

# **DESCHUTES ESTUARY RESTORATION PROJECT**

## **INTERLOCAL AGREEMENT**

THIS DESCHUTES ESTUARY RESTORATION PROJECT INTERLOCAL AGREEMENT ("Agreement") is entered into this **November 12, 2024** by and among the Department of Enterprise Services (DES) acting on behalf of the State of Washington (State), the Squaxin Island Tribe (Tribe), the County of Thurston (County), the City of Olympia (Olympia), the City of Tumwater (Tumwater), the Port of Olympia (Port), and the LOTT Clean Water Alliance (LOTT) to address shared responsibilities for long-term Sediment Management in a restored Deschutes Estuary. Each entity identified above is referred to individually as a "Party," collectively all Parties are referred to as the "Parties," and the Parties other than the State are referred to as the "Local Parties."

## **INTRODUCTION**

### **Background**

What is now Capitol Lake was originally the southern portion of the Deschutes Estuary, where freshwater from the Deschutes River and Percival Creek mixed with saltwater from Budd Inlet over extensive tidal flats. Between 1949 and 1951, the State constructed a dam at 5<sup>th</sup> Avenue in Olympia to impound the Deschutes River to create a reflecting pool for the Washington State Capitol Campus. The 5<sup>th</sup> Avenue Dam blocked saltwater from Budd Inlet and transformed the area upstream of the dam into Capitol Lake, a 260-acre freshwater lake fed by the Deschutes River. Capitol campus planners intended Capitol Lake to be part of the Washington State Capitol Campus, and it was designated a resource of the Capitol Campus under RCW 43.34.090 and RCW 79.24.710. DES (to include predecessor agencies) has had the responsibility to manage Capitol Lake throughout the lake's existence under a long-term lease agreement with the Washington State Department of Natural Resources (DNR). The Deschutes River and Estuary and Budd Inlet, together with the parks and trails that surround them, are an important visual, economic, cultural, and recreational resource for the community.

Each year, the Deschutes River and Percival Creek transport an estimated 35,000 cubic yards of sediment downstream. Before construction of the 5<sup>th</sup> Avenue Dam, this sediment could move freely into Budd Inlet. With the dam in place, most of this sediment settles in Capitol Lake. The sediment captured upstream of the 5<sup>th</sup> Avenue Dam has accumulated up to 13 feet deep in some places—dramatically altering conditions.

The establishment of Capitol Lake created conditions that have resulted in chronic violations of water quality standards. Water quality monitoring began in the 1970s, and by 1985, the Thurston County Health Department permanently closed the historic swimming beach in Capitol Lake due to water quality impairments. Capitol Lake is and has been a focus of state and federal water quality improvement planning since the 1970s. The presence of the 5<sup>th</sup> Avenue Dam is the single largest contributor to dissolved oxygen depletion in Budd Inlet.

The presence and persistence of invasive species in Capitol Lake has complicated its management. Since the 1980s, the State has employed a variety of strategies to address aquatic invasive species, but today more than a dozen different plant and animal invasive species are present. In response to finding the New Zealand mudsnail in Capitol Lake in 2009, the State officially closed Capitol Lake to all active public use.

For more than 50 years, public and private entities have attempted to address these and other environmental concerns regarding Capitol Lake and the Deschutes Estuary. For a wide variety of reasons, these efforts did not result in meaningful resolution or enduring solutions.

### **Selection of the Estuary Alternative**

In 2018, DES began a process to evaluate long-term management alternatives for the waterbody. To evaluate the alternatives, DES used the Environmental Impact Statement (EIS) process. Through this process, DES carefully considered comprehensive technical analyses, evaluated benefits and costs of project alternatives, solicited feedback from key stakeholders, and reviewed public comments. In 2022, DES issued a final EIS identifying the Estuary Alternative as the preferred long-term plan. The Estuary Alternative involves removal of the 5<sup>th</sup> Avenue Dam, restoration of tidal flats and marsh habitat in the 260-acre basin, construction of physical assets such as a new 5<sup>th</sup> Avenue Bridge, and long-term management of sediment naturally transported into navigational areas of Budd Inlet.

Removal of the 5<sup>th</sup> Avenue Dam will also restore natural sediment transport processes. This will result in increased sediment accumulation in navigational areas of West Bay compared to existing conditions, similar to sediment processes that existed prior to dam construction. Sediment accumulation, if unaddressed, will affect commercial and recreational uses in West Bay including the marinas<sup>1</sup> and, to a lesser extent, the Port vessel berths.

At the direction of the Washington State Legislature,<sup>2</sup> DES convened a Funding and Governance Work Group (FGWG) comprising the Parties to explore long-term funding and governance options. The Parties considered several funding and governance options for long-term management of the restored Deschutes Estuary and reached consensus as set forth in this Agreement.

### **Shared Goals and Benefits of the Project**

The Parties recognize that the Project will contribute to the health of Budd Inlet and the Deschutes River watershed.

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<sup>1</sup> The term “marinas” includes the following private businesses and entities: Olympia Yacht Club, Fiddlehead Marina, Martin Marina, and One Tree Island Marina, as well as their successor entities.

<sup>2</sup> Washington State Legislature. “Second Engrossed H.B. 1115 – 64<sup>th</sup> Legislature (2015 3<sup>rd</sup> Special Session): Concerning the capital budget.” June 30, 2015.  
<https://app.leg.wa.gov/billsummary?BillNumber=1115&Year=2015&Initiative=false>.

Estuary restoration will produce a range of ecological and economic benefits. Removing the dam, restoring tidal flows, and reintroducing native habitats will benefit ESA-listed salmon populations and the species that depend on them, including the Southern Resident killer whales. Birds, shellfish, and other native species are likely to proliferate in the estuary and become part of a more diverse ecosystem. Restoring the estuary will also help Budd Inlet meet state water quality standards, which reduces the need for more stringent regulation on other contributors.

The Project will restore public access to the water and enhance adjacent open space through new boardwalks, fishing piers, and trails. A new 5<sup>th</sup> Avenue Bridge will provide safer pedestrian and bicycle connectivity along the trail between Heritage Park and Deschutes Parkway. These new and improved amenities will benefit residents' quality of life and the experience of visitors to the region.

The Squaxin Island Tribe supports the Project, noting that restoring native habitat for fish and other culturally important species and reopening access to the water will renew cultural use of traditional lands and resources that were lost when the State built the dam.

Estuary restoration will complement and enhance the value of other investments among state, tribal, and local governments, public entities, and private organizations to restore the Deschutes River watershed, improve the health of Budd Inlet, and help address flooding risk to adjacent urban infrastructure resulting from sea level rise.

The Parties agree that to be most successful, the Project must also help support a working, urban waterfront, with recreational and commercial boating. Maintaining a working waterfront and supporting boating infrastructure contributes to a dynamic, vibrant community and will produce and sustain public revenue streams from taxes and lease payments, support employment opportunities, and create public amenities that benefit all community members. The Sediment Management program set forth in this Agreement will enable the restored estuary and built environment downstream to coexist.

### **Shared Guiding Principles of the Project**

The Parties, working through the FGWG, agreed on the following guiding principles to support the process of identifying issues and developing proposed solutions:

- The process should have dedicated and secure funding sources.
- Those who contribute to the problem should participate in funding or paying for the solution.
- Those who benefit from the solution should participate in funding or paying for the solution.
- The process should have a shared distribution of costs.
- The State should participate.
- Solutions should be watershed-wide in scale.

- The process should establish manageable long-term governance.
- The Parties should commit to a long-term collaborative process.
- Administration of the project should be adequately resourced.
- Solutions must support the goals and objectives of the long-term management plan and the future of the overall watershed.

From these guiding principles, the Parties agreed upon a three-part structure for governing and funding the Deschutes Estuary restoration:

1. The State will be responsible for funding the capital costs of design, permitting, and construction of the estuary restoration, which recognizes that the State constructed the 5<sup>th</sup> Avenue Dam and has had management responsibility for Capitol Lake since that time.
2. After construction is complete, the State will transfer ownership and management of specific physical assets to other Parties. This will be accomplished through separate agreements between the State and the individual receiving Parties, included in Attachments 1 through 4. This transfer helps to achieve the goal of minimizing the responsibilities for long-term joint governance; after the physical assets are conveyed, the only remaining item for joint governance is Sediment Management in West Bay.
3. The Parties will share in administering, funding, and implementing Sediment Management that will be needed in West Bay to maintain navigation and avoid significant adverse impacts<sup>3</sup> to the marinas and Port, for the term of this Agreement. This shared responsibility for Sediment Management reflects the Parties' recognition that the restored estuary will provide significant benefits to the Parties and the broader community, and is the subject of this Agreement.

## **AGREEMENT**

Based on the foregoing, which is incorporated into and considered part of this Agreement, the Parties agree to enter into an Interlocal Agreement pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, as follows:

### **1. Purpose and Conceptual Overview**

The overall Deschutes Estuary Restoration is referred to as “the Project” and is generally described as the Estuary Alternative in Chapter 2 of the final EIS.<sup>4</sup> The

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<sup>3</sup> Refer to Section 10.1.1 for a description of significant adverse impacts as it has been defined for this Interlocal Agreement.

<sup>4</sup> Washington State Department of Enterprise Services (DES). 2022. Final Environmental Impact Statement: Supporting Chapter 2.0 Project Alternatives & Construction Approach. October. <<https://deschutesestuaryproject.org/wp-content/uploads/2023/11/Capitol-Lake-Deschutes-Estuary-Final-EIS-2-Chapter-2.pdf>>. Last accessed May 8, 2024.



design of the Project will be significantly advanced from the Estuary Alternative in the EIS, but the description contained in the EIS is a good representation of key components of the Project.

Construction and management of the Project will include the following elements:

- The State will fund and administer planning, design, permitting, estuary restoration, and construction of physical assets.
- The State will transfer specific physical assets and/or long-term management responsibilities of these physical assets to individual Parties after construction as described in Table 1 to this Agreement.
- All Parties will fund and govern long-term Sediment Management in navigational areas of West Bay in accordance with this Agreement. The term “Sediment Management” herein refers to maintenance dredging in navigational areas of West Bay to prevent adverse impacts to recreational and commercial navigation. Refer to Exhibit 1, which shows the dredging areas of West Bay subject to this Agreement.

The purpose of this Agreement is to describe and formalize the role of each Party in funding and governance for Sediment Management in navigational areas of West Bay. Exhibit 2a provides a flowchart that depicts the representative annual coordination process for all marina dredging. Exhibit 2b provides the representative coordination process for Port-lead dredging within the Port’s vessel berths. Both exhibits are for illustration purposes and the written terms of this Agreement control in case of conflict.

## **2. Deschutes Estuary Steering Committee (DESC)**

### **2.1. Formation and Purpose of the DESC**

Pursuant to RCW 39.34.030(3) and (4), the Parties establish the Deschutes Estuary Steering Committee (the “DESC”) as a joint board for the purpose of providing overall governance regarding Sediment Management and the use of funds collected pursuant to this Agreement. The DESC is not a separate legal entity. The DESC shall consist of one representative from each Party who shall represent the Party for all purposes on the DESC and one alternate from each Party to act in the absence of the primary Party representative.

### **2.2. Designation of Party Representatives**

Each Party shall designate one person to represent the Party on the DESC and to receive notice of all actions related to Sediment Management and one alternate from each Party to act in the absence of the primary Party representative. If no representative is or has been designated by a Party, notices shall be delivered to any person or office authorized to receive service of process

on behalf of the Party. Each Party shall have one vote on the DESC, regardless of the number of representatives for the Party.

### **2.3. Authority and Duties of the DESC**

The DESC shall have the following authority and duties, to the extent consistent with Chapter 39.34 RCW:

- 2.3.1.** To adopt its own bylaws, rules and procedures. Unless the DESC adopts specific rules or procedures that conflict with Robert's Rules of Order, the most current version of Robert's Rules of Order shall govern.
- 2.3.2.** To select a Chair and Vice-Chair.
- 2.3.3.** To review and either approve or reject written dredge event proposals submitted by the Project Manager.
- 2.3.4.** To review, and either approve or reject requests to expend funds from the State Account and from the Local Account for Sediment Management.
- 2.3.5.** To set general investment strategies for the Local Account, provided that only Local Parties are authorized to vote with respect to matters affecting the Local Account.
- 2.3.6.** To monitor and, if it determines appropriate, request audits of financial matters related to Sediment Management.
- 2.3.7.** To make decisions and implement matters related to and arising out of the subject of this Agreement and Sediment Management not otherwise specifically addressed in this Agreement.

