

RESOLUTION NO. 2121

A RESOLUTION OF THE KIRKLAND CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO SIGN ON BEHALF OF THE CITY AS CONTRACTING PARTY, THAT CERTAIN I.A.C. PROJECT AGREEMENT: ARCO-MARSH NO. 71-004A.

WHEREAS, the Interagency Committee for Outdoor Recreation of the State of Washington has submitted to the City for its signature as Contracting Party, the formal project agreement for I.A.C. Project No. 71-004A: ARCO-Marsh, and

WHEREAS, said agreement has been signed by the appropriate State Officials,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland as follows:

SECTION 1: The Mayor of the City of Kirkland is hereby authorized and directed to sign on behalf of the City of Kirkland as Contracting Party, that certain project agreement Contract known as I.A.C. Project No. 71-004A: ARCO-Marsh. A copy of said Project agreement has been attached to the original of this Resolution and by this reference incorporated herein.

Section 2. Pursuant to Section 21 of said project agreement, the liaison officer for the City of Kirkland is hereby designated as Allen B. Locke, City Manager, or Dave Brink, Director of Parks and Recreation as his delegate.

PASSED by a majority vote of the Kirkland City Council in regular meeting on the 17th day of April, 1972.

William C. Woods

Mayor

Attest:

T. J. Aduson

Director of Administration and Finance
(Ex officio City Clerk)

PROJECT AGREEMENT

Project Title Arco-Marsh Project Number 71-004A

1. Nature of Agreement. This instrument, in 10 pages, of which this is the first, is intended to set out the terms and conditions, not otherwise appearing in statutes or regulations, of a grant of money from the Outdoor Recreation Account of the General Fund of the State of Washington to a state agency or local public body, herein called the Contracting Party, in aid of an outdoor recreation project. The state agency administering the grant is the Interagency Committee for Outdoor Recreation, herein called the Interagency Committee.

2. Assent of Contracting Party. The Contracting Party by the signature of its authorized representative below agrees to be bound by this instrument:

City of Kirkland
Contracting Party

Approved as to form
This 3rd day
of April, 1972.

By [Signature]

Title Mayor

Date April 17, 1972

[Signature]
Attorney for
Contracting Party

3. Assent of Interagency Committee. The signature of the Administrator of the Interagency Committee below witnesses that the Interagency Committee agrees to be bound by this instrument:

Approved as to form
This 15th day
of February, 1972

STATE OF WASHINGTON
Interagency Committee for
Outdoor Recreation

SLADE GORTON
Attorney General

[Signature]
Administrator, STANLEY E. FRANCIS

[Signature]
Assistant Attorney General

Date: 3/1/72

4. Terms of Agreement. This agreement shall be in effect for the period from October 5, 19 71 until December 31, 19 72.

5. Project Assisted. The outdoor recreation project to be assisted is the one set out in the Contracting Party's Application to the Interagency Committee, dated March 23, 1971, as approved for funding by the Interagency Committee at its meeting on the 24 day of May, 19 71. For identification purposes it is entitled Arco-Marsh Property and briefly described as follows:

This project agreement is for the acquisition of 2.27 acres of land, including more than 288 feet of frontage on Lake Washington.

The local agency matching share (25%) will be met by means of a land donation. The adjacent property owner to this subject property will donate .46 acre of land including 65 feet of lake frontage.

The legal descriptions of the properties to be purchased and donated are attached as page 10.

6. Funding of Project. (a) The total cost of the project covered by this agreement is \$ 188,333.34.

(b) The Interagency Committee agrees to pay \$ 47,083.33 or 25 percent of the total project cost, whichever amount is less, from monies available in the Outdoor Recreation Account of the State General Fund.

(c) In addition, the Interagency Committee agrees to recommend to the Bureau of Outdoor Recreation, United States Department of Interior, that federal matching funds in the amount of \$ 94,166.67 or 50 percent of the estimated cost, whichever amount is less, be approved for this project, and the Interagency Committee agrees to pay to the Contracting Party any federal matching money made available to the State of Washington for the outdoor recreation project covered by this agreement.

