

**IMPROVEMENT AGREEMENT**  
(storm drainage improvements)

This Improvement Agreement ( "Agreement" ) is made and entered into as of 11-16-2020 by and between the City of Newport, an Oregon municipal corporation ( "City" ), J.T. Roth, Jr. and Theresa Roth, hereafter referred to as "Owners" and J.T. Roth Construction, Inc., hereafter referred to as "Developer."

**RECITALS:**

WHEREAS, Owners are developing the real property at 1515, 1525, and 1535 NW Spring Street, more specifically described in Exhibit A ("Property"), with up to four (4) dwelling units; and

WHEREAS, this new development is located in an area with poor drainage characteristics, limited and aging public infrastructure, and potentially unstable terrain; and

WHEREAS, a certified engineering geologist and geotechnical engineer, hired by the Owners, evaluated the condition of the property and anticipated development and is recommending that storm drainage be piped downslope through the property where it is to discharge on an energy dissipator just above the vegetation line along the beach; and

WHEREAS, in keeping with these recommendations, Owners had a piped drainage system designed that would direct storm run-off to the south, into a 12-inch public drain line that serves upslope streets and private properties; and

WHEREAS, the City's recently adopted Stormwater Master Plan identifies this 12-inch drain line as being under capacity, and when the City recently inspected the drain pipe it was found to be in poor condition; and

WHEREAS, Owners agree to hire Developer to design and construct a new 18-inch drain line, and appurtenant improvements in and adjacent to their property, and dedicate the line for public use pursuant to a cost sharing agreement; and

WHEREAS, with the 18-inch drain line in place the City can, at its expense, redirect storm drainage from the under capacity and aging 12-inch line to the new 18-inch drain line, which will meet the needs of the residents in this drainage basin for the foreseeable future; and

WHEREAS, City desires, and Owners agree, that it is most cost effective for the 18-inch drain line and appurtenant improvements to be constructed concurrent with development of the Property, with City reimbursing Owners for a portion of the construction costs and utility easement in a manner commensurate with the public benefit attributed to the project; and

WHEREAS, the parties are entering into this Agreement to confirm certain matters relating to the installation of the 18-inch storm drain line and associated utility easement; and

WHEREAS, the Agreement in no way obviates Owners' obligation to install other public improvements as may be required by permits that have been duly issued by the City of Newport in relation to development of the Property.

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promises hereinafter stated, as follows:

1. Recitals. The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.

2. Exhibits. The exhibits set forth below and attached to this Agreement are hereby incorporated herein by this reference.

- a. Exhibit A – Legal description of the real property subject to this Agreement.
- b. Exhibit B – Cost estimate of the storm drainage improvements.
- c. Exhibit C – Illustration of the alignment of the storm drainage improvements.
- d. Exhibit D – Draft public utility easement.

3. Identification of Required Improvements. Owners agree to hire Developer to install and complete, or cause to be installed and completed, the Required Improvements. As used herein, the term “Required Improvements” shall mean and refer to the following:

a. Installation of a catch basin in NW Spring Street, manhole, 8-in PVC storm line connecting the catch basin to the manhole, 18-inch PVC storm line stub from the manhole to the southeast (for future city connection), roughly 140 lineal feet of 18-in PVC storm line secured with concrete deadheads or pipe anchors extending from the manhole downslope to the west, and an energy dissipater and riprap at the pipe outfall in a manner consistent with Exhibit C.

b. An existing 8-inch storm drain line previously installed by Owners to manage storm drainage generated from the roof drains and footing drains of the dwellings they intend to construct will be connected to the 18-inch drain line, with an 8-inch clean-out pipe at the point of connection.

c. These components of the drainage system are to be designed by a licensed engineer and installed by licensed contractor(s) in a manner consistent with recommendations contained in Geologic Permit No. 8-GP-18. Design drawings are to be submitted to the City Engineer for review and approval prior to commencement of construction, and as-built drawings are to be prepared and submitted upon completion of the work.

d. Dedication of land area described in Exhibit D, as a public utility easement to the benefit of the City of Newport.

4. Construction of Required Improvements. The Required Improvements shall be installed and completed and the plans and construction specifications related thereto shall be inspected and receive approval from the City Engineer prior to issuance of certificates of occupancy for residential building(s) on the Property. The City will accept the Required Improvements only if they have been inspected and accepted by the City Engineer. The City Engineer shall accept the Required Improvements if the work and materials are in accordance with the agreed upon plans and construction specifications and applicable Building Code.

5. License to Enter and Remain on Property. Owners hereby grant City and City’s employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on the Property as necessary to make inspections of the Required Improvements. City agrees to hold Owners harmless, from any loss, claim or liability arising out of City’s exercise of this license.

6. Payment for Required Improvements. City agrees to reimburse Owners for costs they incur to cause Developer to construct Required Improvements in the amount of \$50,000, such amount being reflective of the substantial public benefit derived from Required Improvements. Payment to Owners shall be made as a lump sum once Required Improvements are accepted by the City Engineer and

a signed statement is submitted to the City by Developer confirming they have been paid in full for work performed pursuant to this Agreement.

