



**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: TGM Grant Agreement EA #TG21LA15 Date: 3-19-24

Statement of Purpose: Intergovernmental funding agreement for City center Revitalization Plan

Department Head Signature: *Director F. Jones*

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

City Attorney Review and Signature: (email attached) Date: 3/14/24

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

Signature Date: \_\_\_\_\_

Budget Confirmed: Yes  No  N/A

Certificate of Insurance Attached: Yes  No  N/A

City Council Approval Needed: Yes  No  Date: 3/18/24

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: 3/19/24

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: \_\_\_\_\_ Date: \_\_\_\_\_

Date posted on website: \_\_\_\_\_

## Derrick Tokos

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**From:** David Allen  
**Sent:** Thursday, March 14, 2024 10:22 AM  
**To:** Derrick Tokos; Erik Glover  
**Cc:** Spencer Nebel  
**Subject:** Re: [REDACTED]  
**Attachments:** [REDACTED] 8A\_final\_v2.pdf

Erik - for item 8.A. in the agenda packet replace the IGA currently posted with the attached IGA and remove the city attorney/ODOT e-mail exchanges. --David

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**From:** MAFFEI Kelsey M [REDACTED]  
**Sent:** Thursday, March 14, 2024 8:27 AM  
**To:** David Allen; Derrick Tokos  
**Cc:** LEDET Elizabeth; CAMPOZ Frances; HELTON David I; Spencer Nebel; Erik Glover  
**Subject:** RE: [REDACTED] City of Newport IGA

[You don't often get email from [REDACTED]. Learn why this is important at [REDACTED].

At times, decisions are made on a project specific basis to revise DOJ approved template language, such as that of Section 9. In most cases we defer to retaining the language as-is. However, in the case of this project, due to the schedule being so far behind and the need to get this agreement signed and executed as soon as possible, please see the attached which includes the requested revisions to the last sentence of Section 9.F (bottom of page 11).

Please confirm the City's willingness to move forward with City Council review and signatures for the attached Agreement.

Kelsey

-----Original Message-----

**From:** David Allen <D.Allen@NewportOregon.gov>  
**Sent:** Wednesday, March 13, 2024 6:16 PM  
**To:** MAFFEI Kelsey M [REDACTED]; Derrick Tokos <D.Tokos@NewportOregon.gov>  
**Cc:** LEDET Elizabeth [REDACTED]; CAMPOZ Frances [REDACTED]; HELTON David I [REDACTED]; Spencer Nebel <S.Nebel@NewportOregon.gov>; Erik Glover <E.Glover@NewportOregon.gov>  
**Subject:** Re: [REDACTED] City of Newport IGA

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Okay, but that still doesn't explain the inconsistency going back to at least Aug. 2020 and, regardless, there's other language in section 9.F. that would prevent ODOT from asserting a waiver against the city (or the city against ODOT) unless in writing and signed by the party against whom it's asserted. --David

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**From:** MAFFEI Kelsey M [REDACTED]  
**Sent:** Wednesday, March 13, 2024 3:26 PM

**INTERGOVERNMENTAL AGREEMENT**

**Project Location/Name: City of Newport – Newport City Center Revitalization Plan**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation (“ODOT” or “Agency”), and the City of Newport (“City” or “Grantee”).

**BACKGROUND**

1. The Transportation and Growth Management (“TGM”) Program is a joint program of ODOT and the Oregon Department of Land Conservation and Development.
2. The TGM Program includes a program of grants for local governments for planning projects. The objective of these projects is to better integrate transportation and land use planning and develop new ways to manage growth in order to achieve compact pedestrian, bicycle, and transit friendly urban development.
3. This TGM Grant (as defined below) is financed with federal Fixing America’s Surface Transportation Act (“FAST Act”) funds. Local funds are used as match for FAST Act funds.
4. By authority granted in Oregon Revised Statutes (“ORS”) 190.110, state agencies may enter into agreements with units of local government or other state agencies to perform any functions and activities that the parties to the agreement or their officers or agents have the duty or authority to perform.
5. ODOT has awarded City an in-kind grant under the TGM Program (the “TGM Grant”) which is conditional upon the execution of this Agreement.
6. The parties desire to enter into this Agreement for their mutual benefit.

**SECTION 1. DEFINITIONS**

Unless the context requires otherwise, the following terms, when used in this Agreement, shall have the meanings assigned to them below:

- A. “City's Amount” means the portion of the Grant Amount payable by ODOT to City for performing the tasks indicated in Exhibit A as being the responsibility of City.
- B. “City's Matching Amount” means the amount of matching funds which City is required to expend to fund the Project.

