

# Ecology Grant Agreement No. G1200303

between the

State of Washington Department of Ecology and the

King County Flood Control Zone District

## Project: Boeing Levee Improvements

THIS is a binding agreement entered into by and between the State of Washington, Department of Ecology, (PO Box 47600, Olympia, Washington, 98504-7600) hereinafter referred to as the "DEPARTMENT" or as "ECOLOGY" and the King County Flood Control Zone District, hereinafter referred to as the "RECIPIENT" to carry out the activities described herein as authorized by the 2011 Washington State Legislature, §3035 of the capital budget.

**Recipient Name:** King County Flood Control Zone District  
Water and Land Resources Division  
201 South Jackson, Suite 600  
Seattle, WA 98104-3855

**Recipient Project Coordinator:** Jennifer Rice  
Telephone Number: 206-263-0153  
e-mail address: [Jennifer.Rice@KingCounty.gov](mailto:Jennifer.Rice@KingCounty.gov)

**Fiscal Contact for Recipient:** Katrina Johnston  
Telephone: 206-296-1963  
e-mail address: [Katrina.Johnston@Kingcounty.gov](mailto:Katrina.Johnston@Kingcounty.gov)

**Payee on Warrant:** King County Flood Control Zone District  
(address as above)

**Project Officer for the Department:** Scott McKinney  
SEA Program – HQ  
PO Box 47600  
Olympia, WA 98504-7600  
Phone (360) 407-6131  
FAX (360) 407-7162  
e-mail [Scott.McKinney@ecy.wa.gov](mailto:Scott.McKinney@ecy.wa.gov)

The source of funds provided by the DEPARTMENT are from the 2011-2013 Washington State §3035 Capital Budget for the Boeing Levee.

Maximum Eligible Project Cost: \$2,070,000  
Maximum State Grant: \$2,070,000

State Maximum Cost Share Rate: 100% UP TO a maximum State Share of \$2,070,000.

This agreement is effective from July 1, 2011 through June 30, 2013.

## Scope of Work

### **Project Title: Kent Valley Boeing Levee Improvements**

**Description:** The Recipient will execute an interlocal agreement with the City of Kent to carry out the scope of this work. The project involves improvements to the Boeing Levee which is on the right (eastern) bank of the Green River from River Mile (RM) 17.00 to RM 17.84 in the City of Kent. The improvements to the levee will provide protection from high flows in the Green River. The majority of levee improvements are located on a City of Kent Park, Three Friends Fishing Hole, located just south of the South 200<sup>th</sup> Street Bridge. A project location map is included as Exhibit A.

The current state of the levee threatens the warehouse/industrial sector of the Kent Valley, residential neighborhoods, two railroad corridors, multiple utility corridors, and more. In addition, once the repairs are completed to a safe and federally accreditable condition, a portion of the valley behind the levee that is mapped in the floodplain will be removed from the Federal Emergency Management Agency's (FEMA) floodplain map. Not only will this provide a greater level of safety to this area of the valley, it will relieve businesses and residents from needing to buy flood insurance.

The levee construction work will include building a new earthen levee and levee wall combination behind the existing levee at the northern 1000 feet of the levee reach at the City of Kent's Three Friends Fishing Hole Park. The new levee segment and levee wall will be built to meet FEMA standards for 100-year flood accreditation. To achieve higher levels of flood risk reduction and flood protection, other improvements along the Boeing Levee may include raising the height of the existing levee south of the Tree Friends Fishing Hole Park, or additional work along the river's edge to improve the overall stability and safety of the levee. As grant funds allow, these additional improvements will be included under this grant agreement.

The work will also include analyzing, preparing information, and submitting an accreditation request and responding to questions, comments, and requests for information from FEMA on the accreditation request for the Boeing Levee.

**Work**     **The Recipient may delegate to the City of Kent any obligation, duty or task to perform the following scope of work, but the Recipient retains the ultimate responsibility for terms in this grant agreement.**

**Project:** Boeing Levee, Green River mile 17.00-17.84  
**Location:** Latitude: 47° 25' 19"; Longitude: 122° 15' 52"  
Section 2, Township 22N, Range 4E  
GPS Coordinates: N 157,150,E 1,286,170

## Task 1: Project Coordination and Administration

The Recipient will coordinate throughout the grant period with Ecology, the city of Kent and other federal, state and local agencies, and Indian tribes. In its commitment to provide technical assistance throughout the grant period, Ecology will meet with the Recipient and the City of Kent to present and discuss approaches to floodplain construction issues before work begins.