### **2.4. Decision Making/Voting**

The DESC shall decide matters brought before it by majority vote, defined as a clear majority of the Parties who are members of the DESC at the time of a vote and entitled to vote on the specific matter. By way of example, if the DESC consists of 7 Parties at the time of the vote, an affirmative vote of 4 Parties is required to pass a motion; if the DESC consists of 8 Parties at the time of a vote, an affirmative vote of 5 Parties is required to pass a motion. Each Party shall have one vote, regardless of the number of Party representatives.

### **2.5. Meetings**

- 2.5.1.** The DESC shall meet annually, as scheduled by the Project Manager. At least fourteen (14) days prior to each annual meeting, the Project Manager shall provide each member with a written report consisting of

bathymetric surveys, a recommendation of whether or not a dredge event is needed, financial information to include current account balances, records of receipts and expenditures from all accounts, and any other information relevant to understanding costs.

- 2.5.2.** In addition to the annual meeting, meetings of the DESC may be called by the Project Manager, or by any Party by written request to the Project Manager, which meeting shall be held not later than 45 days from delivery of the written request, unless a later date is agreed to by a clear majority vote of the Parties, as defined below. The Project Manager shall be responsible for scheduling any such additional meeting and providing not less than fourteen (14) days' notice to each Party, which shall include the purpose of the meeting and materials relevant to such purpose; provided, however, that to address issues requiring an immediate response, notice shall be the best practicable under the circumstances.
- 2.5.3.** During dredging events, and beginning no later than 30 days prior to the start of in-water construction, the DESC and Project Manager shall meet weekly to keep the DESC apprised of progress, particularly related to budget and schedule. Such weekly meetings shall be convened and facilitated by either the Project Manager (for dredging at the marinas and marina access areas) or Port (for dredging at the Port vessel berths, if contracted separately from marina dredging). The weekly meetings can be cancelled at the discretion of the convening entity, in coordination with the DESC, based on construction workflow and progress.
- 2.5.4.** Attendance at a meeting of the DESC may be in person or by any virtual/videoconferencing means that allows all representatives to hear, be heard, review materials being presented, and fully participate in the proceedings. A meeting of the DESC may commence once a majority of the representatives of the Parties subject to the Agreement are in attendance (quorum).

## **2.6. DESC Chair and Vice-Chair**

- 2.6.1.** The first order of business of the DESC at its initial meeting, at each annual meeting, and at any meeting where the DESC does not have a currently serving Chair and/or Vice-Chair, shall be to elect one Party representative to serve as DESC Chair and one Party representative to serve as DESC Vice-Chair, each with a term beginning upon election and lasting until the next annual meeting. A representative for DES shall act as the DESC Chair until the initial meeting. If an elected Chair is no longer able to serve the Vice-Chair shall assume the position of DESC Chair until the next annual DESC meeting.

- 2.6.2.** The DESC Chair shall convene and facilitate all DESC meetings and communicate decisions of the DESC to the Project Manager, the State Finance Manager, and the Local Party Treasurer.

### **3. Project Manager**

DES shall appoint an individual to be the Project Manager for Sediment Management, with the following authority and duties:

- 3.1.** At least annually, and not later than 14 days prior to each annual meeting of the DESC, the Project Manager shall send to all Parties a report as described in Section 2.5.1.
- 3.2.** As described in and limited by Section 10.6, the Project Manager shall monitor and report to the DESC on bathymetric conditions at the marinas and access areas through annual bathymetric surveys, consult with marinas, negotiate adaptive management with the marinas as needed, recommend contract for and manage dredge events at the marinas, report on completed dredge events, and coordinate with the Port.
- 3.3.** Upon approval of a dredge event proposal by the DESC as described in Section 10.7, manage the advertising, bidding, contracting, and contract management processes in conformance with applicable law and this Agreement. The State (acting by and through DES) shall be the contracting party for such contracts for Sediment Management at the marinas.
- 3.4.** Respond to reasonable requests from a Party or Parties for information regarding the status of Sediment Management within 30 days of receipt. The Project Manager shall have responsibility for maintaining all records concerning Sediment Management and acting as the records custodian for the DESC.
- 3.5.** Negotiate, enter into, and manage separate contract(s) with the marinas regarding marina funding for Sediment Management.
- 3.6.** The Project Manager's office shall be the principal office for Sediment Management, and the Project Manager is designated and authorized to receive any notices required to be given regarding Sediment Management.

### **4. Port of Olympia**

The Port shall maintain responsibility for Sediment Management within its vessel berths. This includes oversight and management of all bathymetric surveys, design, permitting and dredging. Upon approval of the dredge event proposal by the DESC as described in Section 10.7, this includes managing the advertising, bidding, contracting, and contract management processes in conformance with applicable law and this Agreement. The responsibilities of the Project Manager do not extend into the Port vessel berths.

## 5. Financial Management – Overview

Funding will be received from three sources: funding through State appropriations, funding from Local Parties through their individual funding mechanisms, and funding from the marinas. Funding from the marinas will be addressed by separate agreement among the marinas and the State, and is therefore not addressed in this Agreement except to the extent that availability of funding provided by the marinas is a necessary prerequisite to expending or obligating State and Local Party funds.

With respect to funding addressed by this Agreement, the Parties' goals are to ensure that all Parties participate in Sediment Management expenditures, that funds provided by Local Parties over time can be invested in secure instruments not amenable to re-appropriation or transfer (i.e., sweeping) by the State, and that funding provided by the State, which by necessity will occur at or near the time of a planned expenditure, is a necessary prerequisite to expending or obligating Local Party or marina-provided funds.

To accomplish these goals, two accounts will be created. The first account, referred to herein as the State Account, will hold funds appropriated by the State legislature generally at or near the time of a planned expenditure and will be under the control of the State, acting by and through DES.

The second account, referred to herein as the Local Account, will be established by the Local Parties and will hold funds deposited over time by the Local Parties that will be invested in instruments to ensure no loss of principal and that are consistent with all applicable laws, regulations, and polices. The Local Account will hold no State funds and is not subject to reappropriation or transfer (i.e., sweeping) by the State.

Expenditures by the DESC will be on a three-way "match" basis, with the authority to expend funds from any one of the three funding sources (State, Local Parties, marinas) contingent on funding being provided by all three funding sources; provided, however, that the State may fulfill its entire financial obligation of the Agreement by providing full funding (lump sum, as shown in Exhibit 3 adjusted for inflation) ahead of schedule and receiving authorization from the DESC to use a larger portion of State funds while those funds are available from the State so long as the total state contribution is consistent with the percent allocation provided in Exhibit 3.

Specific processes for receipt, investment, and expenditure of Sediment Management funds are set forth in Section 10.

**5.1. State Finance Manager:** DES shall function as the State Finance Manager for the State Account. At its earliest opportunity, the State shall establish an account to receive, hold, and invest funds appropriated by the legislature or obtained through grants or other sources that require State control of funds (collectively, State Funds). The State Finance Manager shall invest State Funds in

instruments that will ensure no loss of principal and are consistent with all applicable laws, regulations, and accounting standards, and in a manner so that State Funds are available when needed to pay Sediment Management costs.

- 5.2. Local Party Treasurer:** The Thurston County Treasurer shall act as Treasurer for the Local Parties unless changed by the Local Parties. The Local Party Treasurer shall establish an account to receive, hold, and invest funds from the Local Parties (Local Funds), which shall serve as the operating account of the Local Parties in accordance with RCW 39.34.030(4)(b). The Local Party Treasurer shall manage and invest Local Funds in accordance with general investment guidance from the DESC, in accordance with all applicable laws, regulations, and accounting standards, and in a manner so that funds are available when needed to pay Sediment Management costs.
- 5.3.** The State Finance Manager and Local Party Treasurer shall prepare such financial information as requested by the Project Manager to provide to the DESC in the annual report. At a minimum, such information shall include current balances in the State and Local accounts and amounts appropriated by the State legislature (but not yet in the State Account).
- 5.4.** The State Finance Manager and Local Party Treasurer shall respond to reasonable requests from a Party or Parties for information regarding the status of Sediment Management within 30 days of receipt of the request.

## **6. Term**

### **6.1. Effective Date**

This Agreement is effective when (i) all Parties have duly executed, (ii) the Agreement has been filed with the Thurston County Auditor pursuant to RCW 39.34.040, and (iii) the Agreement has been approved pursuant to RCW 39.34.050.

### **6.2. Expiration Date**

This Agreement will expire on December 31, 2050, unless some or all Parties agree in writing to renew for an additional term, or unless terminated in accordance with its terms.

### **6.3. Extension**

Prior to the end of 2045, the Project Manager will convene the DESC to determine whether to extend the Agreement, and if so, on what terms and with which Parties. In this meeting, the DESC must consider, among other things, the then-current state of navigation in West Bay, to include the following, at a minimum:

- Public and private navigational interests
- Condition of infrastructure
- Actual cost/operation of dredge activities over the previous period of agreement
- Available alternatives to more dredging
- Desire of Parties to continue supporting objectives of the agreement

## **7. Non-Project Conditions/Port Clean-Up**

Prior to and separate from construction of the Project, it is anticipated the Port will implement a project to remediate sediment contamination in West Bay (as part of the larger remediation of Budd Inlet) to conditions satisfactory to the Washington State Department of Ecology and the U.S. Army Corps of Engineers (USACE). This Port-led remediation is separate from the Project and Sediment Management and is not part of the Agreement. However, it is anticipated that the 5<sup>th</sup> Avenue Dam will not be removed until the Port-led remediation in West Bay is complete.

If the Port remediation is not conducted before removal of the 5<sup>th</sup> Avenue Dam, it would significantly increase the cost of the maintenance dredging to be conducted under the Agreement by likely requiring dredged material to be disposed of upland, increasing the number of dredge events that would occur under the term of this agreement and significantly complicating legal responsibility for the first maintenance dredging event.

The Port is currently targeting the late 2020s for remedial action throughout lower Budd Inlet. Based on the current Project schedule, the earliest the 5<sup>th</sup> Avenue Dam could be removed is 2033. The Port and the State will partner on funding strategies to support the Budd Inlet Remediation Project with the intent to expedite funding for remediation in West Bay. The Port and the State will also (1) coordinate efforts to consider prioritization of remediation in West Bay, (2) minimize potential conflicts and redundant efforts, and (3) maximize the benefit to the Deschutes Estuary and Port area. This coordination will help ensure that the Port-led remediation and DES-led estuary construction do not interfere with each other and, to the extent feasible, complement each other.

## **8. Sediment Management Design, Permitting, and Construction**

### **8.1. Planning and Design**

The State, acting through DES, will fund, manage, and have authority over design and permitting of the Project. The Legislature appropriated initial funding for design and permitting during the 2023 legislative session and work is underway. Assuming additional funding is secured, this phase will conclude in approximately 3 to 5 years. During the design and permitting process, DES will coordinate with Olympia on the design of the 5<sup>th</sup> Avenue Bridge, with Tumwater on the South Basin boardwalks, and with LOTT and Olympia on existing utility assets surrounding Capitol Lake that will be affected by the Project, to ensure that these physical assets meet applicable design standards, satisfy applicable procedural and process requirements, and are acceptable to the receiving Party. The details of each design process and asset transfer will be governed by a separate agreement (Attachments 1 through 4) between the State and the receiving Party.

DES will coordinate with the Squaxin Island Tribe, which may oversee management of the constructed habitat to develop the estuary restoration design, incorporate tribal knowledge and lessons learned on other similar projects, and ensure that design of the Project is acceptable to the Squaxin Island Tribe.

### **8.2. Restoration and Construction**

The State, acting through DES, will fund, manage, and have authority over estuary restoration and construction or replacement of existing physical assets (together “construction funding”). If construction funding is secured without delay, construction of the Project could begin in the late 2020s and is estimated to occur over a 6- to 8-year period.

