall pay interest on the amount of outstanding funds disbursed computed at 12 percent per annum. Interest shall accrue from the time the COUNTY demands repayment of funds in writing to the City. Any property acquired under this agreement, at the option of the COUNTY, may become the COUNTY's property and the CITY's liability to repay monies shall be reduced by an amount reflecting the fair market value of any such property.

9. COMPLIANCE WITH APPLICABLE LAWS, AND REGULATIONS

- 9.1 The CITY shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits, such as, but not limited to, compliance with State Environmental Policy Act, Shoreline Management Act, and the State Flood Control Zone Act. Plans and specifications approved by the County Engineer Department must be submitted to the DEPARTMENT for approval in consultation with the departments of Fisheries and Game. Prior to construction, the CITY shall secure any necessary permits required by authorities having jurisdiction over the project, provide assurance that all permits have been secured, and make copies available to the COUNTY if requested. The CITY's Engineer is deemed to be the ex officio local flood control engineer for any flood control work prosecuted by his municipality.
- 9.2 Discrimination, Labor, and Job Safety - The CITY shall fully comply with all applicable federal, state, and local laws, and regulations related to discrimination, labor, and job safety. Further, the CITY shall affirmatively support the State Minority and Women Owned Businesses policies.
- 9.3 Industrial Insurance - The CITY certifies full compliance with all state industrial insurance laws where applicable. If the CITY fails to comply with such laws, the COUNTY shall have the right to immediately terminate this agreement for cause as provided in Section 7.1, herein.

10. INDEMNIFICATION

10.1 The COUNTY shall in no way be held responsible for payment of salaries, consultant's fees, and other overhead costs related to the project described herein, except as provided in Appendix B.

10.2 To the extent the Constitution and Laws of the State of Washington permit, the CITY shall indemnify and hold harmless the COUNTY from any claim of liability arising out of the Project described in this agreement, or from operation of the facilities or equipment obtained.

11. CONTRACT OFFICER

11.1 The extent and character of all work and services to be performed by the CITY shall be subject to the review and approval of the COUNTY through the Contract Officer to whom the CITY and its agents shall report and be responsible. In the event that there shall be any dispute with regard to the extent and character of the work to be done, the determination of the Contract Officer as to the extent and character of the work to be done shall govern. The CITY shall have the right to appeal as provided for below.

11.2 For the purpose of this agreement, the Contract Officer shall be Jerry Creek, or his/her designee.

12. 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 Contract Officer, who shall provide a written statement of decision to the CITY. The decision of the Contract Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such statement, the CITY mails or otherwise furnishes to the Contract Officer a written appeal addressed to the Director of the County's Public Works Department. In connection with appeal of any proceeding under this clause, the CITY shall be afforded an 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 King County. Review of the decision of the Director will not be sought under Chapter 43.21B RCW. Pending final decision of a dispute hereunder, the CITY shall proceed diligently with the performance of the agreement and in accordance with the decision rendered.

13. AUDITS AND INSPECTIONS

13.1 The CITY shall maintain complete program and financial records relating to the construction or purchases of equipment financed in part by this agreement. Engineering documentation and field inspection reports of all construction work accomplished with this agreement shall be maintained by the CITY. Such records shall

clearly indicate total receipts and expenditures by fund source and object classification. All records shall be available to the COUNTY for such use as the COUNTY sees fit.

- 13.2 Engineering documentation of construction, and all financial records prepared by the CITY shall be open for audit or inspection by the COUNTY or by any duly authorized audit representative for a period of at least three years after the final grant payment or any dispute hereunder; and in the event any such audits determine discrepancies in the financial records adjustments and/or clarification shall be made accordingly.
- 13.3 All work performed under this agreement and any equipment purchased, shall be made available to the COUNTY 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 thereafter, or following any dispute thereunder.
- 13.4 The CITY shall keep all records in a manner which will provide an audit trail to the expenditures for which State support is provided, and all records shall be kept in a common file so as to facilitate audits and inspections.