This Task also covers expenses to administer the grant, including, but not limited to: contracting; contract monitoring; coordination between the Recipient and Kent, and coordination with FEMA and other parties; staff reviews; construction engineering management; etc

**Cost:** \$200,000

**Deliverable:** Progress Reports are due quarterly for both years per the matrix that follows:

Progress Report	Reporting Period	Date Due
First Quarter (Year 1)	August 1 – September 30	October 20
Second Quarter	October 1 – December 31	January 20
Third Quarter (Year 2)	January 1 – March 31	April 20
Fourth Quarter	April 1 – June 30	July 20
First Quarter	July 1 – September 30	October 20
Second Quarter	October 1- December 31	January 20
Third Quarter (Year 3)	January 1 – March 31	April 20
Fourth Quarter	April 1 – June 30	July 20

See Special Terms and Conditions, Paragraph 9 for details on progress reporting and invoicing

## Task 2: Right of Way (ROW) Plans and Property Acquisitions

The Recipient will ensure that the necessary easements required to construct the project are acquired. All properties acquired with State funds will be used to enhance the levee system or used in perpetuity for open space purposes only. Restrictions from future development will be placed on the deeds and will be recorded on the titles. See Exhibit C for the Restrictive Covenant and related documents which shall become part of this acquisition. Ecology shall be in receipt of complete documentation before payment is released for the acquisition.

**Cost:** \$50,000

**Deliverable:** (Two copies) Acquisition Report to include but not limited to:

1. A map showing the location of properties purchased;
2. List of properties with names / addresses acquired
3. Right of Way plans
4. Acquisition documents for each property including:
  - a. Title Reports

- b. Appraisals
- c. Appraisal Reviews
- d. Environmental Assessments
- e. Clean Site Certifications
- f. Closing Statements
- g. Offer Letters
- h. Recorded Deeds and Easements *with* title restrictions
- i. (Digital) photographic documentation of project properties before and after project implementation in sufficient quantity / quality to effectively illustrate project progress / demolition work.

The *Status of Property Acquisitions Report*, see Exhibit D, will be updated and included with each quarterly progress report.

**Date Due:** April 30, 2012

**Task 3: Boeing Levee Improvement Design Plans**

The Recipient will coordinate with City of Kent staff, who will work with the Federal Emergency Management Agency (FEMA) while preparing a detailed set of design plans for construction of the levee system.

**Cost:** \$200,000

**Deliverable:** (Two copies) Design Plans.

**Date Due:** June 30, 2012

**Task 4: Project Permits**

Many of the permits needed for the completion of the project have been obtained, however some coordination will be necessary to acquire all the permits. The Recipient will ensure that the remaining permits will be issued in a timely manner.

**Permit Schedule**

The following permits have been, or will be, obtained.

Permit	Work Dates	
	Start	End
SEPA	11/18/11	1/18/12
NPDES Construction – Wash. Dept. of Ecology	1/3/12	3/1/12
Hydraulic Project Approval – WDF&W	2/1/12	2/28/12
Shoreline Substantial Development	1/3/12	6/30/12
Shoreline Conditional Use Permit	1/3/12	6/30/12
Flood Zone Permit	1/3/2012	3/1/2012

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King County Flood Control Zone District  
Project: Boeing Levee Improvements

**Cost:** \$100,000

**Deliverable:** (Two copies) All Permits

**Date Due:** June 30, 2012

### **Task 5: Construction**

Project construction will be conducted in accordance with approved plans, specifications, permits, and generally accepted engineering practices. A contractor will be hired to construct the levee to meet FEMA standards for 100 year flood levee certification.

**Cost:** \$1,250,000

- Deliverables:**
- ① Two copies: As-built drawings, signed and sealed by a professional engineer licensed in the State of Washington.
  - ② Two copies: Final project summary report, signed by the Project Engineer declaring that the project was, to the best of his/her knowledge, constructed and completed in accordance with the construction plans and specifications and generally accepted engineering/construction practice.
  - ③ Two sets: Digital photographic documentation of the project before and after construction in sufficient quantity to effectively illustrate important phases of construction and project progress.

**Date Due:** June 30, 2013

### **Task 6: Boeing Levee Accreditation**

Project accreditation will be conducted in accordance with federal code requirements as administered by FEMA. Consultants have been hired and are preparing analysis and documentation for a Conditional Letter of Map Revision package which will be reviewed by FEMA. Additional studies and responses to questions and comments may be necessary.

**Cost:** \$270,000

**Deliverable:** FEMA Accreditation

**Date Due:** June 30, 2013

**Schedule**

- Task 1: Project Coordination and Administration
- Task 2: Right of Way Plans and Property Acquisitions
- Task 3: Boeing Levee Improvement Design Plans
- Task 4: Project Permits
- Task 5: Boeing Levee Construction
- Task 6: Boeing Levee Accreditation

Task	2011					2012										2013							
	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
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**Budget**

**Budget Conditions**

1. **Project Administration:** For the administration of this agreement the RECIPIENT must follow the current edition of the Administrative Requirements for Ecology Grants and Loans (Yellow Book).
2. **Invoicing:**
  - Grants are awarded on a reimbursable basis. The Recipient initially pays project costs in full. Upon presentation of an invoice to Ecology, Ecology's share of the project is reimbursed to the Recipient.
  - Expenditures will be monitored by the Ecology Fiscal Office for compliance with the budget (see below). Budget deviations are allowed between tasks (e.g., a grantee may spend less money on one task and more on another), but in no circumstances may the state share of the project cost be exceeded without a prior written amendment. When submitting invoices to Ecology, **the RECIPIENT shall itemize all costs by task** and provide subtotals by task on Ecology's Form C2, Voucher

Support Form. All payment requests must have forms A, B, C (and D if applicable), be accompanied by supporting invoicing documents a commensurate progress report, and receive Ecology Project Officer approval before payment can be released.