C. "City's Project Manager" means the individual designated by City as its project manager for the Project.

D. "Consultant" means the personal services contractor(s) (if any) hired by ODOT to do the tasks indicated in Exhibit A as being the responsibility of such contractor(s).

E. "Consultant's Amount" means the portion of the Grant Amount payable by ODOT to the Consultant for the deliverables described in Exhibit A for which the Consultant is responsible.

F. "Direct Project Costs" means those costs which are directly associated with the Project. These may include the salaries and benefits of personnel assigned to the Project and the cost of supplies, postage, travel, and printing. General administrative costs, capital costs, and overhead are not Direct Project Costs.

G. "Federally Eligible Costs" means those costs which are Direct Project Costs of the type listed in Exhibit B incurred by City and ODOT's Consultant during the term of this Agreement.

H. "Grant Amount" or "Grant" means the total amount of financial assistance disbursed by ODOT under this Agreement, which disbursements consists of the City's Amount and the Consultant's Amount.

I. "ODOT's Contract Administrator" means the individual designated by ODOT to be its contract administrator for this Agreement.

J. "PSK" or "Project Contract" means the personal services contract(s) executed between ODOT and the Consultant related to the portion of the Project that is the responsibility of the Consultant.

K. "Project" means the project described in Exhibit A.

L. "Termination Date" has the meaning set forth in Section 2.A below.

M. "Total Project Costs" means the total amount of money required to complete the Project.

N. "Work Product" has the meaning set forth in Section 5.1 below.

## SECTION 2. TERMS OF AGREEMENT

A. Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been

received. This Agreement terminates on June 13, 2025 (“Termination Date”), unless terminated earlier in accordance with Section 8 of this Agreement.

- B. Grant Amount. The Grant Amount shall not exceed \$364,800.
- C. City's Amount. The City's Amount shall not exceed \$0.
- D. Consultant's Amount. The Consultant's Amount shall not exceed \$364,800.
- E. City's Matching Amount. The City's Matching Amount is \$24,585 or 10.27 % of the TGM funds in Table F. The City shall pay \$125,415 as an over-match towards the Consultant Amount.
- F. Grant Funding Sources. The following table summarizes the sources of the Grant Amount.

Funding type	Responsibility (Federal)
TGM	\$214,800
City	Match \$24,585
	Over-Match \$125,415
	Total \$150,000
TOTALS	\$364,800

**SECTION 3. CITY'S MATCHING AMOUNT**

- A. City shall pay ODOT City's Matching Amount and over-match when it executes this Agreement. City shall not use Federal funds for its Matching Amount.

**SECTION 4. CITY'S REPRESENTATIONS, WARRANTIES, AND CERTIFICATION**

- A. City represents and warrants to ODOT as follows:
  - 1. It is a municipality or intergovernmental entity duly organized and existing under the laws of the State of Oregon.

2. It has full legal right and authority to execute and deliver this Agreement and to observe and perform its duties, obligations, covenants and agreements hereunder and to undertake and complete the Project.

3. All official action required to be taken to authorize this Agreement has been taken, adopted and authorized in accordance with applicable state law and the organizational documents of City.

4. This Agreement has been executed and delivered by an authorized officer(s) of City and constitutes the legal, valid and binding obligation of City enforceable against it in accordance with its terms.

5. The authorization, execution and delivery of this Agreement by City, the observation and performance of its duties, obligations, covenants and agreements hereunder, and the undertaking and completion of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over it or its property or violate or breach any provision of any agreement, instrument or indenture by which City or its property is bound.

6. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of City.

B. City understands and agrees that ODOT's obligation hereunder is contingent on ODOT having received funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

#### **SECTION 5. GENERAL COVENANTS OF CITY**

A. City shall be responsible for the portion of the Total Project Costs in excess of the Grant Amount. City shall complete the Project; provided, however, that City shall not be liable for the quality or completion of that part of the Project which Exhibit A describes as the responsibility of the Consultant.

B. City shall, in a good and workmanlike manner, perform the work on the Project, and provide the deliverables for which City is identified in Exhibit A as being responsible.

C. City shall perform such work identified in Exhibit A as City's responsibility as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform such work. City shall also be responsible for providing for employment-related benefits and deductions that are required by law, including,

but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.

D. City understands and agrees that all employers, including City, 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(2). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. City shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with these requirements.

E. City shall not enter into any subcontracts to accomplish any of the work described in Exhibit A, unless it first obtains written approval from ODOT.