### **8.3. Physical Assets**

After the State completes construction of the physical assets, the State will transfer governance and/or ownership of specific physical assets to individual Parties in accordance with Table 1, below. Each transfer will be governed by a separate agreement between the State and the receiving Party (Attachments 1 through 4). Upon transfer of ownership of a physical asset, the receiving Party will have full ownership in perpetuity, to include all maintenance responsibility and risk of loss.



**Table 1. Governance Responsibilities of Physical Assets**

<b>Receiving and/or Responsible Entity</b>	<b>Asset/Governance Responsibility</b>	<b>Time of Transfer</b>
State of Washington	Infrastructure to support boating, fishing, recreation in estuary, as needed Staffing decontamination stations Maintain Middle Basin boardwalk. Bathymetric surveys, design, permitting, contract management for maintenance dredging outside of federal navigation channel and turning basin and port vessel berths	Upon construction completion
City of Olympia	New 5 <sup>th</sup> Avenue Bridge Refer to Attachment 1 for the City of Olympia Subsidiary Agreement	Upon construction completion
City of Tumwater	South Basin Boardwalks Refer to Attachment 2 for the City of Tumwater Subsidiary Agreement	Upon construction completion
Port of Olympia	Bathymetric surveys, design, permitting, and contract management for maintenance dredging in port vessel berths Lead coordination with USACE on maintenance dredging in federal navigation channel and turning basin. Refer to Attachment 3 for the Port Addendum	N/A; the Port currently serves in this role and nothing in this Agreement shall affect the Port's existing authority over its assets and responsibilities
Squaxin Island Tribe	Lead biological monitoring of the restored estuary to include fish monitoring at a minimum. If additional funding is obtained, participate in implementing Habitat Enhancement Plan for constructed habitat in the 260-acre basin, formerly Capitol Lake.	Upon construction completion
Thurston County	None identified	N/A

Receiving and/or Responsible Entity	Asset/Governance Responsibility	Time of Transfer
LOTT	Replaced LOTT Utilities Refer to Attachment 4 for LOTT's Subsidiary Agreement	N/A; LOTT owns existing utility lines within the Project Area. The LOTT-owned utilities replaced by DES during construction will remain under LOTT ownership.

## 9. Estuary Administration and Management

The State will be responsible for management of the restored estuary and for expenses related to such management except expenses related to Sediment Management in navigational areas as described in Section 10, below, or expenses related to assets governed by other entities.

## 10. Sediment Management

The Parties will collectively fund and govern Sediment Management in navigational areas of West Bay during the term of this Agreement. Sediment Management under this Agreement includes only sediment removal (dredging) and disposal of dredged material (dredging and disposal of dredged material are also referred to as a “dredge event”).

As part of its responsibilities, DES will, at its own cost, perform bathymetric surveys at least annually at the marinas and marina access areas to evaluate sediment accumulation and determine if dredging is required, will complete design and secure programmatic permits for dredging within the marinas and marina access areas, and will be responsible for contract management for marina dredging. Consistent with Table 1 above, the Port will, at its own cost, provide these governance responsibilities for the port vessel berths.

### 10.1. Maintenance Dredging and Cost Estimate Assumptions

- 10.1.1. Maintenance dredging will occur when required to prevent significant adverse impacts from occurring in the navigational areas of West Bay. “Significant adverse impacts” are when any one of the following criteria (i.e., dredge triggers) are forecast to occur: (1) vessels accessing the Federal Navigation Channel and Port of Olympia have to wait more

than 4 hours for channel access due to water depth and low tide conditions caused by sediment deposition on more than one consecutive occasion; (2) more than 10% of anticipated small craft vessels at any single marina are unable to access leased moorage due to shallowed water depth caused by sediment deposition; or (3) any applicable law or regulation requires dredging to be performed.

- 10.1.2.** Numerical modeling conducted for the EIS suggests that maintenance dredging to avoid significant impacts to navigation from sediment accumulation will be needed in areas of the West Bay of Budd Inlet on an average and approximated frequency of every 6 years. The actual rate of sediment accumulation is highly dependent on river flow conditions, which vary.
- 10.1.3.** Estimates conservatively assume that the earliest the 5th Avenue Dam could be removed is 2033. The total estimated Sediment Management costs also assume three dredging events, based on the 18-year duration between 2033 and 2050 and the estimated 6-year frequency of maintenance dredging that is based on hydrodynamic and sediment transport numerical modeling conducted for the EIS. If removal of the 5th Avenue Dam is delayed such that there is reasonable certainty that fewer than three dredging events will be necessary during the term of the Agreement, the Parties may adjust total estimated Sediment Management costs and annual payments.
- 10.1.4.** The Parties have negotiated this Agreement using planning-level cost estimates. Civil, environmental, and coastal engineers developed planning-level cost estimates using costs for other maintenance dredging projects in the Puget Sound region and marine environments, hydrodynamic and sediment transport numerical modeling in the EIS that predicts sediment accumulation under the Estuary Alternative, and triggers to initiate dredging events (see Footnote 3 and Section 10.1.1). Planning-level cost estimates also assume in-water disposal of the dredged sediment; this is based on the assumption that the Port will remediate sediment contamination in navigational areas of West Bay, and it is based on sediment data from Capitol Lake as provided in Attachment 15 of the EIS and a projection that invasive species will not persist in the material to be dredged as described in Attachment 8 of the EIS.
- 10.1.5.** The following measures have been implemented to increase certainty that funding will remain available for Sediment Management for the term of this Agreement:
- Cost estimates are based on planning-level costs developed for the EIS, escalated using the assumptions detailed in Section 10.1.6 below. They are consistent with Class 4 estimates

prepared using standards established by the Association for the Advancement of Cost Engineering and include a 15% contingency. The planning-level cost estimates have an accuracy variation of minus 25% to plus 35%. The higher end of the planning-level cost estimate range (+35%) has been used.

- Annual payments will begin once the State has secured enough construction funding to complete the Project through removal of the 5<sup>th</sup> Avenue Dam. This will likely be more than a decade before the first dredge event is triggered. Interest may accrue during this time.
- The Parties cannot adjust downward the total dredge cost estimate upon which annual payments are based during the initial term of this Agreement, even if actual Sediment Management costs are less than expected in the initial dredge event. Holding the total contributions consistent with Exhibit 3 will increase certainty that funds will be available while acknowledging that dredging frequency, environmental conditions, and costs could vary over the initial Agreement term.

**10.1.6.** Costs have been escalated from EIS planning-level costs. The following escalation assumptions were used.

- Cost estimates were originally prepared and presented in the Draft EIS in 2020 dollars and were escalated to 2022 dollars in the Final EIS using an annual escalation rate of 8%. This rate reflects the historically high levels of inflation in the economy during this period and is informed by specific trends in construction-related inflation.
- Costs were escalated forward from 2022 dollars through the period of the Agreement using an initial escalation factor of 4.5%. This escalation rate is based on a review of dredge-related cost trends over the last 30 years (including non-residential building construction costs, fuel costs, and CPI) and is at the high range of these sources, which reflects two factors present at the time of this ILA: 1) the relatively high level of economic uncertainty and 2) projections for continued strong demand for infrastructure-related construction services.

**10.1.7.** The State Finance Manager and Local Party Treasurer will invest funds in accordance with Sections 5.1 and 5.2, and the estimated annual payments are calculated assuming an annual investment growth at 2%.

## **10.2. Sediment Management Cost Allocation and Annual Payment Estimates**

### **10.2.1. Percent Allocation**

Costs for Sediment Management above those costs associated with dredging of the No Action Alternative (baseline; i.e., the increase in sediment accumulation in navigational areas of West Bay as a result of dam removal, atop the baseline amount of sediment accumulation that would already pass through the 5<sup>th</sup> Avenue Dam and settle in these areas if the dam remained in place) are allocated among the Parties on a percentage basis as set forth in Exhibit 3 below. This percentage will be used to allocate dredge event contract costs only (refer to Exhibit 4 for an estimated annual payment schedule incorporating cost assumptions detailed in Sections 10.1 and 10.2). Parties shall be responsible for their own overhead and “soft costs” associated with their obligations under this Agreement, including those governance responsibilities outlined in Table 1 and participation on the DESC. These additional costs are not estimated or included in any of the costs presented in this agreement.

### **10.2.2. Estimated Annual Payments**

Exhibit 4 provides the estimated annual payment schedule for the term of the Agreement. The estimated annual payment is calculated by proportionally dividing the planning-level costs for dredge events, (escalated through the agreement at an initial rate of 4.5% as described in Section 10.1.6), by the number of payment years (X, partial years count as a full year) and the percent allocation share as shown in Exhibit 3. Each Party agrees to make annual payments (determined as above) on or before December 31 of each year, beginning the year the State secures sufficient construction funding for estuary construction and removal of the Fifth Avenue Dam, through the end of the Agreement term. Late payments shall accrue interest at the rate of 18% per annum, compounded daily.

### **10.2.3. Initiation of Annual Payments**

The State Finance Manager shall notify all Parties when the State has formally secured construction funding for estuary construction and removal of the Fifth Avenue Dam. Each Local Party will begin making annual payments as set forth in Section 10.2.2 by December 31 of that year.

### **10.2.4. Cost Assumption and Annual Payment Review**

No later than 5 years following the first annual payment, the Project Manager, the State Finance Manager, and the Local Party Treasurer

will review the escalation and investment assumptions used to calculate estimated payments (as shown in Exhibit 4) and recommend to the DESC revisions as appropriate to reflect new information and economic conditions.

Thereafter, following each dredge event (refer to Section 10.6), the Project Manager, the State Finance Manager, and the Local Party Treasurer shall prepare a report to the DESC regarding the costs of the dredge event with respect to the overall Sediment Management projections and shall recommend adjustments to the annual payments as appropriate, including a review of escalation and investment growth assumptions.

### **10.3. Notice of Failure to Pay**

If a Party fails to make a payment required under this Agreement when due, to include the State failing to appropriate funds when required, the State Finance Manager or Local Party Treasurer shall notify the Party of the failure in writing, with copies to the Project Manager and to all other Parties. A Party's failure to make a payment required under this Agreement within 2 years of receiving notice of non-payment from the Project Manager shall be considered a withdrawal for non-appropriation of funds under Section 11.2.2.

### **10.4. Refund of Excess Funds**

If funds remain in the Local Account upon either the expiration or termination of the Agreement, and unless otherwise agreed to, each Local Party that is a member in good standing at the time of either expiration or termination of the DESC will be entitled to receive a refund of such excess funds based on a pro-rata calculation of the amounts paid into the Local Account; provided, however, that the return of any amounts paid into the Local Account by an entity withdrawing from this Agreement for convenience or due to non-appropriation of funds shall be at the discretion of the remaining Local Party members of the DESC.

### **10.5. Audit Rights**

Upon reasonable notice, but not more frequently than annually, any Party may call for an examination of the books and records of the State or Local Accounts solely as related to this Agreement. The DESC may appoint an auditor, accountant, or one or more of the Parties to perform such review. Any costs of hiring outside auditors or accountants shall be borne by the Party or Parties requesting the audit.

## **10.6. Sediment Monitoring and Adaptive Management**

### **10.6.1. Monitoring/Reporting**

The Project Manager will ensure that, at least annually, a bathymetric survey is completed in the marinas and marina access area of West Bay. Upon completion, the Project Manager shall review the bathymetric survey and analyze whether the dredge triggers defined in Section 10.1.1 have been met. The bathymetric data will be shared with each Party along with a summary describing how it relates to timing and scope of future dredge events as part of the annual report provided to DESC.

### **10.6.2. Consultation/Adaptive Management**

Throughout the Project, and particularly in response to bathymetric surveys indicating a dredge event may or soon will be triggered, the Project Manager will evaluate whether adaptive management measures can be implemented that will reduce the scope and cost of Sediment Management, or disruption to navigation and marina operations of future dredge events. The Project Manager may coordinate directly with the marinas in this process. The Project Manager may implement adaptive management measures that result in a reduction in overall Sediment Management costs. The Project Manager will report on adaptive management measures considered and rejected or authorized for implementation in the annual report.