**NOTE:** For payment requests, the RECIPIENT must use the Ecology forms contained in the Yellow Book. Otherwise, Ecology will return requests to the RECIPIENT for submittal on the correct forms.

- Forms - <http://www.ecy.wa.gov/biblio/9118A.html>
- Yellow Book - <http://www.ecy.wa.gov/biblio/9118.html>

- The RECIPIENT must **maintain complete backup documents** including but not limited to all invoiced costs and time sheets - signed and dated by employee and supervisor. The RECIPIENT must keep these expenses in grant files according to budget task for a period of three years after project completion and make them available at any time for inspection by the DEPARTMENT.
  - Requests for reimbursement must be **submitted at least quarterly** but not more than once per month by the RECIPIENT on state invoice voucher forms. Financial reports will be submitted 45 days after the quarter closes. The **indirect rate must not exceed 25 percent of direct (staff)** labor and benefit costs. This rate covers space utilities, miscellaneous copying, telephone, motor pool, janitorial services, records storage, rental, county fiscal and legal services, etc. Items not included in this list must be reported with the first payment request and must remain consistent for the life of the grant.
  - **Right to Audit:** The Recipient agrees that payment(s) made under this grant shall be subject to reduction for amount charged thereto which are found after audit examination not to constitute allowable costs under this grant. The Recipient shall refund by check payable to the DEPARTMENT the amount of such reduction of payments under completed or terminated grants..
  - **Final payment** of grant projects is contingent on receipt of viable deliverables as listed in this grant agreement. A final invoice will be submitted 45 days after the final quarter of the grant agreement.
2. **Budget** (for RECIPIENT reporting and Ecology tracking purposes):  
 The source of funds provided by the DEPARTMENT are from the 2011-2013 Washington State Legislature, §3055 Capital Budget for the Boeing Levee.

Maximum Eligible Project Cost: \$2,070,000  
 Maximum State Grant: **\$2,070,000**

3. **Estimated Costs**

Work Item	Cost
Task 1 Project Coordination & Administration	\$200,000
Task 2 Right-of-way Plans & Property Acquisition	50,000
Task 3 Boeing Levee Design Plans	200,000
Task 4 Project Permits	100,000
Task 5 Boeing Levee Construction	1,250,000
Task 6 Boeing Levee Accreditation	270,000
<b>PHASE 1 PROJECT COST</b>	<b>\$2,070,000</b>

## Special Terms and Conditions

### AGREEMENT PROVISIONS

1. **Compliance with all Laws:** The Recipient shall comply fully with all applicable federal, state and local laws, orders, regulations and permits.
2. **Restrictions on Lobbying:** The Recipient of this agreement is prohibited from using funds provided by this agreement for lobbying purposes in accordance with the Administrative Requirements for Ecology Grants and Loans, Publication No. 91-18, current edition, Part III, Section G.
3. **Local Decision:** This grant is made in response to a request for financial assistance from the Recipient to undertake flood damage prevention projects. The choice of floodplain management activities addressed by this grant is a local decision made solely by the Recipient. The Recipient is not acting as an agent of the State.
4. **Lawsuits:** The Department shall not be responsible for any non-contractual damage or inverse condemnation claims resulting from the structures or works constructed, repaired, restored, maintained, or improved pursuant to this grant.
5. **Indemnification, Hold Harmless and Duty to Defend**
  - a. 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.
  - b. This paragraph applies to negligence based claims only. All other claims are governed by paragraph 4 of this section. To the extent the constitution and laws of the State of Washington permit, Recipient shall indemnify, defend and hold harmless the State, its agencies, officers and employees, from all claims, suits or actions brought for any or all injuries to persons or property arising from, or as a consequence of, negligent acts or omissions related to the construction, restoration, repair, maintenance, improvement or operation of the structures or works for which this grant is provided. If the structures or works for which this grant is received are a portion of an integrated flood protection system, Recipient agrees to indemnify, defend and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the operation, maintenance, or repair of that integrated flood protection system; PROVIDED, however, that this provision is not intended to and shall not be construed as a waiver by Recipient of any immunities conferred upon the Recipient by RCW 86.12.037 nor is it intended to, and it shall not be construed to, confer any rights upon third parties.

The Recipient will not be required to indemnify, defend, or save harmless the State, its agencies, officers or employees as provided in the preceding paragraph of this section if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the State. Where such claims, suits, or actions result from the concurrent negligence of (a) the State, or the State's agents or employees and (b) the Recipient or the Recipient's agents or employees, the indemnity provisions

provided in the preceding paragraphs of this section shall be valid and enforceable only to the extent of the Recipient's negligence or the negligence of its agents and employees.