14. MISCELLANEOUS PROVISIONS

- 14.1 Copyrights and Patents: When the CITY creates any copyrightable material(s), or invents any patentable property, the CITY may copyright or patent the same, but the COUNTY 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 governmental purposes.
- 14.2 Tangible Property Rights: The Department of Ecology's current edition of "Financial Guidelines for Grants Management," Ch. 4, shall control determinations regarding the utilization and disposition of all real and personal property purchased wholly or in part with funds furnished by the State Department of Ecology to the COUNTY in the absence of State/Federal statute(s), regulation(s), or policy(s) to the contrary.
- 14.3 Conflict of Interest: No officer, member, agent, 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.
- 14.4 Assignments: No right or claim of the CITY arising under this agreement shall be transferred or assigned by the CITY.

14.5 Waiver: Waiver of any CITY 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 of this agreement unless stated as such in writing by the authorized representative of the COUNTY.

14.6 Subgrantee Compliance: The CITY is responsible for ensuring that all subgrantees, contractors, etc., comply with the terms of this agreement.

15. ALL WRITINGS CONTAINED HEREIN

This agreement and appendices, Appendix A1, Special Conditions, Appendix A2, Project Description, Appendix A3, Budget Information, and Appendix B, Guideline: Submission of A19-1 Voucher and Supportive Documents, 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; EXCEPT, that in relation to change of Contract Officer as set forth in Section 11 the COUNTY may modify or amend this agreement without the signature of the CITY.

16. FILING OF AGREEMENT

Upon execution of this agreement, the parties shall file the agreement with their respective clerks or Office of Records after its effective date as provided in Paragraph 18 below.

17. SEVERABILITY

If any part, paragraph, section or provision of this Agreement is adjudged to be invalid by any court of competent jurisdiction, such adjudication shall not affect the validity of any remaining section, part or provision of this Agreement.

18. EXECUTION

This Agreement, or amendments hereto, shall be executed on behalf of each party by its duly authorized representative and pursuant to an appropriate motion, resolution or ordinance of each party. This Agreement, and any amendment thereto, shall be deemed to be adopted and executed upon the date of signature by the last so authorized representative.

IN WITNESS WHEREOF the undersigned hereby affix their hands and seals.

CITY OF KENT

COUNTY OF KING, WASHINGTON

By: [Signature]

By: _____

By: _____

By: _____

Date 4-28-86

Date _____

SPECIAL CONDITIONS

Design/Construction. 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 County Engineer and State Department of Ecology.

Payments toward construction will not be made until the plans and specifications have been approved by the COUNTY.

Construction Schedule. Within thirty (30) days after the award of the construction contract, the CITY will submit to the COUNTY a copy of the actual construction schedule, by month, for the entire construction period.

APPENDIX A2
PROJECT DESCRIPTION

Applicant Name: CITY OF KENT, a municipal corporation

Project Title: Green River Bank Riprap, South 212th Street Bridge Vicinity

Project Description:

This project consists of providing bank protection to reduce the risk of future slope failure and to repair existing undercut areas. The existing slope shall be finished to not greater than 1:1 to provide stability and to eliminate existing undercut areas. The slopes will then be covered with a geotextile and a cross rock filter layer. A riprap layer shall then be placed at a maximum slope of 1.25:1. Existing asphalt pathways shall be restored.

Project Completion Date: June 30, 1987

Estimated Costs for Eligible Work Items

<u>Work Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Cost</u>
Riprap	Tons	3955	20	\$79,100
Crushed Rock	Tons	504	15	7,560
Geotextile	Sq. Yd.	1314	3.50	4,600
Excavation	CY	270	12	3,240
Asphalt Paving	Tons	50	40	2,000
			Total	<u>\$96,500</u>

BUDGET INFORMATIONMAJOR PROJECT ELEMENTSEstimated Eligible Cost

1. Work Items	\$96,500.00
2. Inspection fee	2,000.00
3. Equipment rental	500.00
4. Miscellaneous	<u>1,000.00</u>
TOTAL ESTIMATED ELIGIBLE PROJECT COST	<u>\$100,000.00</u>

Flood Control Assistance Account Project Grant Agreement

GUIDELINE:
SUBMISSION OF A19-1 VOUCHER
AND SUPPORTIVE DOCUMENTS

The purpose of this appendix is to assist the CITY in determining allowable items of cost. If the CITY fails to name an item of cost in the request for payment, this does not imply it is either allowable or unallowable; rather, determination of allowability shall be based upon the treatment of similar or related items of cost.

