

**INTERGOVERNMENTAL MAINTENANCE AGREEMENT**  
Newport Tsunami Interpretive Trail and Safe Haven Hill  
City of Newport

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and the CITY OF NEWPORT, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. US Route 101 (Oregon Coast Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). SW Abalone Street is a part of the city street system under the jurisdiction and control of Agency.
3. Located in the South Beach area of the City of Newport, a Tsunami Interpretive Trail marks the route to an evacuation assembly area known as Safe Haven Hill. Safe Haven Hill is adjacent to US 101 and is located on state-owned property immediately southwest of the Yaquina Bay Bridge.
4. The purpose of this Agreement is to clarify Agency's and State's maintenance responsibilities of the Safe Haven Hill tsunami evacuation assembly area and amenities within the road prism of US 101 and SW Abalone Street.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to jointly maintain the tsunami evacuation assembly area located on Safe Haven Hill and amenities within the road prism of US 101 and SW Abalone Street. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. It is understood and agreed that the cost of all work associated with maintenance responsibilities identified herein, including cost of labor, materials, equipment and other disbursements shall be borne by State and Agency at their own expense.

3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for twenty (20) calendar years. This Agreement may be modified by mutual consent of both Parties and upon execution of amendment to this Agreement stating said modifications.

#### **AGENCY OBLIGATIONS**

1. Agency shall, at its own expense, perform routine maintenance and upkeep of the following to keep areas clean and in good repair, including, but not limited to:
  - a. All multi-use paths, trails, staircases, handrails, retaining walls, and similar improvements that provide public access from the base to the top of Safe Haven Hill.
  - b. Lighting, including electrical energy costs, signage relating to the Tsunami Interpretive Trail and evacuation assembly area on Safe Haven Hill, tree and brush maintenance for the areas improved, removal and clean-up of illegal camps, and similar improvements at the top of Safe Haven Hill to ensure the site is suitable for use during an emergency.
  - c. Cleared area for the public to assemble at the top of Safe Haven Hill.
2. Agency agrees to conduct the following
  - a. Any Agency complaints received for multi-use paths, trails, retaining walls, or staircases safety shall be promptly evaluated.
  - b. Any damage due to vehicle crashes, vandalism including graffiti or painting, vegetation, site distance, delineation, acts of nature, or regular wear or aging must be repaired or removed by Agency within fourteen (14) days of discovery.
  - c. Routine inspection to detect deterioration or defects and schedule necessary maintenance or repair, including, but not limited to features associated with ADA.
  - d. When pedestrian access would be dangerous, Agency is responsible for installing a temporary repair within forty-eight (48) hours of receiving notice of such damage. Agency is responsible for installing a permanent repair within twenty-one (21) days of receiving notice of damage.
3. Agency shall contact State's District 4 Permits Office seven (7) days prior to the commencement of maintenance activities that impact travel lanes. No lane restrictions are permitted unless prior approval from State's District 4 Manager or designee is provided.
4. When performing maintenance activities on state right of way, Agency shall follow the Oregon Temporary Traffic Control Handbook for pedestrian and traffic control.

5. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
6. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
7. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
8. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
9. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately

defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

10. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
11. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
12. Agency's Project Manager for this Project is Spencer Nebel, City Manager, City of Newport, 169 SW Coast Hwy., Newport, Oregon 97365; phone: (541) 574-0601; email: [s.nebel@newportoregon.gov](mailto:s.nebel@newportoregon.gov), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **STATE OBLIGATIONS**

1. State shall, at its own expense, perform routine maintenance and upkeep of the following to keep areas clean and in good repair, including, but not limited to: sidewalks and highway signage.
2. State is responsible for any improvements it may make to Safe Haven Hill that are unrelated to Agency's tsunami evacuation assembly area.
3. State grants Agency the right to enter onto state right of way for the performance of duties as set forth in this Agreement.
4. State's Project Manager for this Project is Brian Morey, District Manager, ODOT District 4, 3700 SW Philomath Boulevard, Corvallis, Oregon 97333; phone: (541) 757-4211; email: [brian.t.morey@odot.state.or.us](mailto:brian.t.morey@odot.state.or.us), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual written consent of both Parties.