7. Contingencies. The duty of the Interagency Committee to approve disbursement of funds pursuant to this agreement is contingent upon strict compliance by the Contracting Party with the terms of this agreement.

The duty of the State of Washington to disburse funds is contingent on the funds being available in the Outdoor Recreation Account of the State General Fund.

8. Requirements of Bureau of Outdoor Recreation. If application has been made to the Bureau of Outdoor Recreation, United States Department of Interior, for assistance from the United States Land and Water Conservation Fund (see paragraph 6 (c)) then a copy of Attachment 1 to Form BOR 8-92, Land and Water Conservation Fund Project Agreement, General Provisions, is attached to this agreement and marked "Attachment A". If United States Land and Water Conservation Fund money is made available for this project, the Interagency Committee will be required to sign an agreement with the Bureau of Outdoor Recreation and the State of Washington and the recipient public body will be bound by the attached provisions. Therefore, if Land and Water Conservation Fund money is involved in this project, then the Contracting Party agrees to faithfully comply with all the requirements of Attachment A.

9. Project Performance. The Contracting Party shall execute and complete the approved project in accordance with the time schedule set forth in the project application. Unless a different schedule appears in the application or in this agreement, the contractor's performance shall commence not later than sixty days after the date this agreement has been signed by the Administrator. Unless otherwise agreed in writing, the Contracting Party's performance shall be completed by the end of the period covered by this agreement.

10. Project Administration. (a) The Contracting Party shall promptly submit such reports as the Administrator of the Interagency Committee may request.

(b) Property and facilities acquired or developed pursuant to this agreement shall be available for inspection by the Administrator upon request.

(c) The Contracting Party shall submit a final report when the project is completed or prematurely terminated, or project assistance is terminated. The report shall include a final accounting of all expenditures and a description of the work accomplished. If the project is not completed, the report shall contain an estimate of the percentage of completion, and shall indicate the degree of usefulness of the completed project, if not previously reported. The report shall contain a final accounting summarizing all expenditures not previously reported and shall include an overall summary for the entire project.

11. Project Termination. All obligations of the Interagency Committee under this agreement may be suspended or canceled, at the option of the Interagency Committee, if any of the following has occurred:

(a) The Contracting Party has failed to make satisfactory progress to complete the project, or will be unable to complete the project, or any portion of it.

(b) The Contracting Party is failing to make satisfactory progress to complete any other project assisted with funds from the Outdoor Recreation Account of the State General Fund, or will be unable to complete another such project, or any portion of it.

(c) The Contracting Party has made misrepresentation in its application or in any other information furnished to the Interagency Committee in connection with this project.

12. Remedies. Because the benefit to be derived from the full compliance with the terms of this agreement is the preservation, protection, and the net increase in the quantity and quality of public outdoor recreation facilities and resources which are available to the people of the state and of the United States, and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished under the terms of this agreement, the Contracting Party agrees that repayment of an amount equal to the amount of assistance extended under this agreement by the state of Washington would be inadequate compensation for any failure to comply with the terms of this agreement. The Contracting Party agrees, therefore, that in the event of a breach of this agreement by it, specific performance shall be an appropriate remedy.

13. Restriction on Conversion of Facility to Other Uses. The Contracting Party shall not at any time convert any property or facility acquired or developed pursuant to this agreement to uses other than those for which state assistance was originally approved without the prior approval of the Interagency Committee, in the manner provided by RCW 43.99.100 for marine recreation land, whether or not the property was acquired with Initiative 215 funds.

14. Use and Maintenance of Assisted Facility. The Contracting Party shall operate and maintain, or cause to be operated and maintained, the property or facilities which are the subject matter of this agreement, as follows:

(a) The property or facilities shall be maintained so as to appear attractive and inviting to the public.

(b) Sanitation and sanitary facilities shall be maintained in accordance with applicable state and local public health standards.

(c) The property or facilities shall be kept reasonably safe for public use.

(d) Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime, so as to prevent undue deterioration that would discourage public use.

(e) The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.

(f) The property or facility shall be open for the use of all segments of the public without restriction because of the race, creed, color, sex, religion, national origin or residence of the user.