- c. To the extent that the constitution and laws of the State of Washington permit, Recipient shall indemnify and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the continued operation, maintenance, or repair of the structures or works constructed, restored, repaired, maintained or improved as a result of this grant. If the structures or works for which this grant is received are portions of an integrated flood protection system, Recipient agrees to indemnify, defend and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the operation, maintenance, or repair of that integrated flood protection system; PROVIDED, however, that the indemnity provisions of this paragraph are not intended to and shall not be construed as a waiver by Recipient of any immunities conferred upon the Recipient by RCW 86.12.037 nor are they intended to, and they shall not be construed to, confer any rights upon third parties. This agreement applies to all non-negligent, non-contractually based claims including, but not limited to, inverse condemnation, contribution, indemnification, trespass and/or nuisance.
6. **IF** this project involves the collection of environmental measurement data, the Recipient needs to prepare a QAPP to ensure the consistent application of quality assurance principles to the planning and execution of all activities involved in generating this data. The plan shall be conducted in accordance with the DEPARTMENT's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, current edition, (Ecology Publication No. 04-03-030) available at <http://www.ecy.wa.gov/biblio/0403030.html>. The plan must describe the monitoring and data quality objectives, procedures, and methodologies which will be used to ensure that all environmental data generated will meet these requirements. The size and complexity of the plan should be cost effective and in proportion to the magnitude of the sampling effort. In developing the plan, the RECIPIENT may also reference Ecology's Technical Guidance for Assessing the Quality of Aquatic Environments, February 1994 (Ecology Publication No. 91-78), available at <http://www.ecy.wa.gov/biblio/9178.html>. The QAPP report shall be limited to a concise description of the environmental measurement aspects of this project. Ecology's Project Officer shall review and approve this plan prior to initiation of work.
- The QAPP plan may describe the following elements:
- Assumptions that direct the collection and analysis;
  - Resources used (such as flights for aerial photos);
  - Resource documents that will be consulted;
  - Field methods employed;
  - Office methods employed;
  - Training level of staff involved in data collection and analysis;
  - Equipment / materials to be used and accurate calibration assurance.
7. **Responsibilities of the Project Coordinator:** The Recipient's Project Coordinator shall be responsible for the procedural obligations under this agreement in addition to his/her duty to coordinate the planning effort hereunder. He/She shall cooperate with all parties concerned in every way possible to promote successful completion of the services described in the Scope of Work.

**8 Coordination with Ecology's Geographical Information System (GIS)**

**IF** this project involves developing GIS data, the Recipient shall coordinate with Ecology's GIS office in an effort to promote compatibility and to encourage sharing of geospatial data. To facilitate data sharing, the Department utilizes the following standards:

<b>Ecology's GIS Standards</b>	
ESRI's ARC/INFO	Current version
ESRI's ArcView	Current Version
Horizontal Datum	NAD 83 HARN
Vertical Datum	NGVD 88
Projection System	Lambert Conic Conformal
Coordinate System	WA State Plane Coordinates
Coordinate Zone	South
Coordinate Units	Feet
Accuracy Standard	+/-40 Feet (1:24,000) minimum accuracy to within a foot of the true North American datum system
Vector Import Format	ArcExport, DLG and/or DXF, shapefiles
Raster Import Format	TIFF, BIL/BIP, RLC, GRID, ERDAS, SID

Whenever possible, the Recipient is encouraged to utilize the standards listed above when compiling data. To discuss the usage of other standards, please contact Jerry Franklin at 360 407-7470; Fax: 360 407-6902; E-Mail: [jfra461@ecy.wa.gov](mailto:jfra461@ecy.wa.gov) or Dan Saul at 360-407-6419; E-Mail: [dsau461@ecy.wa.gov](mailto:dsau461@ecy.wa.gov) for further data sharing and compatibility information.

The RECIPIENT shall submit copies to Ecology's Project Officer with complete documentation as it relates to all digital data, GIS coverages, shape files, related tables and map products.

**9. Quarterly Reporting**

Quarterly Reports are contingent on the effective date of the agreement. For timely preparation and review, quarterly reports shall convey essential information in a simple, concise manner through the use of bulleted summary statements, lists, and tables and include the following:

- a. A comparison of actual accomplishments to the objectives established for the reporting period including a description of issues on fisheries resources;
- b. For any work related to GIS, designate data standard utilized and associated data documentation.
- c. Status of project schedule
- d. Personnel changes
- e. Any difficulties encountered during the quarter.
- f. Environmental benefits being achieved by the project

**Reporting Periods**

<b>Progress Report</b>	<b>Reporting Period</b>	<b>Date Due</b>
First Quarter (Year 1)	August 1 – September 30	October 20
Second Quarter	October 1 – December 31	January 20
Third Quarter (Year 2)	January 1 – March 31	April 20
Fourth Quarter	April 1 – June 30	July 20
First Quarter	July 1 – September 30	October 20
Second Quarter	October 1- December 31	January 20
Third Quarter (Year 3)	January 1 – March 31	April 20
Fourth Quarter	April 1 – June 30	July 20

**For Report Contents and Ecology's form:** Please visit our website at:  
<http://www.ecy.wa.gov/programs/sea/grants/flooddamageprevention>

County or City Name Grant No. G1200__
Project Title Task Title Task Number Date

**10. Identification of Project Materials** - All reports, maps, and other documents published as part of this grant agreement shall carry the name of the RECIPIENT, Ecology's grant number (in the upper right hand corner), title, the specific task number of the product and date centered on the front cover or title page (or in the case of maps, the block which contains the name of the Government unit or Department).