2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. **Americans with Disabilities Act Compliance:**
  - a. The Parties agree that all work performed by either Party under this Agreement ("Work") shall comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA").
  - b. Scope of Work:
    - i. The scope of the Work performed under this Agreement is limited to maintenance activities and shall not include alteration, upgrade, or construction of sidewalks or curb ramps, or installation of pedestrian activated signals.
    - ii. If Work to be performed by either Party includes an alteration under the ADA as set forth in ODOT Maintenance Operational Notices MG 144-03 or MG100-107 ("Alteration"), and thereby triggers additional modifications to the facility in order to comply with the ADA ("ADA Modifications"), and if the ADA Modifications cannot reasonably be included in the Work, then the Work falls outside the scope of this Agreement. The Parties may enter into a separate

agreement for performance of such work and ADA Modifications. Whether specific Work may include an Alteration shall be determined by the Party responsible for performing the Work.

- c. For Work performed by ODOT under this Agreement, the Parties shall:
  - i. Utilize ODOT standards, including but not limited to ODOT Maintenance Operational Notices MG 100-107 ("MG 100-107"), MG144-03 ("MG144-03"), and MG Activities-2 ("MG Activities-2"), to ensure that the Work complies with the ADA, and
  - ii. Follow ODOT's processes for modification or upgrade of pedestrian-activated signals and performance of any ADA Modification, including but not limited to MG 144-03 and MG 100-107.
- d. For Work performed by Agency under this Agreement on or along the State Highway System or a State-owned facility ("state highway"), Agency shall:
  - i. Utilize ODOT standards to assess compliance with the ADA, including but not limited to MG 100-107, MG144-03, and MG Activities-2, and Chapters 1 and 5 of the Oregon Temporary Traffic Control Handbook 2011 ("OTTCH");
  - ii. Follow ODOT's processes for modification or upgrade of pedestrian-activated signals and performance of any ADA Modification, including but not limited to MG 144-03 and MG 100-107;
  - iii. Promptly notify ODOT of completion of Work and allow ODOT to inspect completed Work located on or along a state highway for ADA compliance, prior to acceptance of such Work and release of any Agency contractor; and
  - iv. Ensure that temporary pedestrian routes are provided through or around any work zone related to the Work, as provided in MG Activities-2 and Chapters 1 and 5 of the OTTCH. For Services included in MG Activities-2 "Situations" Paragraph 2, to the greatest extent possible Agency shall ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction. However, the Parties acknowledge that providing advance notice may not be possible in some such circumstances, including but not limited to, when Services are provided on an urgent or emergency basis, or where the nature and location of the Services are unknown until the beginning of the workers' shift
- e. Agency reaffirms its commitment to provide an accessible ADA-compliant transportation system and ensure that any feature or part of a feature that was addressed as part of the Work ("Feature"), including ADA Modifications, that falls under Agency's jurisdiction, is maintained in compliance with the ADA throughout

the useful life of the Feature. This includes, but is not limited to, Agency ensuring that:

- i. Pedestrian access is maintained as required by the ADA,
  - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
  - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
  - iv. Any future alterations during the useful life of the Feature complies with the ADA requirements in effect at the time the future alteration work is performed, and
  - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- f. Maintenance obligations in Subsection e above shall survive termination of this Agreement.
- g. ODOT Maintenance Operational Notices MG 100-107, MG144-03, MG Activities-2, and the OTTCH are incorporated herein by reference.
- i. The OTTCH is available at:  
<http://www.oregon.gov/ODOT/Engineering/Pages/OTTCH.aspx> Copies of MG 100-107, MG144-03, and MG Activities-2 are available for inspection at the ODOT District 4 Office located at 3700 SW Philomath Boulevard, Corvallis, Oregon during regular business hours, or at the following locations online:
- MG 100-107:  
[https://www.oregon.gov/ODOT/Engineering/DOCS\\_ADA/MG100-107\\_w-diagram.pdf](https://www.oregon.gov/ODOT/Engineering/DOCS_ADA/MG100-107_w-diagram.pdf)
  - MG 144-03:  
[https://www.oregon.gov/ODOT/Engineering/DOCS\\_ADA/MG144-03.pdf](https://www.oregon.gov/ODOT/Engineering/DOCS_ADA/MG144-03.pdf)
  - MG Activities-2:  
[https://www.oregon.gov/ODOT/Engineering/Doc\\_TechnicalGuidance/MG-Activities-2.pdf](https://www.oregon.gov/ODOT/Engineering/Doc_TechnicalGuidance/MG-Activities-2.pdf)
- h. All references to MG 100-107, MG144-03, and MG Activities-2 in this Section refer to the version of the policy in place at the time the Services are performed.

5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
7. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State or Agency to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

***Electronic Signatures.** The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement, and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.*

SIGNATURE PAGE FOLLOWS

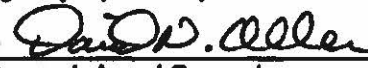
City of Newport / ODOT  
Agreement No. 31148

CITY OF NEWPORT, by and through its  
elected officials

By   
City Manager

Date May 3, 2021

LEGAL REVIEW APPROVAL (If required  
in Agency's process)

By   
Agency's Legal Counsel

Date 5/06/2021

**Agency Contact:**

Spencer Nebel, City Manager  
City of Newport  
169 SW Coast Hwy.  
Newport, OR 97365  
Phone: (541) 574-0601  
Email: [s.nebel@newportoregon.gov](mailto:s.nebel@newportoregon.gov)

**State Contact:**

Brian Morey, District Manager  
ODOT District 4  
3700 SW Philomath Blvd.  
Corvallis, OR 97333  
Phone: (541) 757-4211  
Email: [brian.t.morey@odot.state.or.us](mailto:brian.t.morey@odot.state.or.us)

STATE OF OREGON, by and through  
its Department of Transportation

By Sonny P.A. Chickering Digitally signed by Sonny P.A. Chickering  
Date: 2021.05.11 08:51:41 -07'00'  
Region 2 Manager