15. Reporting. Once a year, the Contracting Party shall certify to the Administrator that the project and all assisted facilities are being retained, operated, maintained, and used in accordance with the terms of this agreement. A report and certification will be partially prepared by the Interagency Committee and will be sent to the Contracting Party for completion. The Contracting Party shall also report on specific matters whenever requested to do so by the Administrator.

16. No Waiver by Interagency Committee. The Contracting Party agrees that failure by the Interagency Committee to insist upon the strict performance of any provision of this project agreement or to exercise any right based upon a breach thereof, or acceptance by it of performance during such breach, shall not constitute a waiver of any of its rights under this project agreement.

17. Identifying Markers. The Interagency Committee reserves the right to display, during the period covered by this agreement and after project completion, appropriate signs or markers identifying the roles of the state and federal agencies participating financially in this project.

18. Disbursement of Assistance. Disbursement of the grant-in-aid shall be made in accordance with WAC 286-24-040, after the Contracting Party has furnished the Administrator such information as he shall deem necessary to show compliance with applicable statutes and rules and this agreement.

19. Provisions Applying Only to Acquisition Projects. The following provisions shall be in force if the project covered by this agreement is for the acquisition of outdoor recreation land or facilities, but shall not apply when the project is for development only:

(a) Evidence of Land Value. Prior to disbursement of the assistance provided for in this agreement, the Contracting Party shall supply evidence establishing to the satisfaction of the Administrator that the land acquisition cost represents a fair and reasonable price for the land in question.

(b) Evidence of Title. The Contracting Party shall be responsible for providing 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 attorneys' opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.

(c) Recital in Deeds. The Contracting Party shall require that every deed or other instrument of conveyance of land acquired for this project with state assistance shall contain the following provision:

"This conveyance is made in consideration of money coming in whole or in part from the Outdoor Recreation Account of the General Fund of the State of Washington. The purchaser takes subject to the obligations of the project agreement contract between it and the Washington State Interagency Committee for Outdoor Recreation dated (insert date of this agreement), copies of which are in possession of the purchaser and the Interagency Committee. The project agreement contract provides, among other

things, that the purchaser shall not at any time convert this property to uses other than for which state assistance was originally granted unless it has obtained prior approval of the Interagency Committee for Outdoor Recreation in the manner required by RCW 43.99.100 for marine recreation land, whether or not the property is marine recreation land."

20. Provisions Applying Only to Development Projects. The following provisions shall be in force if the project covered by this agreement is for development of outdoor recreation land or facilities, but shall not apply when the project is for acquisition only:

(a) Compliance with the Law. The Contracting Party shall comply with all laws and regulations applicable to the development project and to contracts for work done to carry it out.

(b) Compliance with Application. Unless otherwise agreed to in writing by the Administrator, the project shall be carried out according to the plans and proposals submitted by the Contracting Party in, or in connection with, its application for assistance for the project.

(c) Installment Payments. Assistance provided by this agreement for development may be remitted to the Contracting Party in installments, after receipt of billings, and upon satisfactory proof of completion of each stage of construction or development. Determination of appropriate stages for installment payments shall be made by the Administrator, after consultation with the Contracting Party and with the approval of the Bureau of Outdoor Recreation, if United States Land and Water Conservation Funds are involved. Installment payments shall in no event be made more frequently than monthly. An amount equal to 10% of the funding assistance provided the Contracting Party by this agreement for eligible development costs may be withheld until final inspection and certification of project completion is made by the Interagency Committee and approved by the Bureau of Outdoor Recreation.

(d) Contracts for Construction. Contracts for construction shall be awarded through a process of competitive bidding if required by state law. No contract required to be let after competitive bidding shall be awarded until approved by the Administrator. Copies of all bids and contracts awarded shall be retained for inspection by the Administrator upon request. Where all bids are substantially in excess of project estimates, the Administrator may, by notice in writing, suspend the project and refer the matter to the Interagency Committee for determination of appropriate action, which may include termination of assistance for development of the project.

(e) Change Orders. Any change orders shall be in writing and shall be made a part of the project file and kept available for inspection or audit upon request.