F. City agrees to cooperate with ODOT's Contract Administrator. At the request of ODOT's Contract Administrator, City agrees to:

- (1) Meet with ODOT's Contract Administrator; and
- (2) Form a project steering committee (which shall include ODOT's Contract Administrator) to oversee the Project.

G. City shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code. Without limiting the generality of the foregoing, City expressly agrees to comply with: (1) Title VI of Civil Rights Act of 1964; (2) Title V of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990 and ORS 659A.142; (4) all regulations and administrative rules established pursuant to the foregoing laws; and (5) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

H. City shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City shall maintain any other records pertinent to this Agreement in such a manner as to clearly document City's performance. City acknowledges and agrees that ODOT, the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of City that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts.

I. City shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

J. (1) All of City's work product related to the Project that results from this Agreement (collectively, "Work Product") is the exclusive property of ODOT. ODOT and City intend that such Work Product be deemed "work made for hire" of which ODOT shall be deemed the author. If, for any reason, such Work Product is not deemed "work made for hire", City hereby irrevocably assigns to ODOT all of its rights, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. City shall execute such further documents and instruments as ODOT may reasonably request in order to fully vest such rights in ODOT. City forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

(2) ODOT hereby grants to City a royalty free, non-exclusive license to reproduce any Work Product for distribution upon request to members of the public.

(3) City shall ensure that any Work Product produced pursuant to this Agreement includes the following statement:

"This project is partially funded by a grant from the Transportation and Growth Management (TGM) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by the federal Fixing America's Surface Transportation Act ("FAST Act"), local government, and State of Oregon funds.

"The contents of this document do not necessarily reflect the views or policies of the State of Oregon."

K. Unless otherwise specified in Exhibit A, City shall submit all final Work Product produced in accordance with this Agreement to ODOT's Contract Administrator in the following form:

(1) two hard copies; and

(2) in electronic form using generally available word processing or graphics programs for personal computers via e-mail or on compact diskettes.

L. Within 30 days after the Termination Date, City shall (1) pay to ODOT City's Matching Amount less Direct Project Costs that are Federally Eligible Costs previously reported as City's Matching Amount. ODOT may use any funds paid to it under this Section 5.L (1) or any of the City's Matching Amount that is applied to the Project pursuant to Section 3 to substitute for an equal amount of the federal FAST Act funds used for the Project or use such funds as matching funds; and (2) provide to



ODOT's Contract Administrator, in a format prescribed by ODOT, a completion report. This completion report shall contain:

- (a) The permanent location of Project records (which may be subject to audit);
  - (b) A summary of the Total Project Costs, including a breakdown of those Project costs that are being treated by City as City's Matching Amount. City shall attest that generally accepted accounting principles, State of Oregon Accounting Manual, General Travel Rules and the definitions of ORS 294.311 were applied and that federal funds were not used to meet the Matching Amount;
- and
- (c) A list of final deliverables.

#### **SECTION 6. CONSULTANT**

If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with a Consultant to accomplish the work described in Exhibit A. In such a case, even though ODOT, rather than City, is the party to the PSK with the Consultant, ODOT and City agree that, as between themselves:

- A. Selection of the Consultant will be conducted by ODOT in accordance with ODOT procedures with the participation and input of City, to the extent permitted by applicable law;
- B. ODOT will review and approve Consultant's work, billings and progress reports after having obtained input from City;
- C. ODOT shall serve as the lead contracting agency and contract administrator for the PSK related to the work under this Agreement, including monitoring the work of its Consultant.
- D. City shall be responsible for prompt communication to ODOT's Contract Administrator of its comments regarding (A) and (B) above; and
- E. City will appoint a Project Manager to:
  - (1) be City's principal contact person for ODOT's Contract Administrator on all matters dealing with the Project;

(2) collaborate with ODOT's Contract Administrator regarding coordination of work as described in Exhibit A and City personnel, as necessary; and

(3) review invoices forwarded to City from ODOT's Contract Administrator on any deliverables produced by ODOT's Consultant and communicate any concerns City may have to ODOT's Contract Administrator.

#### **SECTION 7. ODOT'S REPRESENTATIONS AND COVENANTS**

A. ODOT represents that, at the time ODOT executes this Agreement, sufficient funds are authorized and available for expenditure to finance ODOT's portion of this Agreement within the appropriation or limitation of its current biennial budget.

B. ODOT represents that the statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of ODOT.

C. ODOT will assign a Contract Administrator for this Agreement who will be ODOT's principal contact person regarding administration of this Agreement and will participate in the selection of the Consultant, the monitoring of the Consultant's work, and the review and approval of the Consultant's work, billings and progress reports.