**11. Format for Publications and Brochures: Any (hard copy) publications or brochures** required as a product of this agreement shall conform to minimum standards of size, 8-1/2" x 11" white, recycled paper equivalent in weight to 20 lb. bond, single spaced, printed both sides, no less than 1" margins. Photos, illustrations, and graphs must be of reproducible quality. Any publications or brochures intended for public distribution shall comply with graphic requirements as specified in Ecology's "Publications Handbook", publication number 91-41 and any additional specifications as may be outlined in the Scope of Work.

- 12. Amendments:** A "letter" amendment is a written request by the Recipient to extend the project completion and expiration dates provided that is allowed by the grant program . On the approval of Ecology's project officer, the request is then forwarded to the Ecology Budget and Fiscal Offices for processing. A formal amendment is required for a significant change to the scope of work or an increase to the total eligible project cost and is signed by both parties.
- 13. Minority And Women's Business (MWBE) Participation:** The RECIPIENT agrees to solicit and recruit, to the maximum extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

In the absence of more stringent goals established by the RECIPIENT's jurisdiction, the RECIPIENT agrees to utilize the DEPARTMENT'S goals for minority- and women-owned business participation in all bid packages, request for proposals, and purchase orders. These goals are expressed as a percentage of the total dollars available for the purchase or contract and are as follows:

Construction/Public Works	10% MBE	6%WBE
Architecture/Engineering	10% MBE	6%WBE
Purchased Goods	8% MBE	4%WBE
Purchased Services	10% MBE	4%WBE
Professional Services	10% MBE	4%WBE

Meeting these goals is *voluntary* and no contract award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and the RECIPIENT and ALL prospective bidders or persons submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this Agreement:

- a. Include qualified minority and women's businesses on solicitation lists.
- b. Assure 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 work requirements permit, which will encourage participation of qualified minority and women's businesses.
- e. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

By signing this Agreement, the RECIPIENT certifies that the above steps were, or will be followed. Any contractor engaged by the RECIPIENT under this agreement shall be required to follow the above five affirmative steps in the award of any subcontract(s).

The RECIPIENT shall report to the DEPARTMENT at the time of submitting each invoice, on forms provided by the DEPARTMENT, payments made to qualified firms. The report will address:

- f. Name and state OMWBE certification number of any qualified firm receiving funds under the voucher, including any sub-and/or sub-subcontractors.
  - g. The total dollar amount paid to qualified firms under this invoice.
14. **Right to Audit:** The Recipient agrees that payment(s) made under this grant shall be subject to reduction for amount charged thereto which are found after audit examination not to constitute allowable costs under this grant. The Recipient shall refund by check payable to the DEPARTMENT the amount of such reduction of payments under completed or terminated grants.
15. **Grant Closeout:** The end date for this project is **June 30, 2013**. A grace period of **45 days** for all deliverables and invoice vouchers is allowed as stipulated in the scope of work or by the State Office of Financial Management (OFM) through Ecology's Fiscal Office.
16. **All Writings Contained Herein:** This agreement, the appended "General Terms and Conditions", and the Department's current edition of "Administrative Requirements for Ecology Grants and Loans" contain the entire understanding between the parties, and



**GENERAL TERMS AND CONDITIONS**  
**Pertaining to Grant and Loan Agreements of  
the Department of Ecology**

**A. RECIPIENT PERFORMANCE**

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall only use contractor/consultant assistance if that has been included in the agreement's final scope of work and budget.

**B. SUBGRANTEE/CONTRACTOR COMPLIANCE**

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

**C. THIRD PARTY BENEFICIARY**

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary 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. RECIPIENT 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 RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

**F. COMPLIANCE WITH ALL LAWS**

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

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

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.

3. Wages And Job Safety. The RECIPIENT 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 RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

**G. KICKBACKS**

The RECIPIENT 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 RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object.

All grant/loan 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 RECIPIENT.

2. All grant/loan 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/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT 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/loan termination or dispute resolution hereunder.

4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$500,000 or more in a year in Federal funds. The \$500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

#### **I. PERFORMANCE REPORTING**

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods 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 thirty (30) days following the end of the quarter being reported.

#### **J. COMPENSATION**

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. 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 RECIPIENT and approved as satisfactory by the Project Officer.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT.

When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.

Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. Period of Compensation. Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.