(f) Nondiscrimination Clauses. Except where a non-discrimination clause required by the United States is used, the Contracting Party shall insert the following nondiscrimination clause in each contract for construction of this project:

"During the performance of this contract, the Contractor agrees as follows:

- "(1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- "(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
- "(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The Contractor will include the provisions of the foregoing paragraphs in every sub-contract exceeding \$5,000, so that such provisions will be binding upon each such subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Interagency Committee may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the State of Washington to enter into such litigation to protect its interests."

21. Notices. All notices, demands, requests, consents, approvals, and other communications which may or are required to be given by either party to the other under this agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes when delivered or mailed by first class postage or certified mail, postage prepaid, addressed as follows:

(a) Notice to the State

To: Interagency Committee for Outdoor Recreation
P. O. Box 1489
Olympia, Washington 98501

or at such address as the Interagency Committee shall have furnished to the Contracting Party in writing.

(b) Notice to the Contracting Party

To _____, who serves in the capacity of _____ for the Contracting Party, and who has been designated as the Contracting Party's liason officer for the purposes of this agreement, or to such other officer or address as the Contracting Party shall have furnished to the Administrator in writing.

22. Additional Provisions, or Modifications of Standard Provisions.

"The State agrees to comply with the terms and intent of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)", and the applicable regulations and procedures of the Department of the Interior implementing such act.

ACQUISITION PROJECTS ONLY

LOCAL AGENCIES

(a) In the event that housing and relocation costs, as contemplated by federal law (P.L. 91-646) and state law (Chapter 240, Laws of 1971, 1st Ex. Sess.), are involved in the execution of this project, the Contracting Party agrees that such costs, excluding administrative costs, will be added to the cost of the project and shared proportionately by the Interagency Committee and the Contracting Party;

(b) In the event the Interagency Committee must perform any portion or all the work necessary to comply with the relocation requirements of the above cited federal and state law, the Contracting Party agrees to reimburse the Interagency Committee for the actual administrative costs of performing such work.

STATE AGENCIES

(a) In the event that housing and relocation costs, as contemplated by federal law (P.L. 91-646) and state law (Chapter 240, Laws of 1971, 1st Ex. Sess.), are involved in the execution of this project, the Contracting Party agrees to provide any housing and relocation assistance that may be necessary and will assume the administrative costs, with the understanding that the actual relocation costs will be a part of the total project cost.

ARCO Property - to be acquired

LEGAL DESCRIPTION:

North Parcel:

The north 123 feet of the south 535 feet more or less of Government Lot 3, Sec. 8, T. 25N, R. 5 E.W.M., lying west of Lake Avenue, together with Second Class Shore Lands lying front thereof, lying between the westerly extensions of the north and south lines of said portion of Government Lot 3 and extending to the inner harbor line; also known as Tax Lot 88. Subject to right, privilege and permit to remove, and/or place and deposit earth material in the extension of slopes of excavation and/or embankment from and/or upon a strip of land 10 feet wide, westerly of, parallel and contiguous to the westerly right of way line of Secondary State Highway No. 2-A as surveyed over and across said premises together with the right privilege and permit of ingress and egress to and from said land for the purposes herein specified and for the purpose of maintaining said slopes, as granted to the State of Washington, by instrument recorded under auditor's file #3268409 and 3268413, records of King County,

South Parcel:

That portion of the north 100 feet of the south 412 feet of Government Lot 3 in Sec. 8, T. 25 N, R. 5 E.W.M. and Second Class Shore Land adjacent thereto lying west of the northeast Lake Washington Boulevard as established; subject to right of the State of Washington as now of record. Auditor's file #326931. Also known as Tax Lot 208.

Marsh Property - to be donated

LEGAL DESCRIPTION:

That portion of the following described property lying westerly of Lake Washington Boulevard Northeast as the same is now established:

The North 115 feet of the South 312 feet of Government Lot 3, Section 8, Township 25 North, Range 5 East, W.M.; together with shorelands of the second class lying between the westerly extensions of the north and south lines of said protion of Government Lot 3.

SUBJECT TO:

Permit to extend slopes and deposit earth for excavation or embankment, together with rights of ingress and egree, as granted to the State of Washington by instrument recorded under Auditor's File No. 3263926.