D. If the TGM Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to perform the work described in Exhibit A designated as being the responsibility of the Consultant, and in such a case ODOT agrees to pay the Consultant in accordance with the terms of the PSK up to the Consultant's Amount.

#### **SECTION 8. TERMINATION**

This Agreement may be terminated by mutual written consent of all parties, or by ODOT effective 30 days following written notice to City. In addition, ODOT may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by ODOT, under any of the following conditions:

A. City fails to complete work specified in Exhibit A as its responsibility, in accordance with the terms of this Agreement and within the time specified in this Agreement, including any extensions thereof, or fails to perform any of the provisions of this Agreement and does not correct any such failure within 10 calendar days of receipt of written notice or by the date specified by ODOT in such written notice.

B. Consultant fails to complete work specified in Exhibit A as its responsibility, in accordance with the terms of this Agreement and within the time specified in this Agreement, including any extensions thereof, and does not correct any

such failure within 10 calendar days of receipt of written notice or by the date specified by ODOT in such written notice.

C. 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 ODOT is prohibited from paying for such work from the planned funding source.

D. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

In the event of termination, ODOT shall have any remedy available to it under this Agreement, at law, or in equity, including but not limited to withholding of or setoff against any disbursements otherwise due under this Agreement. Any termination of this Agreement shall not prejudice any right or obligations accrued to the parties prior to termination.

#### **SECTION 9. GENERAL PROVISIONS**

A. Time is of the essence of this Agreement.

B. Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to ODOT or City at the address or number set forth in Exhibit A to this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed is in effect five (5) days after the date postmarked. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice delivered by email shall be deemed to be given when confirmation of the transmission is generated by the transmitting computer. To be effective against ODOT, such facsimile or email transmission must be confirmed by telephone notice to ODOT's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

C. ODOT and City are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons (including but not limited to any Consultant) unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

D. Sections 5(H), 5(I), 5(K) and 9 of this Agreement and any other provision which by its terms is intended to survive termination of this Agreement shall survive.

E. The parties agree as follows:

(a) Contribution.

(1) 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 ODOT or Grantee ("Notified Party") with respect to which the other party ("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 the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 9(E) with respect to the Third Party Claim.

(2) With respect to a Third Party Claim for which ODOT is jointly liable with the Grantee (or would be if joined in the Third Party Claim), ODOT 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 the Grantee in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Grantee 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 ODOT on the one hand and of the Grantee 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. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

(3) With respect to a Third Party Claim for which the Grantee is jointly liable with ODOT (or would be if joined in the Third Party Claim), the Grantee 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 ODOT in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of ODOT 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 the Grantee on the one hand and of ODOT 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. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

(b) Choice of Law; Designation of Forum; Federal Forum.

(1) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(2) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(3) Notwithstanding Section 9.E (b)(2), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 9.E(b)(3) applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section 9.E(b)(3) is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

(c) Alternative Dispute Resolution.

The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding mediation or non-binding arbitration) to resolve the dispute short of litigation.

F. This Agreement and attached Exhibits (which are by this reference incorporated herein) 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 modification or change of terms of this Agreement shall bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Budget modifications and adjustments from the work described in Exhibit A must be processed as an amendment(s) to this Agreement and the PSK. No waiver or consent shall be effective unless in writing and signed by the party against whom such waiver or consent is asserted. 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 ODOT or City to enforce any provision of this Agreement shall not constitute a waiver by ODOT or City of that or any other provision.

G. 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. Electronic signatures and copies of signatures by facsimile, electronic scan, or other electronic means will be considered original signatures.

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

**City**

City of Newport

By: [Signature]  
(Official's Signature)

Spencer R. Nebel, City Manager  
(Printed Name and Title of Official)

Date: March 19, 2024

**ODOT**

STATE OF OREGON, by and through its  
Department of Transportation

By: \_\_\_\_\_  
Amanda Pietz, Division Administrator or  
designee  
Policy, Data & Analysis Division

Date: \_\_\_\_\_

**ATTORNEY GENERAL'S OFFICE**

Approved as to legal sufficiency by Senior  
Assistant Attorney General, Samuel Zeigler,  
via email dated 03/04/2024.

G. 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. Electronic signatures and copies of signatures by facsimile, electronic scan, or other electronic means will be considered original signatures.