### **10.6.3. Coordination with Port**

The Port is responsible for bathymetric surveys, design, permitting and contracting for Sediment Management in its vessel berths. The Port shall work in good faith with the DESC and its members, the Project Manager, the State Finance Manager, and the Local Party Treasurer to coordinate dredging efforts within Port vessel berths as set forth in Attachment 3 (Port Addendum). The Port shall report to the DESC and Project Manager results of Port bathymetric studies taken in the Port's vessel berths and the Federal Navigation Channel. When Port bathymetric surveys establish that dredging is necessary to prevent significant adverse impacts at Port vessel berths, the Port shall provide the DESC and the Project Manager written confirmation that dredge triggers have been met and with a Port dredging plan.

#### **10.6.4. Dredge Event Proposals**

When, after consideration or implementation of adaptive management measures, the Project Manager determines that the criteria for a dredge event at the marinas have been met and a dredge event is necessary to prevent significant adverse impacts at the marinas, the Project Manager shall provide DESC with a written dredge event proposal. This proposal may be part of the Project Manager's annual report. The dredging proposal must describe the scope, timing and order of magnitude cost of the dredge event with sufficient data and information to allow the DESC to evaluate the proposal. The dredging proposal must also confirm that State, Local, and marina funding is available to meet funding obligations under this Agreement.

The Project Manager, in developing the dredge event proposal, shall meet with the Port to determine whether dredging is also needed at the Port. If dredging at the Port is needed, the Project Manager shall include that information and a description of the coordination to the DESC as part of a dredge proposal. The goal of this coordination is reduce costs through efficient dredge implementation.

#### **10.7. DESC Dredge Event Funding Approval**

Within 30 days of receiving a written dredge event proposal, the DESC shall meet to approve or reject the dredge event proposal. The DESC may reject the Project Manager's written dredge event proposal only on the following grounds: (1) the data do not support a finding that the criteria for a dredge event have been met; (2) adaptive management measures have not been sufficiently considered or implemented; or (3) there are insufficient funds to pay for the proposed dredge event. Unwillingness to expend funds from the Local Account, by itself, is not a sufficient ground for objecting to a proposed dredge event. The DESC may not reject a dredge event proposal if the failure to implement the dredge event proposal would result in any Party being in violation of applicable law, regulation, or valid order of an entity with authority to issue such an order. A decision by the DESC shall be in writing and takes effect 11 business days after it is delivered to the Parties, unless objected to, in which case the decision takes effect upon resolution of the objection in accordance with Section 12. The Project Manager may revise and/or resubmit a rejected dredge event proposal to the DESC at any time.

#### **10.8. Objection to DESC Dredge Event Decision**

If a Party objects to either the approval or rejection of a dredge event proposal by the Project Manager, it must, within 10 days of the DESC's decision to either



accept or reject the dredge event as per Section 10.7, deliver a written objection to the Project Manager with a copy to all Parties providing data and information sufficient to allow the Project Manager and other Parties to evaluate the objection. Upon receipt of a written objection the Parties shall meet and confer and attempt to reach consensus regarding the objection. If the parties cannot reach consensus, the dispute resolution procedures in Section 12 (Disputes/Enforcement) shall apply. An objection to a rejected dredge event proposal made under this section does not preclude submission to the DESC of a revised dredge event proposal.

#### **10.9. Dredge Event Contract Approval**

When a DESC decision to approve a dredge event becomes effective, the Project Manager shall solicit, receive, and evaluate proposals for the dredge event and shall select a preferred contractor(s) and/or consultant(s) in accordance with applicable law. Each dredge event contract shall contain a ten percent (10%) contingency and be within the DESC-approved amount.

#### **10.10. Dredge Event Expenditure Process**

When a DESC decision approving the dredge contract(s) becomes effective, the State Finance Manager shall confirm to the Local Party Treasurer that State Funds and marina funds sufficient to meet State and marina obligations for the dredge event have been deposited in the State Account. Upon receipt of such confirmation, the Local Party Treasurer shall transfer sufficient funds from the Local Account to the State Account to meet the Local Parties' obligations for the dredge event.

When, and only when, the State Finance Manager has received into the State Account sufficient State, Local, and marina funds to meet their respective obligations, the Project Manager is authorized to execute the contract(s), and the State Finance Manager is authorized to pay invoices for the contract(s) from the amounts in the State Accounts allocated to the contract(s). All payments shall be in arrears based on periodic invoicing.

#### **10.11. Dredge Event Project Management**

The Project Manager shall be responsible for managing dredge events and the dredge event contracts for the marina and marina access area. The Project Manager shall endeavor to manage costs within the approved contract amount, but shall have authority to expend up to the 10 percent contingency after notification to the DESC but without further DESC formal action. DESC approval is required for expenditures exceeding the 10 percent contingency amount.

## **10.12. Dredge Event Reporting and Adjustments**

After each dredge event, the Project Manager, the State Finance Manager, and the Local Party Treasurer shall provide the Parties with a summary report for the dredge event to include final costs with sufficient detail to enable the Parties to consider alterations to the Sediment Management program and/or to implement other adaptive management practices for future dredge events. This summary may be provided in the Project Manager's annual report to the DESC for the following year. Adjustments to total Sediment Management costs and/or annual payments will trigger the renegotiation rights described in Section 11 only if adjustments cause projected costs to increase above agreed-upon allocations.

## **11. Termination, Withdrawal, and/or Renegotiation**

### **11.1. Termination and Withdrawal for Project Delay**

If removal of the 5th Avenue Dam is not completed within a reasonable time frame, defined currently as prior to 2045, the DESC has the right to terminate the Agreement and any Party has the right to require renegotiation of the terms of the Agreement and the right to withdraw from the Agreement without further financial obligations.

### **11.2. Withdrawal for Convenience/Non-Appropriation of Funds**

**11.2.1.** A Party may withdraw from the Agreement for convenience at any time upon written notice to the Project Manager and all Parties, provided that before withdrawing, the withdrawing Party provides funds sufficient to satisfy all financial obligations of the withdrawing Party for the term of the Agreement in effect at the time of withdrawal, and the withdrawing Party has satisfied all specific performance obligations under the Agreement.

**11.2.2.** A Party, to include the State, may withdraw from the Agreement if its governing body fails to appropriate and/or provide sufficient funds to make required payments under this Agreement. A Party withdraws due to non-appropriation of funds at the earlier of the Party providing written notice to the Project Manager and all Parties of withdrawal due to non-appropriation of funds, or two years after receiving notice from the State Finance Manager and/or Local Party Treasurer of the failure to make a payment required by this Agreement. A Party withdrawing due to non-appropriation, to include the State, must satisfy all specific performance obligations under the Agreement, to include subsidiary agreements. However, the withdrawing party is no longer obligated, indebted, or otherwise responsible to make an annual payment under

Section 10 of this Agreement for the year of non-appropriation and all remaining years under this Agreement.

**11.2.3.** Upon withdrawal for convenience or due to non-appropriation of funds, the withdrawing Party is no longer a member of the DESC.

**11.2.4.** A Party withdrawing for convenience or due to non-appropriation of funds shall not be entitled to a refund of any funds previously deposited in Local Account, or any interest thereon.

### **11.3. Renegotiation.**

If one or more of the following specific events occur, the Project Manager will convene the DESC to consider modification of the Sediment Management program to avoid significant impacts to navigation in West Bay through the initial term of the Agreement:

**11.3.1.** Sediment Management costs increase to a degree that funds will be exhausted prior to the expiration of the initial term of the Agreement (2050).

**11.3.2.** The marinas fail to provide funding sufficient to meet their obligations under a formal dredging program under the No Action Alternative (i.e., funding sufficient to dredge at the frequency needed to avoid significant adverse impacts<sup>5</sup> and meet the terms of DNR leases if the 5th Avenue Dam were left in place).

**11.3.3.** A withdrawal by a Party for convenience or due to non-appropriation occurs.

**11.3.4.** Unforeseen environmental impacts (e.g., sea level rise, earthquake) necessitate additional mitigation and/or costs that have not been contemplated.

## **12. Disputes/Enforcement.**

### **12.1. Each Party May Enforce**

The Parties agree and recognize that this multi-party Agreement is the result of complex negotiations among individual entities each with individual interests and constituencies, and that the provisions of this Agreement are interdependent and represent a balancing of those individual interests and constituencies. Accordingly, the Parties agree that they each have authority to

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<sup>5</sup> Refer to Section 10.1.1 for a description of significant adverse impacts as it has been defined for this Interlocal Agreement.

enforce the obligations of each other Party under this Agreement, to include requiring specific enforcement of such obligations.

## **12.2. Disputes**

Any disputes among Parties under this Agreement shall be resolved, if possible, by negotiation. If resolution cannot be reached, any Party may declare an impasse by delivering written notification of impasse to the Project Manager with a copy to each Party. Upon receipt of a notice of impasse, the Project Manager shall confer with the Parties involved in the impasse on an appropriate dispute resolution process, including, as a first preference, use of a mediator or other facilitated negotiation. If the Project Manager determines that the Parties cannot agree on a dispute resolution process, the dispute shall be decided by a panel of three arbitrators, one appointed by the Party(ies) initiating a notification of impasse, a second appointed by the Party(ies) responding to the notification, and the third by the two appointed arbitrators. A written decision by a majority of the arbitrators shall be the decision of the arbitration panel. Hourly payments for the arbitrators' time shall be in arrears and the arbitrators may, in the arbitrator's discretion, award costs and fees, to include reasonable attorneys' fees, to the prevailing Party/Parties. The decision of the arbitration panel shall be binding, subject to judicial review. Any dispute relating to the appointment of arbitrators shall be decided by petition to the Superior Court for Thurston County, Washington.

## **12.3. Choice of Law/Venue**

This Agreement and any dispute arising under this Agreement shall be governed by the laws of the State of Washington. Venue for entrance of a decision of the dispute resolution panel and for any other reason shall lie exclusively in the Superior Court for Thurston County, Washington.

## **13. Administrative**

### **13.1. Authority**

This Agreement shall be executed on behalf of each Party by a duly authorized signatory, and pursuant to an appropriate motion, resolution, or ordinance of each Party. By executing below, each Party represents that it has authority to enter into and be subject to the terms of this Agreement.

### **13.2. Public Records**

The Project Manager is responsible for maintaining Sediment Management records and responding to public records requests made to the DESC or related to Sediment Management. Each Party shall cooperate with the Project Manager and with other Parties in responding to any public records requests related to Sediment Management. Notwithstanding the above, each Party

shall be responsible for maintaining its own records and responding to public records requests for that Party's records.

### **13.3. Execution**

This Agreement may be executed in counterpart and/or by electronically transmitted signature (pdf or similar).

### **13.4. Contact Information/Notice**

Each Party shall provide updated contact information of its representative to the Project Manager and to all other Parties. Notice to the representative shall constitute notice to a Party.

### **13.5. Filing**

Upon execution by all Parties, this Agreement shall be filed as required by RCW 39.04.040.

### **13.6. Entire Agreement/Amendments**

This Agreement represents the entire and sole agreement of the Parties with respect to the subject matter herein and may be amended or modified only by written agreement of all affected Parties who are members of the DESC at the time of the Amendment.

### **13.7. Assignment**

This Agreement shall be binding on each Party and its successors and may not be assigned in whole or in part without the written consent of all Parties.

### **13.8. No Third-Party Beneficiaries**

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.

### **13.9. Waiver**

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.

### **13.10. Force Majeure**

If a Party, the Project Manager, the State Finance Manager and/or the Local Party Treasurer, is or are rendered unable by Force Majeure to carry out, in whole or part, obligations under this Agreement and gives notice and full details of the event to the other Parties and Project Manager as soon as practicable after the occurrence, then during the pendency of such Force Majeure event

but for no longer period, the obligations affected by the event (other than the obligation to make payments due for performance prior to the event) shall be suspended to the extent required. Any entity claiming a Force Majeure event shall remedy the event as soon as possible.