Date \_\_\_\_\_

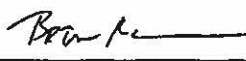
**APPROVAL RECOMMENDED**

By Michael J. Kimlinger via email  
State Traffic/Roadway Engineer

Date 1/26/2021 - email approval retained in file

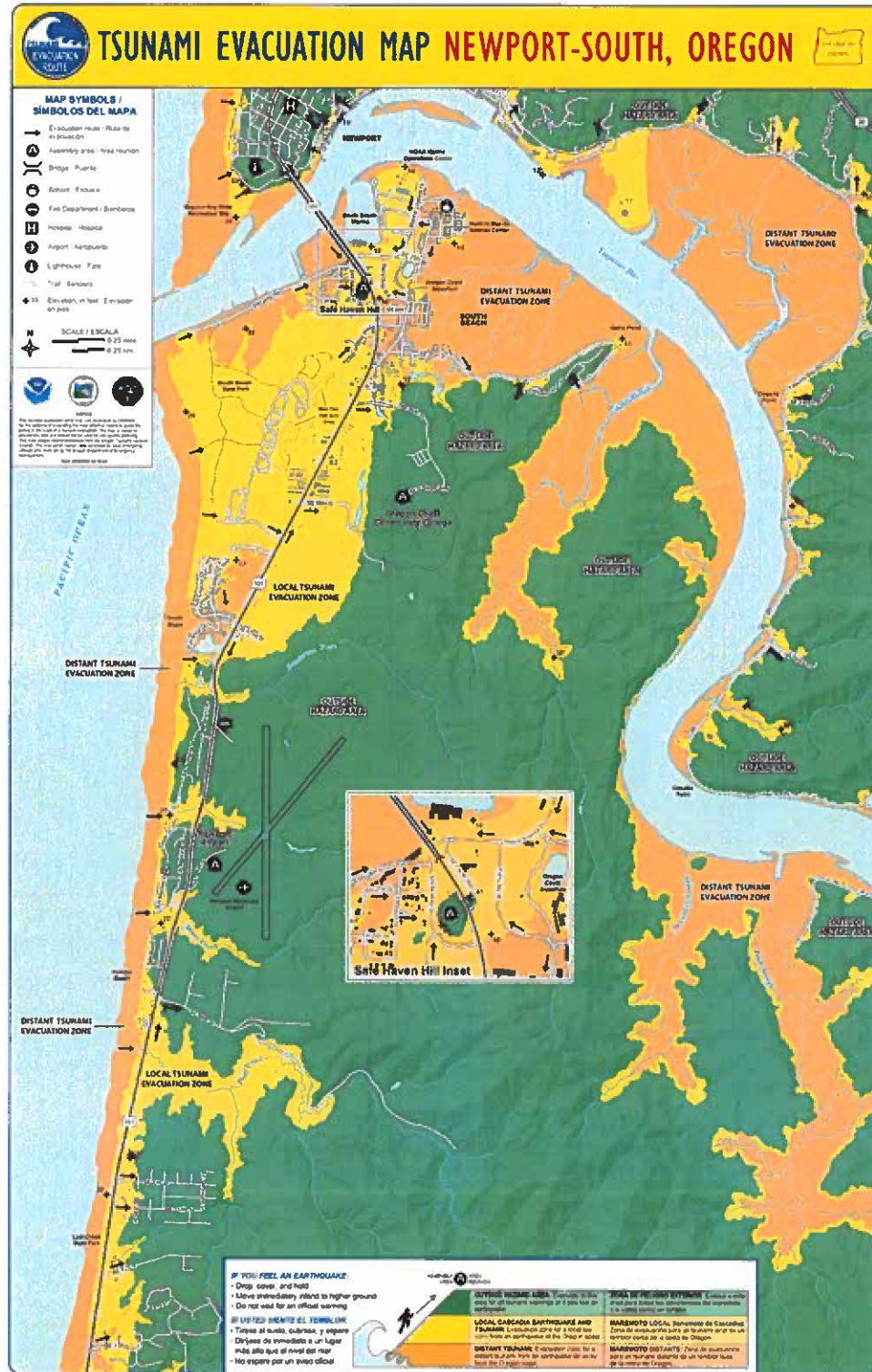
By David P. Warren via email  
Region 2 Maintenance and Operations  
Manager

Date 5/10/2021 - email approval retained in file

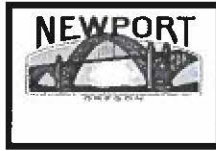
By   
District 4 Manager

Date 5/10/21

EXHIBIT A – Location Map







**AUTHORIZATION FOR  
AGREEMENTS, MOUs, OR  
OTHER DOCUMENTS OBLIGATING  
THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Agreement Date: 5/3/21

Statement of Purpose: IGA - Maintenance Agreement -  
Newport Tsunami Interpretive Trail & Sak Haven Hill

Department Head Signature: \_\_\_\_\_

Remarks, if any: \_\_\_\_\_

City Attorney Review and Signature: David Allen Date: 5/06/2021

Other Signatures as Requested by the City Attorney: \_\_\_\_\_

\_\_\_\_\_  
Name/Position  
Date: \_\_\_\_\_

Budget Confirmed: Signature Yes ☐ No ☐ N/A ☐

Certificate of Insurance Attached: Yes ☐ No ☐ N/A ☒

City Council Approval Needed: Yes ☒ No ☐ Date: April 19, 2021

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 05-03-21

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: [Signature] Date: 5/6/2021

Date posted on website: 5/12/21