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

**City**

City of Newport

By: [Signature]  
(Official's Signature)

Spencer R. Nebel, City Manager  
(Printed Name and Title of Official)

Date: March 19, 2024

**ODOT**

STATE OF OREGON, by and through its  
Department of Transportation

By: Erik M. Havig Digitally signed by Erik M. Havig  
Date: 2024.03.22 14:06:31 -07'00'

Amanda Pietz, Division Administrator or  
designee  
Policy, Data & Analysis Division

Date: \_\_\_\_\_

**ATTORNEY GENERAL'S OFFICE**

Approved as to legal sufficiency by Senior  
Assistant Attorney General, Samuel Zeigler,  
via email dated 03/04/2024.

**EXHIBIT A**

City understands that the Consultant has significant tasks related to, and involvement with the Project. As such Agency has entered into a separate PSK (PO-73000-00005659:3) (“Project Contract”) with the Consultant to provide Services to the Project as described in the Statement of Work and Delivery Schedule of the Project Contract. City shall perform such work described in the Statement of Work and Delivery Schedule of the Project Contract and identified as City's responsibility. Information regarding the Consultant deliverables and responsibilities is for informational purposes only and are not the responsibility of the City.

Name: Address:  Phone: Email:	<b>*Agency's Project Manager ("APM")</b> David Helton ODOT Area 5 ██████████ ████████████████████7 ██████████ ████████████████████	Name: Phone: Email:	<b>*Agency's Contract Administrator</b>  Same as APM
Name: Address:  Phone: Email:	<b>**Consultant's Project Manager ("PM") for the Project Contract</b> James Hencke David Evans and Consultants, Inc. ██████████ ██████████ ██████████ ██████████	Name: Phone: Email:	<b>Alternate Contact for Consultant</b>  N/A
Name: Address:  Phone: Email:	<b>**City's Project Manager ("CPM")</b> Derrick Tokos City of Newport 169 SW Coast Highway Newport, OR 97365  (541) 574-0626 <a href="mailto:d.tokos@newportoregon.gov">d.tokos@newportoregon.gov</a>	Name: Phone: Email:	<b>Alternate Contact for City</b>  N/A

\* ODOT may change the APM designation by promptly sending written notice (e-mail acceptable) to City, with a copy to [tgmcentral@odot.oregon.gov](mailto:tgmcentral@odot.oregon.gov). Changes to ODOT's Contract Administrator must be done by amendment to this Agreement.

\*\*Any changes to the PM or CPM must be approved in writing (e-mail acceptable) by ODOT.



**EXHIBIT B**  
**ELIGIBLE PARTICIPATING COST**  
**DESCRIPTION**

**PERSONNEL SERVICES**

*Salaries* - Straight time pay for regular working hours in a monthly period. Includes standard labor distributions like Social Security Taxes, Workers' Compensation Assessments and Medical, Dental, Life Insurance. Excludes mass transit tax, vacation leave, sick leave and compensatory time taken.

*Overtime* - Payments to employees for work performed in excess of their regular work shift.

*Shift Differential* - Payments to employees, in addition to regular pay, for shift differential work as described in labor contracts or Personnel Rules.

*Travel Differential* - Payments to employees, in addition to regular pay, for travel time to and from work on projects in excess and beyond an 8 hour day as described in labor contracts or Personnel Rules.

**SERVICES AND SUPPLIES**

**In-State Travel - Per Rates Identified in State Travel Handbook**

*Meals & Misc.* - Payment for meals incurred while traveling within the State of Oregon.

*Lodging & Room Tax* - Payment for lodging, including room taxes, incurred while traveling within the State of Oregon. Fares, Taxi, Bus, Air, Etc.

*Per Diem* - Payment for per diem, incurred while traveling within the State of Oregon.

*Other* - Payment for other miscellaneous expense, incurred while traveling within the State of Oregon.

*Private Car Mileage* - Payment for private car mileage while traveling within the State of Oregon.

**Office Expense**

*Direct Project Expenses Including:*

*Photo, Video & Microfilm Supplies* - Payment for photography, video and microfilm supplies such as film for cameras, blank video tapes, storage folders, etc.

*Printing, Reproduction & Duplication* - Expenditures for services to copy, print, reproduce and/or duplicate documents.

*Postage* - Payment for direct project postage.

*Freight & Express Mail* - Payment for direct project freight services on outgoing shipments.

**Telecommunications**

*Phone Toll Charges (long-distance)* - Payment for telephone long distance charges.

**Publicity & Publication**

*Publish & Print Photos* - Payment for printing and publishing photographs to development of publicity and publications.

*Conferences* (costs to put on conference or seminars)

**Equipment \$250 - \$4,999**

**NOT ELIGIBLE**

**Employee Training, Excluding Travel**

**NOT ELIGIBLE**

**Training In-State Travel**

**NOT ELIGIBLE**

**CAPITAL OUTLAY**

**NOT ELIGIBLE**