### **13.11. 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.

### **Exhibits**

Exhibit 1	Sediment Management Dredging Areas
Exhibit 2a	Representative Annual Coordination Process & Marina Dredging Coordination
Exhibit 2b	Representative Annual Coordination Process for Port Vessel Berth Dredging Coordination
Exhibit 3	Recommended Sediment Management Allocations
Exhibit 4	Estimated Annual Payment Schedule

### **Attachments**

Attachment 1	Fifth Avenue Bridge and Infrastructure Agreement
Attachment 2	South Basin Boardwalk and Related Infrastructure Agreement
Attachment 3	Port of Olympia Dredging Addendum to ILA
Attachment 4	LOTT Utility Agreement

Signatures



9/22/2024

Tara C. Smith, Director  
Department of Enterprise Services

Date

Kris Peters, Chairman  
Squaxin Island Tribe

Date

Mark Barber, City Attorney  
City of Olympia

Date

Steven J. Burney, City Manager  
City of Olympia

Date

Debbie Sullivan, Mayor  
City of Tumwater

Date

Karen Kirkpatrick, City Attorney  
City of Tumwater

Date

Matthew J. Kennelly, Executive Director  
LOTT

Date

## Signatures

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Tara C. Smith, Director  
Department of Enterprise Services

Date



Kris Peters, Chairman  
Squaxin Island Tribe

9/12/24

Date

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Mark Barber, City Attorney  
City of Olympia

Date

---

Steven J. Burney, City Manager  
City of Olympia

Date

---

Debbie Sullivan, Mayor  
City of Tumwater

Date

---

Karen Kirkpatrick, City Attorney  
City of Tumwater

Date

---

Matthew J. Kennelly, Executive Director  
LOTT

Date



## Signatures

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Tara C. Smith, Director  
Department of Enterprise Services

Date

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Kris Peters, Chairman  
Squaxin Island Tribe

Date

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**Mark Barber**

10/03/2024

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Mark Barber, City Attorney  
City of Olympia

Date

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*Steven J Burney*

10/09/2024

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Steven J. Burney, City Manager  
City of Olympia

Date

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Debbie Sullivan, Mayor  
City of Tumwater

Date

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Karen Kirkpatrick, City Attorney  
City of Tumwater

Date

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Matthew J. Kennelly, Executive Director  
LOTT

Date

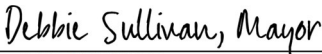
Signatures


Tara C. Smith, Director Department of Enterprise Services	Date
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Kris Peters, Chairman Squaxin Island Tribe	Date
---	------

Mark Barber, City Attorney City of Olympia	Date
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Steven J. Burney, City Manager City of Olympia	Date
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<div>Signed by: </div> <div>Debbie Sullivan, Mayor City of Tumwater</div>	11/12/2024 Date
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<div>DocuSigned by: </div> <div>Karen Kirkpatrick, City Attorney City of Tumwater</div>	11/7/2024 Date
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Matthew J. Kennelly, Executive Director LOTT	Date
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Signatures

Tara C. Smith, Director Department of Enterprise Services	Date
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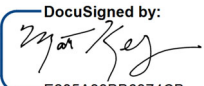
Kris Peters, Chairman Squaxin Island Tribe	Date
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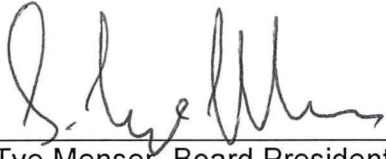
Mark Barber, City Attorney City of Olympia	Date
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Steven J. Burney, City Manager City of Olympia	Date
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Debbie Sullivan, Mayor City of Tumwater	Date
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Karen Kirkpatrick, City Attorney City of Tumwater	Date
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<div><div>DocuSigned by:</div><div></div><div>E285A33BB6374CB...</div></div>	10/16/2024
Matthew J. Kennelly, Executive Director LOTT	Date



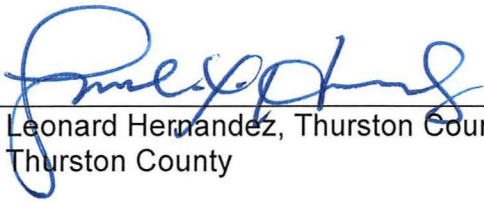
Tye Menser, Board President  
LOTT

11-7-24

Date

Alex Smith, Executive Director  
Port of Olympia

Date



Leonard Hernandez, Thurston County Manager  
Thurston County

Nov 1, 2024

Date

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Tye Menser, Board President  
LOTT

Date

*Alex Smith*

*Nov 5, 2024*

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Alex Smith, Executive Director  
Port of Olympia

Date

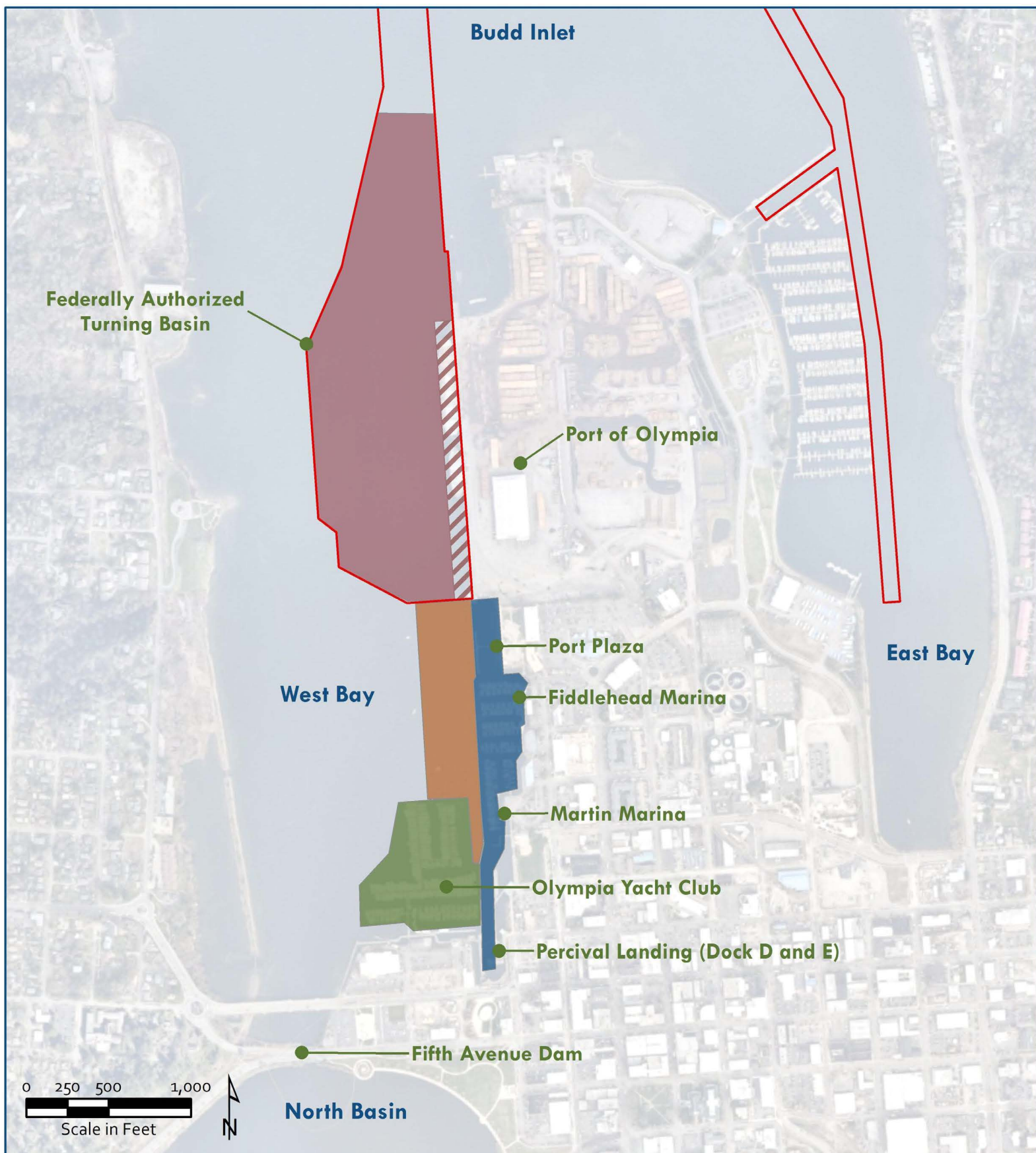
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Leonard Hernandez, Thurston County Manager  
Thurston County







Date

## Exhibits

# Exhibit 1 Sediment Management Dredging Areas



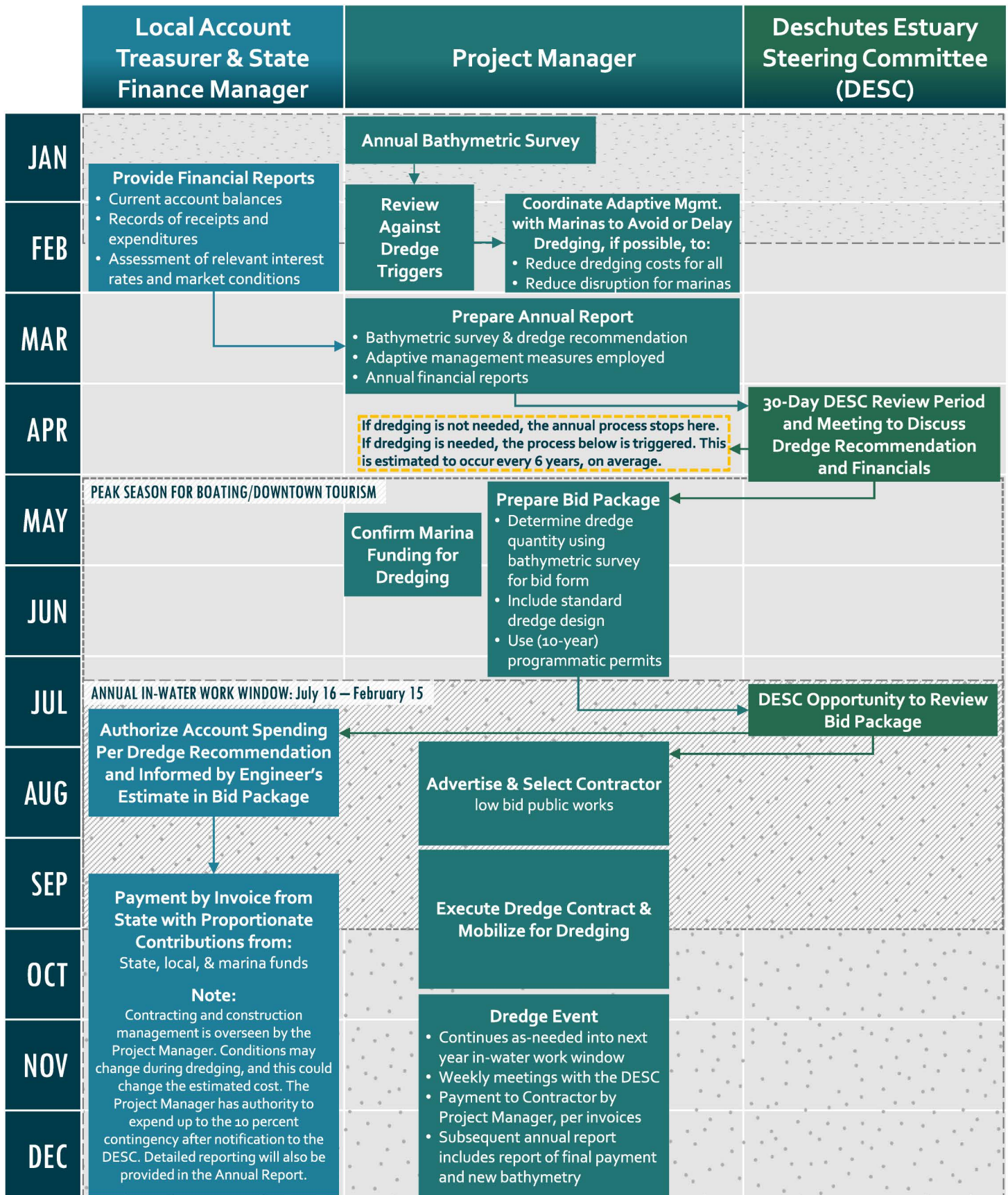
## Legend

 Olympia Yacht Club	 Marina Access Area	 Port Vessel Berths (within FNC)
 Other Nearby Marinas	 Turning Basin (within FNC)	 Federal Navigation Channel





