

ATTACHMENT 2

South Basin Boardwalk and Related Infrastructure Agreement

State of Washington and City of Tumwater

This Boardwalk and Related Infrastructure Agreement (“Boardwalk Agreement”) is by and between the State of Washington (State) acting by and through the Department of Enterprise Services, (“DES”) and the City of Tumwater (“Tumwater”). DES and Tumwater shall be referred to herein using their defined names.

Capitalized terms not specifically defined in this Boardwalk Agreement shall have the meanings given to them in the ILA.

RECITALS

- A. In 2022, after approximately four years of study, DES issued a final Environmental Impact Statement (EIS) identifying the Estuary Alternative as the preferred long-term plan for management of the area of Capitol Lake. The Estuary Alternative involves removing the existing 5th Avenue Dam, restoring tidal flats and marsh habitat in the Capitol Lake basin, constructing and transferring physical assets to local entities, and long-term Sediment Management of navigational areas in the West Bay of Budd Inlet. The work described in the Estuary Alternative and the ILA is referred to as “the Project.”
- B. The ILA Parties, acting pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, have entered into an ILA dated *Date of Last Signature* governing Sediment Management.
- C. As recognized in the ILA, the State, acting through DES, shall fund, design, and construct estuary restoration and specific physical assets provided that DES will cooperate with each entity receiving a specific physical asset in accordance with subsidiary agreements between DES and the receiving entity.
- D. Among the physical assets to be constructed and transferred as part of the Project are new boardwalks, pathways, and related infrastructure (collectively “South Basin Boardwalks”) that will connect to and extend the existing trail system in Tumwater Historical Park that is owned and maintained by Tumwater.
- E. This Boardwalk Agreement is subsidiary to the ILA and sets forth the agreement between DES and Tumwater as to general principles related to the design, construction, and transfer of the South Basin Boardwalks.
- F. Tumwater and DES recognize that Project construction plans for the South Basin Boardwalks are in a preliminary, conceptual design phase, and this Boardwalk Agreement will be supplemented and/or superseded by a subsequent conveyance instrument,

consistent with the general principles set forth herein, providing details regarding the design, construction, transfer, and future operations of the South Basin Boardwalks and underlying real property.

AGREEMENT

In consideration of the mutual promises, covenants, and conditions in this Boardwalk Agreement and in the ILA, DES and Tumwater agree as follows:

1. **Intent.**

DES and Tumwater shall work together in good faith, with specific areas of responsibility as outlined in this Boardwalk Agreement, to design new boardwalks within the South Basin of Capitol Lake, adjacent to the Tumwater Historical Park, in accordance with design goals set forth in the June 2024 Basis of Design, and consistent with the City of Tumwater policies and regulations governing the use of City parks and facilities. The design goals were developed through coordination and consultation between DES and Tumwater at the onset of the design process.

2. **DES-Led Boardwalk Design and Community Involvement**

- a. DES shall be responsible for the design of the South Basin Boardwalks.
- b. At minimum, design of the South Basin Boardwalks shall be consistent with the following:
 - i. Pedestrian facilities shall be enhanced from current conditions and shall include links to existing and planned boardwalks, pathways, and other infrastructure in Tumwater Historical Park.
 - ii. Recreational and viewing opportunities shall be enhanced and consistent with the overall Project goals.
 - iii. The location, design, materials, construction, and specifications for the South Basin Boardwalks shall meet or exceed all Tumwater requirements applicable to such facilities.
- c. DES shall be responsible for community involvement regarding the South Basin Boardwalk design and construction processes. The community engagement implemented by DES shall meet or exceed Tumwater's requirements regarding community involvement for similar facilities. The intent of community engagement is to incorporate input from the community into the South Basin Boardwalk design or layout, where appropriate. After community engagement activities regarding the South Basin Boardwalks are complete, DES shall report to Tumwater the primary themes and requests from the community and shall identify whether or not those requests meet the design goals as outlined in the June 2024 Basis of Design, and whether or not the requests can or should be incorporated into the boardwalk design.

3. Tumwater Coordination Responsibilities

Tumwater shall remain integrated into the South Basin Boardwalk design process in the following ways, at minimum:

- a. Participate in design meetings with DES, as needed and as may be requested by the City, throughout the design process so that feedback can be received in real time.
- b. Review the formal design deliverables concurrent to DES to ensure that the South Basin Boardwalk design is consistent with Tumwater design standards and long-term management and maintenance goals.