3. Final Request(s) for Payment. The RECIPIENT should submit final requests for compensation within forty-five(45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

4. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT 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.6. herein.

5. Unauthorized Expenditures. All payments to the RECIPIENT may be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.

6. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.

7. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

#### **K. TERMINATION**

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, 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 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 RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

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

2. Insufficient Funds. The obligation of the DEPARTMENT 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 DEPARTMENT 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 K. 1 above.

When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; Provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT 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 DEPARTMENT reserves the right to terminate this agreement.

#### **L. WAIVER**

Waiver of any RECIPIENT 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.

#### **M. PROPERTY RIGHTS**

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT 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 may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.

3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, 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 directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT 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 RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.

b. The RECIPIENT 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 RECIPIENT 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.

**N. SUSTAINABLE PRODUCTS**

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include use of clean energy, and purchase and use of sustainably produced products (e.g. recycled paper). For more information, see [www.ecy.wa.gov/sustainability..](http://www.ecy.wa.gov/sustainability..)

**O. RECOVERY OF PAYMENTS TO RECIPIENT**

The right of the RECIPIENT 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 RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per year from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

**P. PROJECT APPROVAL**

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT 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 Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

**Q. 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 Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT 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 RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

**R. 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.

**S. 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, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

**T. GOVERNING LAW**

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

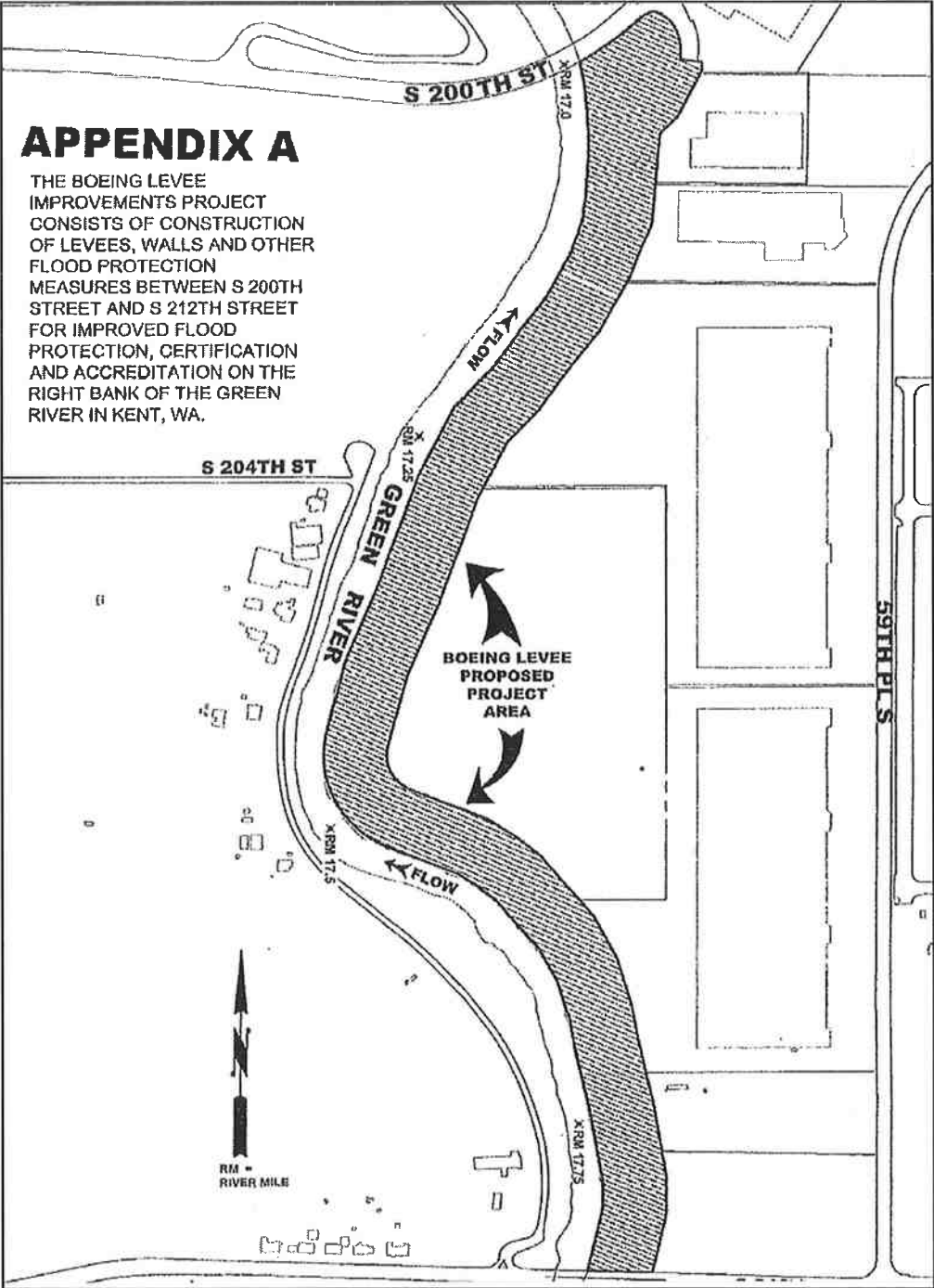
**U. SEVERABILITY**

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.