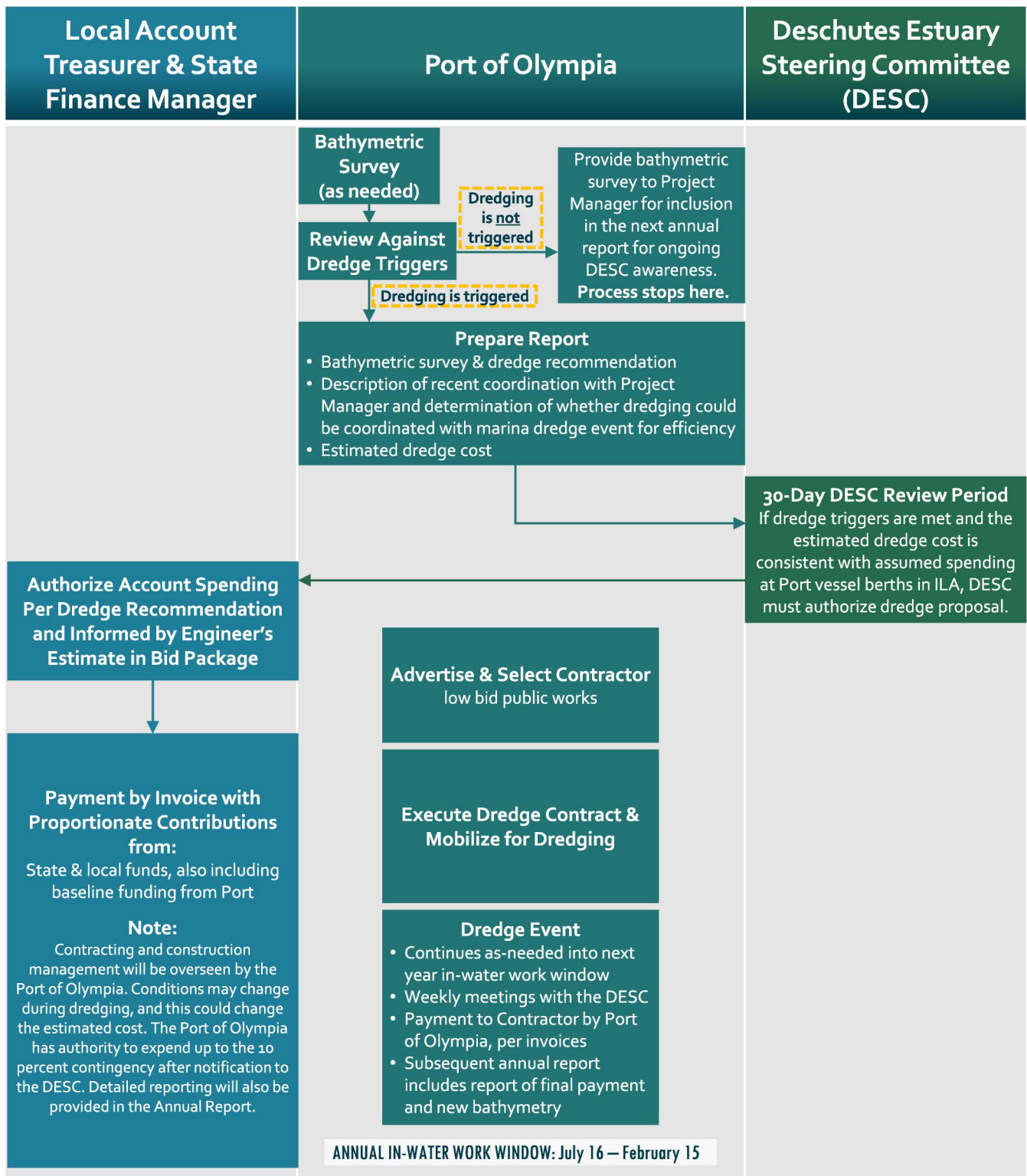
## Representative Annual Coordination Process & Marina Dredging Coordination







## Representative Coordination Process for Port Vessel Berth Dredging



### Exhibit 3. Recommended Sediment Management Allocations

The values in this table are based on planning-level cost estimates and are provided in 2022 dollars.

The allocations and associated cost estimates are provided for the term of the FGWG agreement only – through 2050.

This table of recommended allocations provides and equalizes the recommended allocations for Sediment Management across the FGWG. It recognizes that: (1) all parties benefit from estuary restoration and/or Sediment Management and (2) that differences in the magnitude of benefits cannot be mathematically derived but that the Project would be beneficial to each entity. Importantly, the City of Olympia is shown in an increased capacity from the remaining FGWG members given that the working waterfront and recreational boating infrastructure exists within the city limits and is adjacent to downtown Olympia, and arguably, the City of Olympia may derive the most direct benefits.

Entity <sup>(i, ii)</sup>	Allocation % for Maintenance Dredging of Increased Sediment from Estuary Alternative (above No Action Alternative)	Cost Estimate for Maintenance Dredging Equivalent to No Action Alternative <sup>(iii)</sup>	Cost Estimate for Maintenance Dredging of Increased Sediment from Estuary Alternative (above No Action Alternative) <sup>(iv)</sup>	Total Cost Estimate for Sediment Management (No Action Alternative + Increased Maintenance Dredging from Estuary Alternative)	Estuary Construction + Total Sediment Management	Allocation % Total (Estuary Construction + Sediment Management)
Olympia	~23.1%	\$0	\$4,297,000	\$4,297,000	\$4,297,000	2%
LOTT	~15.4%	\$0	\$2,865,000	\$2,865,000	\$2,865,000	1%
Port	~15.4%	\$362,000	\$2,865,000	\$3,227,000	\$3,227,000	1%
Tumwater	~15.4%	\$0	\$2,865,000	\$2,865,000	\$2,865,000	1%
Marinas	0.0%	\$5,800,000	\$0	\$5,800,000	\$5,800,000	2%
Thurston County	~15.4%	\$0	\$2,865,000	\$2,865,000	\$2,865,000	1%
State	~15.4%	\$0	\$2,865,000	\$2,865,000	\$249,545,000	92%
Squaxin Island Tribe	0.0%	\$0	\$0	\$0	\$0	0%
	<b>~100.0%</b>	<b>\$6,162,000</b>	<b>\$18,622,000</b>	<b>\$24,784,000</b>	<b>\$271,464,000</b>	<b>100%</b>

#### Notes:

- i All values included in this table are represented in 2022 dollars and may use rounded values. An annual inflationary rate is to be included in each Party's annual payment of allocated Sediment Management funding; those inflation costs are not reflected in this table (refer to Exhibit 4). All values reflect planning-level cost estimates based on conceptual design (see Section 10). Parties shall be responsible for their own overhead and "soft costs" associated with their obligations under this Agreement.
- ii The total cost for Sediment Management represented in this table assumes removal of the 5<sup>th</sup> Avenue Dam occurs in 2033, which is the soonest that phased dam removal could begin—through 2050, which is the end date of the existing agreement. Based on hydrodynamic and sediment transport numerical modeling conducted for the EIS, maintenance dredging is assumed to occur at an approximate 6-year frequency, resulting in an estimated three dredge events in the 18-year duration between 2033 and 2050. These planning level costs reflect these assumed dredging events.

Delays in 5<sup>th</sup> Avenue Dam removal would reduce the duration assumed by this Agreement within which sediment conditions in West Bay have changed from existing conditions. If removal of the 5<sup>th</sup> Avenue Dam is delayed (particularly if the delay is long enough to eliminate an assumed dredge event), the total cost estimates for Sediment Management provided herein could be adjusted. In that scenario, adjustments in the total cost of Sediment Management will be reflected in the total costs allocated to each Party, but not the percentage allocation of each Party.

Each Party's annual payment is determined by dividing the member's total allocated Sediment Management costs (escalated) for the initial term of the Agreement by the number of years (partial years count as a full year) remaining in the initial agreement term of the Agreement at the time of the payment's deposit. The number of years used to determine the annual payment is dependent upon the State's receipt of construction funding to remove the 5th Avenue Dam. Each FGWG member is responsible for its annual allocated costs; however, they may divide over the initial term of the Agreement, as is described in Section 10.2, Sediment Management Cost Allocation and Annual Payment Estimates, of the Agreement. These costs assume that the Port of Olympia (Port) will have already dredged

existing contaminated sediment and has reestablished authorized depths in West Bay. That dredging of contaminated accumulated sediment is not associated with this Project, and those costs are not included in the costs represented here. The planned Port dredging of contaminated sediments is also expected to allow the future dredged material to be disposed of in-water.

The planning-level costs presented herein assume in-water disposal of dredged material. The maintenance dredging costs would significantly increase if dredged material were determined not suitable for in-water disposal.

Bathymetric surveys would be conducted to adjust dredging events to actual environmental conditions (surveys would occur annually at the marinas, at a minimum). These tables do not include costs for the annual bathymetric surveys. Costs associated with design and permitting (and associated efforts) are not included in these tables either, and they are currently assumed to be an in-kind contribution from the State as outlined in Table 1 of Section 8.3.

The last year of existing leases with the marinas in West Bay is 2050; these estimates align with that timeline and do not speculate about continued maintenance dredging past that time, potential new funding sources or different shared agreements, or potential marina decisions to relocate.

- iii This represents the estimated non-project costs associated with dredging impacted areas of West Bay based on sedimentation rates and patterns modeled for the No Action Alternative, assuming a formal dredging program with the same dredging triggers as defined for the Estuary Alternative. Numerical modeling shows that approximately 65% of the sediment would be dredged from the Federal Navigation Channel and turning basin; funding for that dredging is the responsibility of the U.S. Army Corps of Engineers (USACE). USACE-provided funding (for dredging equivalent to the No Action Alternative, or for increased Sediment Management under the Estuary Alternative, as described below) has not been included in this table at the request of the Parties. USACE funding for dredging is a critical component of maintaining navigation in West Bay.
- iv These costs reflect the increased Sediment Management costs beyond those that would be incurred by others under the No Action Alternative to avoid significant impacts to navigation in West Bay. Dredging in the FNC and turning basin, including additional dredging requirements resulting from the Project, is the responsibility of USACE and those costs are not included. Maintenance dredging needs equivalent to the No Action Alternative in impacted areas of West Bay would continue to be the responsibility of the Port, the marinas, and USACE; additional dredging requirements shown in this estimate resulting from the Project would be the shared responsibility of members of the Parties.

## Exhibit 4. Estimated Annual Payment Schedule

Dredge Cost (Escalated at 4.5%)	Year		Olympia	LOTT	Port	Tumwater	Marinas	Thurston County	State <sup>c</sup>	Squaxin
Allocation % (Increased Sediment) <sup>a</sup>			23.1%	15.4%	15.4%	15.4%	0.0%	15.4%	15.4%	0.0%
Allocation % (Baseline + Increased Sediment) <sup>b</sup>			17.3%	11.6%	13.0%	11.6%	23.4%	11.6%	11.6%	0.0%
	1	2022								
	2	2023								
	3	2024								
	4	2025								
	5	2026								
Payment begins	6	2027	\$ 276,000	\$184,000	\$207,000	\$184,000	TBD	\$184,000	\$184,000	\$0
	7	2028	\$ 288,000	\$192,000	\$217,000	\$192,000		\$192,000	\$192,000	
	8	2029	\$ 301,000	\$201,000	\$226,000	\$201,000		\$201,000	\$201,000	
	9	2030	\$ 315,000	\$210,000	\$237,000	\$210,000		\$210,000	\$210,000	
	10	2031	\$ 329,000	\$219,000	\$247,000	\$219,000		\$219,000	\$219,000	
	11	2032	\$ 344,000	\$229,000	\$258,000	\$229,000		\$229,000	\$229,000	
	12	2033	\$ 359,000	\$240,000	\$270,000	\$240,000		\$240,000	\$240,000	
	13	2034	\$ 376,000	\$250,000	\$282,000	\$250,000		\$250,000	\$250,000	
	14	2035	\$ 393,000	\$262,000	\$295,000	\$262,000		\$262,000	\$262,000	
	15	2036	\$ 410,000	\$274,000	\$308,000	\$274,000		\$274,000	\$274,000	
Dredge 1	16	2037	\$ 429,000	\$286,000	\$322,000	\$286,000		\$286,000	\$286,000	
\$12,099,000	17	2038	\$ 448,000	\$299,000	\$336,000	\$299,000		\$299,000	\$299,000	
	18	2039	\$ 468,000	\$312,000	\$352,000	\$312,000		\$312,000	\$312,000	
	19	2040	\$ 489,000	\$326,000	\$367,000	\$326,000		\$326,000	\$326,000	
	20	2041	\$ 511,000	\$341,000	\$384,000	\$341,000		\$341,000	\$341,000	
	21	2042	\$ 534,000	\$356,000	\$401,000	\$356,000	\$356,000	\$356,000		
Dredge 2	22	2043	\$ 558,000	\$372,000	\$419,000	\$372,000	\$372,000	\$372,000		
\$33,761,000	23	2044	\$ 583,000	\$389,000	\$438,000	\$389,000	\$389,000	\$389,000		
	24	2045	\$ 610,000	\$406,000	\$458,000	\$406,000	\$406,000	\$406,000		
	25	2046	\$ 637,000	\$425,000	\$478,000	\$425,000	\$425,000	\$425,000		
	26	2047	\$ 666,000	\$444,000	\$500,000	\$444,000	\$444,000	\$444,000		
	27	2048	\$ 696,000	\$464,000	\$522,000	\$464,000	\$464,000	\$464,000		
Dredge 3	28	2049	\$ 727,000	\$485,000	\$546,000	\$485,000	\$485,000	\$485,000		
\$20,518,000	29	2050	\$ 760,000	\$507,000	\$571,000	\$507,000	\$507,000	\$507,000		
Estimated Total Escalated Contribution Through the ILA Term <sup>d</sup>										
\$66,374,000			\$11,508,000	\$7,673,000	\$ 8,643,000	\$7,673,000	\$15,534,000	\$7,673,000	\$ 7,673,000	\$0