1. Factors Allowing Cost

In order to be allowable, costs must:

- a. Be necessary and reasonable and not be a general expense,
- b. Not be prohibited by any laws or regulations,
- c. Conform to any cost limitations or exclusions,
- d. Be consistent with state and federal (when applicable) policies, regulations and procedures,
- e. Be given consistent treatment through uniform accounting principles,
- f. Not be allocated to or included as a cost of any other state/federally financed program, past, or present,
- g. Be net of all allowable credits.

2. Certification

To assure expenditures are proper, vouchers requesting payment must be certified by the CITY. Form A19-1 has a certification provision which must be signed by the CITY or its authorized representative before payment will be allowed.

3. Credits

The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the CITY, must be credited to the COUNTY, either as a cost reduction, or by cash refund, as appropriate.

4. Unforeseen/Emergency Expenditures

A contingency line item providing a specified amount for reimbursements for unforeseen expenditures may be made only with the prior written approval of the COUNTY.

5. Allowable Expenditures

No request for payment will be honored for those expenditures incurred before the commencement date of the agreement, or after termination of such agreement, unless otherwise agreed upon in writing.

6. Contract Provisions Controlling

Where any discrepancies between the specific provisions of the agreement and the applicable cost principles arise, the agreement provisions shall apply.

The COUNTY will not provide reimbursement in excess of the COUNTY'S share of the total eligible project cost.

7. Phone Number

The CITY must include its business phone number along with the documents requesting payment to expedite processing should questions arise.

8. Instructions - Form A19-1

Specific instructions for filling out the A19-1 voucher and supportive documents are found in "Financial Guidelines for Grants Management," Chapter 6, published by the Washington State Department of Ecology (WDOE). A copy of this text is available from the Washington State Department of Ecology.

9. Cost Object Breakdown

The documents supporting each request for payment must have a brief concise breakdown of each cost object under the agreement, along with a brief explanation for the charges.

10. Allowable Costs

Generally, whether costs are allowable depends upon cost principles applicable to the particular project agreement. However, certain costs are commonly allowed. These include:

- advertising
- compensation for personal services
- construction inspection
- depreciation and use allowances
- employee fringe benefits
- employee morale, health and welfare
- maintenance and repair
- materials and supplies
- taxes
- transportation
- travel related directly to this grant

Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

Where any questions involving allowability of costs arise, the COUNTY's contracts officer should be consulted; otherwise, certain costs may be disallowed.

11. Payroll and Distribution of Time

Amounts charged for personal service, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with the generally accepted practice of the state or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one cost objective must be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort. Such time records must be certified by the project director. Such certified records are the only allowable source document for charging and reporting personnel expenditures.

12. Costs Allowable With Prior Written Approval

Certain costs require prior written approval of the COUNTY. Costs requiring prior approval include indirect costs, some direct costs such as equipment, insurance and indemnification, and preagreement costs. Again, reference to cost principles and consultation with COUNTY officials should eliminate any questions and possible rejection of incurred costs.

13. Unallowable Costs

Certain costs are commonly disallowed.

These unallowable costs include:

- bad debts
- contingencies
- contributions and donations
- entertainment
- finer and penalties
- interest and other financial costs
- project planning work
- Project design work
- underrecovery of costs under grant agreements
- See Section XI, D.3., "Financial Guidelines For Grants Management"

Once again, whether a cost is unallowable depends upon the applicable cost principles to the agreement. Failure to clarify any question whether a cost is unallowable or allowable may result in its disallowance by the COUNTY.