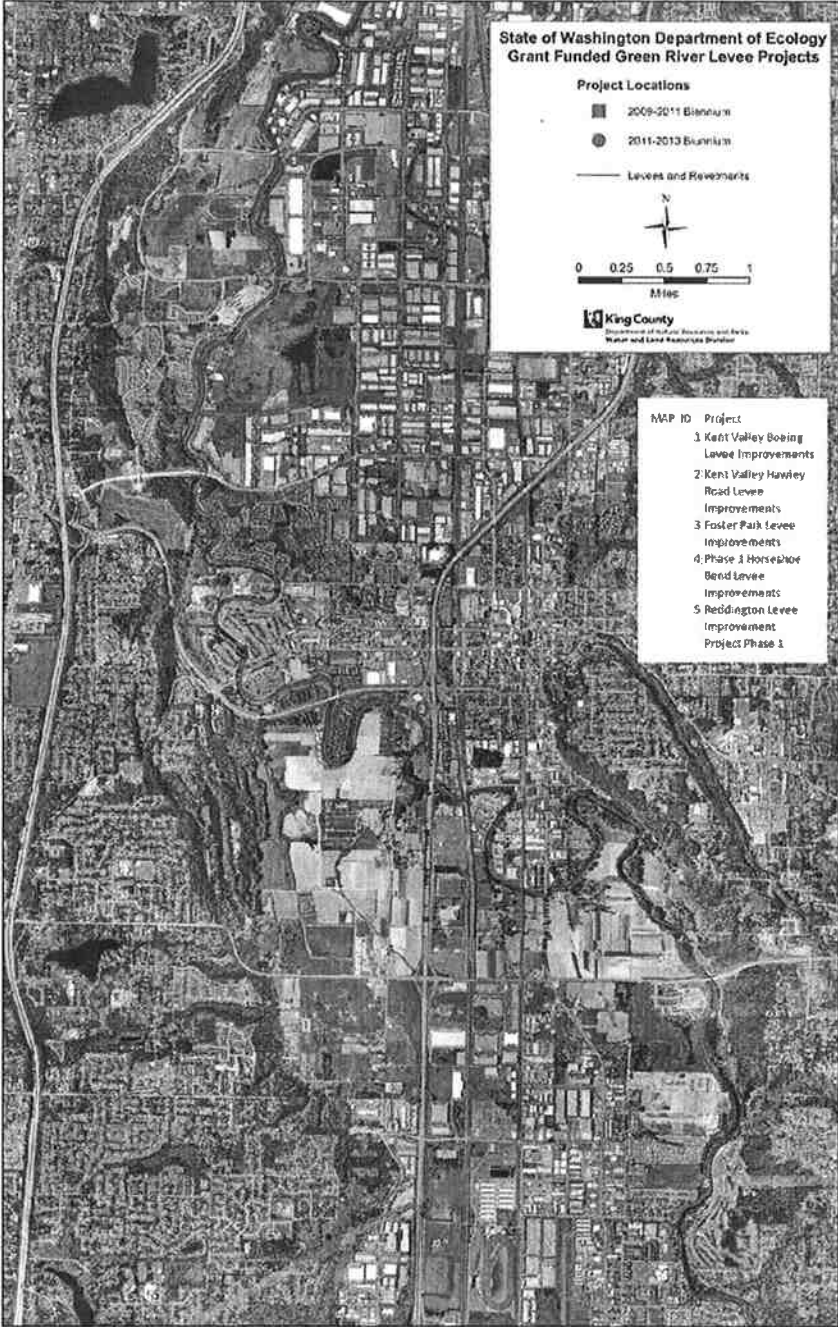
**V. PRECEDENCE**

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 statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions.

**Appendix A: Map (detail)**



# Appendix B: Comprehensive Map Current Levee Projects in the Cities of Kent and Auburn on the Green River (Boeing Levee, Hawley Road Levee, Reddington Levee, Horseshoe Bend Levee)



### Appendix C: Restrictive Covenant Boilerplate for the Green River Levees

Restrictive covenant for the City of \_\_\_\_\_

Tax Lot # \_\_\_\_\_

Upon recording return to:  
Project Manager: \_\_\_\_\_  
Department: \_\_\_\_\_  
City: \_\_\_\_\_  
Address: \_\_\_\_\_

#### Restrictive Covenants

Notice is hereby given that the \_\_\_\_\_ property acquisition, hereinafter referred to as the "\_\_\_\_\_" property, more particularly described in Exhibit "A," is subject to the use restrictions listed below. The purpose of these restrictions is to prevent this land from future development and to ensure that the \_\_\_\_\_ property will be used to enhance the Green River Levee system in perpetuity while allowing public access.