Notes:

- a/ This allocation percent reflects the distribution of maintenance dredging costs for increased sediment management above the No Action Alternative across ILA Parties, as shown in Attachment 1 to the MOU.
- b/ This allocation percent reflects the distribution of total costs for managing sediment including the cost estimate for maintenance dredging equivalent to No Action Alternative and the cost estimate for maintenance dredging costs for increased sediment management, above the No Action Alternative.
- c/ The state may provide its payment as a lump sum contribution in the year of the dredge events, consistent with and not to exceed its allocated percent of actual costs.
- d/ The estimated total escalated contribution is calculated in two steps. First the cost of each dredge event is escalated from 2022 dollars (as reported in the EIS) at 4.5% per year and then summed to arrive at the total cost of sediment management over the ILA term. Annual payments are then calculated by apportioning the total escalated costs to each party using the allocation percentages that reflect baseline and increased sediment management, as described in footnote b above.

## Attachments

## ATTACHMENT 1

### Fifth Avenue Bridge and Infrastructure Agreement

State of Washington and City of Olympia

This Fifth Avenue Bridge and Infrastructure Agreement (“5<sup>th</sup> Avenue Bridge Agreement”) is by and between the State of Washington (State), acting by and through the Department of Enterprise Services, (DES) and the City of Olympia (“Olympia”), and is subsidiary to the Interlocal Agreement (ILA) entered into on **November 12, 2024**, by DES, Olympia, the Squaxin Island Tribe (Tribe), the County of Thurston (County), the City of Tumwater (Tumwater), the Port of Olympia (Port), and the LOTT Clean Water Alliance (LOTT). Collectively, the parties to the ILA shall be referred to as the “ILA Parties.” DES and Olympia shall be referred to herein using their defined names.

Capitalized terms in this 5<sup>th</sup> Avenue Bridge 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 5<sup>th</sup> 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 **November 12, 2024**, 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 auxiliary agreements between DES and each receiving entity.
- D. Among the physical assets to be constructed and transferred as part of the Project is a new 5<sup>th</sup> Avenue Bridge spanning the main channel of the Deschutes River immediately to the south of the existing 5<sup>th</sup> Avenue Bridge, which will be removed. The new 5<sup>th</sup> Avenue Bridge will connect to the existing 5<sup>th</sup> Avenue at Simmons Street NW on the east side of the Deschutes River; on the western side, Olympic Street W will be reconfigured between Deschutes Parkway SW and the existing roundabout at 4<sup>th</sup> Avenue. The reconfigured roadway is part of the asset transfer to Olympia. All references to the new 5<sup>th</sup> Avenue Bridge in this 5<sup>th</sup> Avenue Bridge Agreement includes the reconfigured roadway.

- E. This 5<sup>th</sup> Avenue Bridge Agreement is subsidiary to the ILA, and sets forth the agreement between DES and Olympia regarding general principles related to design of the new 5<sup>th</sup> Avenue Bridge, removal of the existing 5<sup>th</sup> Avenue Bridge and transfer of a new 5<sup>th</sup> Avenue Bridge after construction.
- F. DES and Olympia recognize that the new 5<sup>th</sup> Avenue Bridge is currently in preliminary design stage, and that this 5<sup>th</sup> Avenue Bridge Agreement will be supplemented or superseded by a subsequent conveyance agreement, consistent with the general principles set forth herein, providing further details regarding the design, construction, transfer and future operations of the new 5<sup>th</sup> Avenue Bridge.

### **AGREEMENT**

In consideration of the mutual promises, covenants, and conditions in this 5<sup>th</sup> Avenue Bridge Agreement and in the ILA, DES and Olympia agree as follows:

1. **Intent.**

DES and Olympia shall work together in good faith, with specific areas of responsibility as outlined in this 5<sup>th</sup> Avenue Bridge Agreement, to design, build, and transfer the new 5<sup>th</sup> Avenue Bridge.

The new 5<sup>th</sup> Avenue Bridge shall be designed in accordance with the agreed design goals that have been identified by DES and Olympia as set forth below in Table 1.

**Table 1—City of Olympia Design Goals**

<ul style="list-style-type: none"> <li>• <b>Design for minimal maintenance</b> <ul style="list-style-type: none"> <li>○ Focus on a single bridge structure (not two structures or a continuous separation, but a short separation for a small portion of bridge is acceptable)</li> <li>○ Avoid designs with double-maintenance responsibilities (e.g., two continuous sets of railings, two sets of curbs.)</li> </ul> </li> <li>• <b>Prioritize pedestrian safety</b> <ul style="list-style-type: none"> <li>○ <b>Maintain natural sight lines between vehicles and pedestrians for improved safety and to avoid a pedestrian experience of feeling isolated</b></li> <li>○ <b>Create a meaningful buffer to separate pedestrians and vehicles. This can be through increased width of the pedestrian space, physical barriers (like landscape buffers), or raising/lowering elevations. The buffer reduces noise and proximity to traffic.</b></li> </ul> </li> <li>• <b>Create larger space for pedestrians/programming on south side of vehicular bridge</b> <ul style="list-style-type: none"> <li>○ <b>Bump-out locations for pause, seating, viewing – supportive of plaza idea, expansive space for programming</b></li> <li>○ <b>Supportive of a design that is considered transformational</b></li> <li>○ <b>Supportive of low-maintenance railing system that does not impede views</b></li> </ul> </li> <li>• <b>Provide some level of design consistency with the 4<sup>th</sup> Avenue Bridge. Also, 5<sup>th</sup> Avenue can be a “continuation on the design spectrum” but should have some similarities to 4<sup>th</sup> Avenue.</b></li> <li>• <b>Consider bridge affordability, which will require a design that is inspiring enough to attract funding, but not so expensive that the full funding can never be obtained.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Design to reflect the grandeur of the Project, Capitol Campus</li> <li>• Create opportunities to engage with the natural environment</li> <li>• Design elements to support natural resource function</li> <li>• Integrate Squaxin Island Tribal histories (through art, interpretive signage) and representation of other histories where possible</li> <li>• Create a cohesive experience with the area context (Downtown Olympia, Heritage Park, Marathon Park, Capitol Campus, etc.) – inform and be informed by this area context</li> </ul>
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\* Bold font indicates elements included in both Olympia’s and DES’s Community design goals.

## 2. DES-Led Bridge Design and Community Involvement

- DES shall be responsible for the design of the new 5<sup>th</sup> Avenue Bridge and shall consult with representatives of Olympia throughout the design process to ensure the new 5<sup>th</sup> Avenue Bridge meets the intent set forth above.
- DES shall advance the 5<sup>th</sup> Avenue Bridge design from the concept drawing provided to Olympia in July 2024 for review and comment.
- DES shall be responsible for community involvement regarding the new 5<sup>th</sup> Avenue Bridge design and construction processes. DES shall consult with Olympia in the development of the community engagement plan (the scope and



included elements of which are tied to available funding), and the process implemented by DES shall meet or exceed Olympia's requirements regarding community involvement for similar facilities and based on available funding. The intent of the community engagement plan is to incorporate input from the community into the bridge design, where appropriate, and to work toward a community-supported bridge design.

- d. After the community engagement activities regarding the 5<sup>th</sup> Avenue Bridge are complete, DES shall report to Olympia the primary themes and requests from the community and shall identify whether those requests meet the design goals as provided in Table 1 above, and whether the requests can or should be incorporated into the bridge design.

### 3. Olympia Coordination Responsibilities

Olympia shall remain integrated into the new 5<sup>th</sup> Avenue Bridge design process. At a minimum, Olympia shall:

- a. Participate in design meetings with DES, up to monthly throughout the design process so that feedback can be received in real time.
- b. Review the formal design deliverables concurrent with DES to ensure that bridge design remains consistent with Olympia design standards and long-term management and maintenance goals.
- c. Provide design feedback through other channels, as needed. There are several components of the bridge and roadway design that will benefit from a broad range of Olympia input. For example, the bridge height above water will be determined by design requirements for climate resiliency, clearance for recreational vessels on the restored estuary, grade restrictions to support bike and pedestrian movements in this corridor, etc. Olympia shall support coordination across city departments, as needed, on these interdisciplinary design topics, and provide timely input and responses back to DES.

### 4. Bridge Funding and Construction

- a. DES shall be responsible for securing construction funding and overseeing construction of the Project, including the new bridge and roadway. For this reason, during the design process, DES shall have authority over decisions that materially impact Project costs but will consider input from Olympia given that all design decisions have a cost component. DES will seek to balance Olympia interests in bridge type and aesthetics with likely funding outcomes.
- b. DES and Olympia acknowledge that construction funding is not yet secured and will require significant investment from the State and federal governments. DES and Olympia commit to jointly pursuing State and federal grant funding, where appropriate. Olympia shall also take all needed steps to support joint pursuit of grant funding, including listing of the Project in its Capital Improvement Plans and other long-range planning documents.

- c. DES and Olympia shall work together to determine the acceptable level of construction-related disruption and shall receive input from the community regarding these impacts. DES will implement reasonable avoidance or mitigation measures, as agreed to with Olympia, to minimize impacts to the transportation network as a result of construction.
5. DES shall be the contracting party for and shall manage all contracts related to removal of the existing 5<sup>th</sup> Avenue Bridge and the design and construction of the new 5<sup>th</sup> Avenue Bridge.
6. Bridge Turnover and Long-Term Maintenance and Operation

Upon completion, DES shall transfer ownership of the new 5<sup>th</sup> Avenue Bridge to Olympia and Olympia shall accept such transfer. After transfer, Olympia shall bear all operation and maintenance costs and responsibilities and shall be responsible for all risk of loss. The transfer will be accomplished by subsequent legal instrument consistent with this 5<sup>th</sup> Avenue Bridge Agreement.
7. Replaced Olympia Utilities
  - a. Olympia owns and maintains utilities in the area expected to be affected by construction of the Project. Any Olympia utilities affected by the Project, either existing or new, will be replaced with the same service or better.
  - b. DES will consult with representatives of Olympia to ensure design and replacement of Olympia's utilities meet Olympia design requirements.
  - c. DES shall work in good faith with Olympia to minimize interruptions in service in accordance with relevant Olympia guidance regarding timing and length of service outages, and other agreements regarding allowable disruptions during construction.
8. Funding
  - a. DES and the State shall provide all funding for design and construction of a new 5<sup>th</sup> Avenue Bridge.
  - b. After transfer of the new 5<sup>th</sup> Avenue Bridge to Olympia, Olympia shall provide all funding for operation and maintenance of the new 5<sup>th</sup> Avenue Bridge.
  - c. DES and Olympia shall each be responsible for their own overhead and internal costs related to carrying out their respective responsibilities under this 5<sup>th</sup> Avenue Bridge Agreement.
9. Termination

This 5<sup>th</sup> Avenue Bridge Agreement may not be terminated by either party.
10. Section 12 (Administrative) of the ILA shall apply to the extent feasible.