4. Boardwalk Funding and Construction

- a. DES shall be responsible for permitting and construction of the South Basin Boardwalks.
- b. DES shall be responsible for securing construction funding and overseeing design, permitting and construction of the Project, including the South Basin Boardwalks. For this reason, during the design process, DES shall have authority over decisions that materially impact Project costs but will incorporate input from the Tumwater given that all design decisions have a cost component that will impact not only construction but operation and maintenance costs and longevity.
- c. DES and Tumwater acknowledge that construction funding is not yet secured and will require significant investment from the State and federal governments. DES and Tumwater commit to jointly pursuing State and federal grant funding where appropriate.
- d. DES and Tumwater shall work together to determine the acceptable level of construction-related disruption in Tumwater Historical Park, and if needed, can receive input from the community regarding these impacts. DES shall take all reasonable actions to minimize impacts and disruption to Park operations and shall restore any Park facilities damaged by Project activities to a condition equal to or better than those existing prior to commencement of the Project.
- e. DES shall be the contracting party for and shall manage all contracts related to design and construction of the South Basin Boardwalks. Each DES contract for design and construction of the South Basin Boardwalks shall include a minimum of one-year warranty from the design professional or contractor that meets all DES and Tumwater contracting requirements and is consistent with similar Tumwater projects that can and will be transferred to Tumwater.

5. Boardwalk Turnover

Upon completion, DES shall transfer ownership of the South Basin Boardwalks to Tumwater, and Tumwater shall accept such transfer. Upon transfer, Tumwater shall have exclusive control of the South Basin Boardwalks, shall bear all maintenance costs and

responsibilities for the South Basin Boardwalks, and shall have all risk of loss related to the South Basin Boardwalks. The transfer will be accomplished by subsequent legal instrument acceptable to DES and to Tumwater consistent with this Boardwalk Agreement.

6. Funding

As noted above, the following funding provisions shall apply:

- a. DES, and the State, shall provide all funding for the design and construction of the South Basin Boardwalks.
- b. After transfer of the South Basin Boardwalks, Tumwater shall provide all funding for operation and maintenance of the South Basin Boardwalks.
- c. DES and Tumwater shall each be responsible for their own overhead and internal costs related to carrying out their respective responsibilities under this Boardwalk Agreement.

7. Termination

- a. This Boardwalk Agreement may be terminated by Tumwater at any time prior to the beginning of construction of the South Basin Boardwalks. After construction commences, Tumwater shall be obligated to accept transfer of the South Basin Boardwalks; provided, however, that upon transfer of the South Basin Boardwalks, Tumwater shall have exclusive control over the Boardwalks, up to and including the authority at its own expense to alter or remove the Boardwalks.
- b. Unless terminated earlier under subsection a, this agreement shall terminate upon completion of transfer to and acceptance by Tumwater of the South Basin Boardwalks and expiration of all warranties.

8. Dispute Resolution

If a dispute arises between the parties with regards to the performance of any provision of this Agreement or the interpretation thereof, representatives of the parties shall meet to see if the matter can be informally resolved. This meeting shall occur promptly after the nature of the dispute is known to the parties involved.

If the parties are unable to resolve their differences through informal discussions, the parties will endeavor to settle the dispute by mediation. Mediation shall commence, unless otherwise agreed, within 30 days of a party's written request for mediation of a dispute. Any resolution at mediation shall be reduced to writing, and signed by the parties.

9. Administration

- a. This Agreement represents the entire agreement of the Parties with respect to the subject matter herein and may be amended or modified only by written agreement of the Parties.
- b. This Agreement is not intended to create rights in, or to grant remedies to, any third party as a beneficiary to this Agreement or any of its provisions.
- c. The failure to require cure of a breach of any provision of the Agreement shall not be deemed a waiver of any subsequent breach, whether of the same or different provision.
- d. Severability. If any portion of this Agreement is adjudged to be invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of any remaining section, part or provision of this Agreement.

SIGNATURES

Debbie Sullivan, Mayor
City of Tumwater

Date

Approved as to Form:

Karen Kirkpatrick, City Attorney

Date

Tara C. Smith, Director
Department of Enterprise

Date