These restrictions are a condition of the grant funding appropriated by the Department of Ecology through the 2011 Washington State Legislature under Section 3035 of Engrossed Substitute House Bill 2020 to repair the Green River Levee that protects communities in the Lower Green River Valley from flooding and are enforceable by Ecology.

Uses of the \_\_\_\_\_ property are restricted as set forth below. These restrictions and obligations are intended to run with the land and shall be binding on the city of \_\_\_\_\_, its heirs, successors, and assigns:

- 1) Enhancing the Green River Levee to protect the Lower Green River Valley from flooding;
- 2) Maintaining vegetation and providing new native vegetation as necessary to prevent levee erosion and to manage the growth of non-native exotic species (such as Reed Canary grass, purple loosestrife, etc.);
- 3) Allowing for inspection, maintenance, repair, and necessary reconstruction of the levees;
- 4) Allowing for levee access;
- 5) Maintaining and improving the levee system for the enhancement of fish and wildlife habitat;
- 6) Providing for open space as deemed appropriate; and
- 7) Restricting acquisition areas from future development other than required for levee improvements.

**Legal Description of Acquisition Area, is attached as Exhibit "A"**



Agreement No. G1000304 between the  
Washington State Department of Ecology and the  
King County Flood Control Zone District  
Project: Boeing Levee Improvements

**Restrictive Covenants Exhibit A:**  
**Legal Description of Acquisition Area,**

## Appendix D: Easement Agreement

WHEN RECORDED RETURN TO:

City of Kent  
220 Fourth Avenue South  
Kent, Washington 98032  
ATTN: PROPERTY SERVICES

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Reference Number of Related Document: \_\_\_\_\_

Grantor: \_\_\_\_\_, a Washington Limited Liability Company

Grantee: CITY of \_\_\_\_\_

Abbreviated Legal Description: \_\_\_\_\_

Additional Legal Description on \_\_\_\_\_

Assessor's Tax Parcel ID No.: \_\_\_\_\_

Project Name: \_\_\_\_\_ Project No. \_\_\_\_\_

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### LEVEE ACCESS, MAINTENANCE AND RIVER PROTECTION EASEMENT AGREEMENT

This Levee Access, Maintenance and River Protection Easement Agreement (Agreement) is by and between \_\_\_\_\_, a Washington Limited Liability Company, licensed to do business in Washington State (Grantor), and the City of Kent, a municipal subdivision of the State of Washington, its successors and/or assigns, agents and licensees (Grantee).

### RECITALS

A. The purpose of this Agreement is to grant certain real property rights to Grantee for purposes of access to a flood control levee and appurtenances, and to describe restrictions upon and rights reserved to the Grantor for activities in the Easement Area.

B. Grantee requires the perpetual and assignable easement, to run with the land, in, on, over and across the land described in Exhibit A for the purpose of constructing, accessing, inspecting, monitoring, reconstructing, restoring, maintaining and repairing the Horseshoe Bend Levee System, including but not limited to the right to remove vegetation, structures, or obstacles as may be necessary within the Easement Area; reserving-to Grantor all uses that do not interfere with Grantee's easement rights

## AGREEMENT

1. Grantor hereby grants to Grantee, for valuable consideration, the receipt of which is hereby acknowledged, perpetual easement rights as described herein that shall run with the land under, over and upon that real property legally described in Exhibit A and approximately shown on Exhibit B (Easement Area).
2. Grantor reserves the right to use the easement area in legally permissible ways that does not interfere with Grantee's rights under this easement, provided that that in no event may Grantor place any structure (chain-link fence shall *not* be considered a structure), or any vegetation other than grass in the easement area.
3. If any damage is caused by Grantee's use of the Easement Area, Grantee shall restore the property to equal or better condition.
4. Grantor agrees not to remove or otherwise alter any improvements installed by Grantee within the Easement Area, including any and/or any flood protection works, without the prior approval of the Grantee.
5. Grantee shall not be responsible for maintaining any vegetation, pavement, fencing or other improvements that Grantor may have installed within the easement area, except that Grantee shall replace or repair any such existing or future improvements if it damaged by Grantee *and* the improvement in question is permissible within the easement area.
6. Nothing in this Agreement shall be deemed to be a grant of access to the general public. The scope of this grant is expressly limited to the Grantee, its employees, contractors, and assigns, for the limited purposes described in this Agreement.
7. Neither this river protection easement or any flood related works constructed or to be constructed within the Easement Area shall be construed as a grant of any rights or as a guarantee of any protection from flooding or flood damage, and nothing contained herein shall be construed as waiving any immunity to liability granted to Grantee by any state statute or otherwise, including but not limited to Chapter 86.12 of the Revised Code of Washington.
8. Without limiting any rights granted by this Agreement, the parties explicitly acknowledge that Grantee may enter the property and have unimpeded access at any time as may be necessary, at Grantee's sole discretion.
9. The rights, conditions, covenants, provisions contained in this Agreement shall inure to the benefit of and are binding upon the parties hereto and their respective heirs, successors, and assigns and shall run with the land.