SIGNATURES

<u>Mark Barber</u>	11/01/2024
Mark Barber, City Attorney	Date
City of Olympia	

<u>Steven J. Burney</u>	11/01/2024
Steven J. Burney, City Manager	Date
City of Olympia	

## **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 5<sup>th</sup> 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 **November 12, 2024** 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

Signed by:



945DD615DE7D4C0...

Debbie Sullivan, Mayor

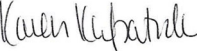
City of Tumwater

11/12/2024

Date

Approved as to Form:

DocuSigned by:




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Karen Kirkpatrick, City Attorney

11/7/2024

Date



Tara C. Smith, Director

Department of Enterprise

14/11/2024

Date



## ATTACHMENT 3

### PORT OF OLYMPIA DREDGING ADDENDUM TO ILA

This Port of Olympia Dredging Addendum (“Port Addendum”) is incorporated into and part of the Interlocal Agreement (ILA) by and among the State of Washington (State) acting by and through the Department of Enterprise Services, (“DES”), the Squaxin Island Tribe (Tribe), the County of Thurston (County), the City of Olympia (Olympia), the City of Tumwater (Tumwater), the LOTT Clean Water Alliance (“LOTT”), and the Port of Olympia (Port). Collectively, the parties to the ILA shall be referred to as the “ILA Parties.” DES and the Port shall be referred to herein using their defined names.

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

#### **BACKGROUND**

- 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 5<sup>th</sup> Avenue Dam and Bridge, 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 **November 12, 2024** governing Sediment Management in the West Bay of Budd Inlet.
- C. As recognized in the ILA, the Port has independent authority and responsibility to conduct dredging to maintain authorized water depths in the Port’s vessel berths and under this ILA, is entitled to use funding from the ILA accounts (State and Local accounts, however denominated). The Port is also the local sponsor for coordination with the U.S. Army Corps of Engineers (USACE) for dredging in the Federal Navigation Channel (FNC) and Turning Basin; dredging in the FNC and Turning Basin would be funded by USACE.
- D. This Port Addendum to the ILA sets forth the responsibilities and processes related to the Port’s maintenance dredging within the Port vessel berths.

## **PORT VESSEL BERTH DREDGING**

The review process for Port-led maintenance dredging in Port vessel berths using funding from the ILA Parties, described below, is based on the following assumptions and agreements regarding process:

### **1. Assumptions**

- a. Maintenance dredging equivalent to the EIS' No Action Alternative in impacted areas of the Port's vessel berths will continue to be the responsibility of the Port; additional dredging requirements resulting from the Project (above the No Action Alternative), will be the shared responsibility of the ILA Parties (including the Port).
- b. Based on numerical modeling completed for the Project, maintenance dredging within the Port's vessel berths is estimated to occur at a frequency of once every 12 years, which is expected to result in one dredge event during the term of the ILA.

### **2. Process and Responsibilities**

The Port shall work in good faith with the Deschutes Estuary Steering Committee (DESC), the Project Manager, the State Finance Manager, and the Local Party Treasurer to coordinate dredging efforts at the marinas, if mutually desirable and feasible, and within the Port's vessel berths. As a condition of accessing ILA funds for dredging in Port's vessel berths, the Port agrees that it shall:

- Serve as project manager for maintenance dredging within the Port's vessel berths.
- Be responsible for bathymetric survey, design, permitting, and contract management for maintenance dredging within the Port's vessel berths during the term(s) of the ILA and provide the bathymetric survey results to the Project Manager and the DESC.
- Continue to serve as the local sponsor for USACE-funded maintenance dredging in the federal navigation channel and turning basin.
- Report to the DESC when Port bathymetric survey(s) indicates significant adverse impacts (i.e., dredge triggers, as defined in the ILA) are likely to occur and dredging within the Port's vessel berths is needed to avoid such significant adverse impacts.
- Prepare a Dredging Plan for DESC review, which must include but is not limited to the following:
  - Bathymetric survey results
  - Dredge recommendations and summary descriptions indicating significant adverse impacts are likely to occur and dredging within the Port's vessel berths is recommended to avoid such significant adverse impacts (i.e., dredge triggers, as defined in the ILA)
  - Adaptive management measures employed (if applicable)

- Description of coordination with the DES Project Manager and determination of whether dredging could be coordinated with a marina dredge event for cost efficiency
- Estimated dredge cost to restore authorized dredge depths in the Port's vessel berths
- Organize and facilitate weekly meeting(s) with, or provide weekly updates to, the Project Manager and/or the DESC during maintenance dredging within the Port's vessel berths. If and as applicable, notify the DESC of changed conditions that impact cost or the maintenance dredging plan.
- Contract with and provide payment to the Contractor during maintenance dredging of the Port's vessel berths using authorized funding from the Local and State accounts (which includes Port contribution for baseline dredging as would occur under a No Action Alternative). Payment shall not exceed the base cost plus 10 percent contingency without prior coordination and approval from the DESC.
- Prepare and submit to the DESC a post-dredging report after each Port dredge event that includes a summary of final dredging cost to the Local Party Treasurer each year (records of receipts and expenditures).

3. Funding

- a. The estimated cost within the ILA to complete one maintenance dredging event within the Port's vessel berth (as assumed in the ILA) is \$1,345,896. This includes a contribution from the ILA Parties (including the Port) of \$983,540 for increased maintenance dredging that would occur as a result of DES implementing the Estuary Alternative, and an additional contribution from the Port of \$362,356 for dredging costs that would have been incurred under the No Action Alternative. The values provided herein are stated in 2022 dollars, consistent with Attachment 1 of the ILA, and have not been escalated.
- b. A not to exceed amount of \$1,345,896 (escalated as appropriate, consistent with escalation applied across the ILA) shall be authorized to the Port from the total funds available once the DESC authorizes the Dredging Plan for dredging in the Port's vessel berths (and as informed by the Engineer's Estimate).

SIGNATURE



Alex Smith, Executive Director  
Port of Olympia

Nov 5, 2024

Date

## ATTACHMENT 4

### LOTT Utility Agreement

#### State of Washington and LOTT Clean Water Alliance

This LOTT Utility Agreement (“Utility Agreement”) is by and between the State of Washington acting by and through the Department of Enterprise Services, (DES) and the LOTT Clean Water Alliance (“LOTT”), and is subsidiary to the Interlocal Agreement (ILA) entered into on **November 12, 2024**, by DES, LOTT, the Squaxin Island Tribe (Tribe), the County of Thurston (County), the City of Olympia (Olympia), the City of Tumwater (Tumwater), and the Port of Olympia (Port). Collectively, the parties to the ILA shall be referred to as the “ILA Parties.” DES and LOTT shall be referred to herein using their defined names.

Capitalized terms not specifically defined in this Utility 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 5<sup>th</sup> Avenue Dam and Bridge, 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 **November 12, 2024** 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 auxiliary agreements between DES and each receiving entity.
- D. Any LOTT utilities affected by the Project, either existing or new, shall be collectively referred to as “LOTT Utilities.” LOTT owns and maintains utilities in the area expected to be affected by construction of the Project, including but not limited to:
  - a. 5<sup>th</sup> Avenue Corridor: 20-inch ductile iron sewer force main
  - b. Deschutes Parkway: 20-inch high-density polyethylene (HDPE) reclaimed water line, 22-inch HDPE gravity sewer main, and 20-inch ductile iron sewer force main
  - c. Marathon Park Pedestrian Bridge: 12-inch ductile iron reclaimed water line, 24-inch ductile iron sewer force main, and three 4-inch polyvinyl chloride (PVC) communication conduits

- E. This LOTT Utility Agreement is subsidiary to the ILA and sets forth the agreement between DES and LOTT as to general principles related to LOTT Utility Construction and future operations and maintenance.
- F. LOTT and Olympia recognize that Project plans affecting LOTT Utilities are in a preliminary design phase, and this LOTT Utility Agreement will be supplemented by a subsequent agreement, consistent with the general principles set forth herein, providing details regarding impacts to and transfer and future operations of the LOTT Utilities.

## **AGREEMENT**

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

### **1. Intent**

DES and LOTT shall work together in good faith, with specific areas of responsibility as outlined in this LOTT Utility Agreement, to design and construct replacement utilities that will provide the same service or better. DES and LOTT shall work together to determine allowable disruptions during construction, while balancing reasonable construction means and methods with the need to minimize utility disruptions to service during that process. DES acknowledges these disruptions may be subject to factors outside of LOTT's control, including, but not limited to weather-related flows. The removal of existing LOTT Utilities and the design and construction of new LOTT utilities shall be collectively referred to as LOTT Utility Construction.

### **2. DES Contracting and Project Management**

- a. DES shall be the contracting party for and shall manage all contracts related to LOTT Utility Construction.
- b. DES shall work in good faith with LOTT to minimize interruptions in service in accordance with relevant LOTT guidance regarding timing and length of service outages, and other agreements regarding allowable disruptions during construction as may be made through the coordination facilitated through this Utility Agreement.
- c. DES shall ensure LOTT's unrestricted access to the Capitol Lake Pump Station at all times.

### **3. LOTT Utility Design**

DES shall consult with representatives of LOTT to ensure replacement LOTT utilities meet the intent set forth above and are consistent with the following standards:

- a. Service shall be equal to or better than current service.
- b. Replaced LOTT Utilities shall be designed to withstand river and tidal flows and have a minimum expected service life of 50 years.

LOTT shall remain integrated into the LOTT Utility design process in the following ways, at minimum:

- a. Participate in design meetings with DES, as needed, 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 LOTT Utility design remains consistent with LOTT design standards and long-term maintenance and maintenance goals. Any changes to material, size, or other specification of existing LOTT Utilities must be submitted in advance to, and approved by, LOTT.

4. Damage to LOTT Utilities Prior to Removal and Replacement

LOTT and Olympia shall endeavor to ensure continuous service and to minimize interruptions to LOTT's existing customers. To that end, if LOTT Utilities are damaged to the extent that they are rendered inoperable or service is compromised or impaired by the Project work recognized by this LOTT Utility Agreement in any way prior to their scheduled removal and replacement, it shall be the sole responsibility of DES to repair or restore LOTT Utilities to prior levels of functionality pending their removal and replacement. DES shall not be responsible for repairing or restoring failures of LOTT Utilities that occur prior to their scheduled removal and replacement that are not caused by Project work recognized by this LOTT Utility Agreement.

5. Replaced LOTT Utilities Transfer, Long-Term Maintenance, and Operation

Upon completion of Project construction, DES shall transfer ownership of replacement LOTT Utilities to LOTT, and LOTT shall accept such transfer. Upon transfer, LOTT shall bear all maintenance costs and responsibilities for the replaced LOTT Utilities and shall be responsible for all risk of loss. The transfer will be accomplished by subsequent legal instrument consistent with this LOTT Utility Agreement.

6. Funding

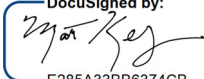
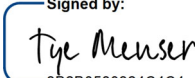
- a. DES, and the State of Washington, shall provide all funding for LOTT Utility Construction.
- b. DES and LOTT acknowledge that construction funding is not yet secured and will require significant investment from the State and federal governments, and will benefit all ILA Parties, including LOTT. DES and LOTT commit to jointly pursuing State and federal grant funding when appropriate.
- c. After transfer of the replaced LOTT utilities, LOTT shall provide all funding for operation and maintenance of the replaced LOTT utilities.
- d. DES and LOTT shall each be responsible for their own overhead and internal costs related to carrying out their respective responsibilities under this LOTT Utility Agreement.

7. Termination

This LOTT Utility Agreement may not be terminated by either party.

8. Section 12 (Administrative) of the ILA shall apply to the extent feasible.

SIGNATURES

<div><div>DocuSigned by:</div><div></div><div>E285A33BB6374CB...</div></div>	10/16/2024
Matthew J. Kennelly, Executive Director	Date
LOTT	
<div><div>Signed by:</div><div></div><div>3B2B0580324C4C...</div></div>	10/16/2024
Tye Menser, Board President	Date
LOTT	