7. Execution of Utility Easement. Upon City acceptance of the Required Improvements and payment to Owners required pursuant to Section 6 of this Agreement, Owners and City agree to sign, and City will record, a ten-foot wide public utility easement in a format that substantially conforms to Exhibit D.

8. Ownership of Required Improvements. The Required Improvements, with the exception of the 8-inch drain line serving Owners' Property, shall be owned and maintained by City upon its acceptance of the same.

9. No Third-Party Beneficiaries. City, Owners, and Developer are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.

10. Expiration. This Agreement shall expire at such time as the terms of the Agreement have been fully satisfied, or twenty-four (24) months from the date of this Agreement, whichever is sooner.

11. No Agency. It is agreed by and between the parties that Owners and Developer are not carrying out a function on behalf of City, and City does not have the right of direction or control of the manner in which Owners and Developer complete performance under this Agreement nor does City have a right to exercise any control over the activities of the Owners or Developer.

12. Liens. Owners shall pay as due all claims for work done on and for services rendered or material furnished to the portion of the Property identified as Lot 1, Block 49, Plat of Oceanview and shall keep said portion of the Property free from liens.

13. Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

14. Entire Agreement/Modifications. This Agreement constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto.

15. Severability. The unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

16. Oregon Law; Attorneys' Fees. This Agreement shall be interpreted, construed and enforced in accordance with the law of the State of Oregon, without regard to conflict of law principles. If any suit, action or proceeding (including under the U.S. Bankruptcy Code) is brought to declare, interpret, or enforce any rights under this Agreement, or for the breach of any warranty, representation, covenant, term or condition hereof, the prevailing party in such suit, action or proceeding, including at arbitration, at trial, on appeal to an appellate court arising therefrom, or on any petition for review, shall be entitled to recover reasonable attorneys' fees in addition to costs and disbursements.

17. Covenants Running with the Land. It is the intention of the parties that the obligations set forth in this Agreement are also covenants necessary for the development of Property and as such shall

run with the Property and shall be binding upon the heirs, executors, assigns, administrators, and successors of the parties hereto, and shall be construed to be a benefit and burden upon the Property.

18. Further Assurances. Each party shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder in good faith, to carry out the intent of the parties hereto.

19. Indemnification. Owners and Developer shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of Owners and Developer under this Agreement and the failure of Owners and Developer to comply with this Agreement; and further agree to defend, indemnify and save harmless City, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury or noncompliance. Notwithstanding the foregoing, Owners and Developer shall have no liability for, and no obligation to indemnify the City for, any liability, loss, injury or damage to the extent the same arises out of the actions or inactions of the City.

20. Counterparts. This Agreement may be executed in several counterparts, 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.

21. Notice. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing to Owners, Developer, or City at the addresses set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, email, facsimile, or mailing the same, postage prepaid. Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against City, such facsimile transmission shall be confirmed by telephone notice to the City Recorder. Any communication or notice mailed shall be deemed delivered three (3) days after mailing. Any notice mailed pursuant to this Agreement shall be by first class postage or delivered as follows:

To Owners:

J.T. Roth, Jr. and Theresa Roth  
Post Office Box 4564  
Tualatin, OR 97062

To City:

City of Newport  
Attn: Community Development Director  
169 SW Coast Highway  
Newport, Oregon 97365

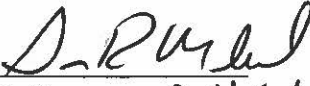
To Developer:

J.T. Roth Construction, Inc.  
Attn: J.T. Roth Jr  
12600 SW 72nd Ave Suite 200  
Portland, OR 97223

22. Captions. The captions contained in this Agreement were inserted for the convenience of reference only. Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.

Executed as of this 6<sup>th</sup> day of November, 2020.

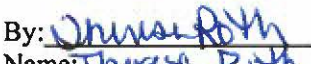
City: City of Newport

By:   
Name: Spencer R. Nebel  
Title: City Manager


Owner: J.T. Roth Jr.

By:   
Name: J.T. ROTH JR.  
Title: Owner

Owner: Theresa Roth

By:   
Name: Theresa Roth  
Title: owner

Developer: J.T. Roth Construction, Inc.

By:   
Name: J.T. ROTH Const. Inc.  
Title: PRES

Approved as to Form:


  
David W. Allen  
City Attorney

EXHIBIT A

(Legal Description of Real Property Subject to this Agreement)

Lots 1, 2, and 3, Block 49, Plat of Oceanview, except the real property described as follows:

Commencing at the Southeast corner of Lot 1, Block 49, Plat of Oceanview, said corner being on the westerly Right of Way of NW Spring Street; thence North 89°54'21" West, along the south line of said Lot 1, a distance of 37.00 feet, to the True Point of Beginning; thence continuing along said south line, North 89°54'21" West to a 5/8 inch iron rod, a distance of 96.46 feet; thence North 89°03'41" East, a distance of 96.48 feet; thence South 00°05'39" West to the south line of said Lot 1, a distance of 1.74 feet and the Point of Beginning.

**EXHIBIT B**

**(Cost Estimate of Required Improvements)**

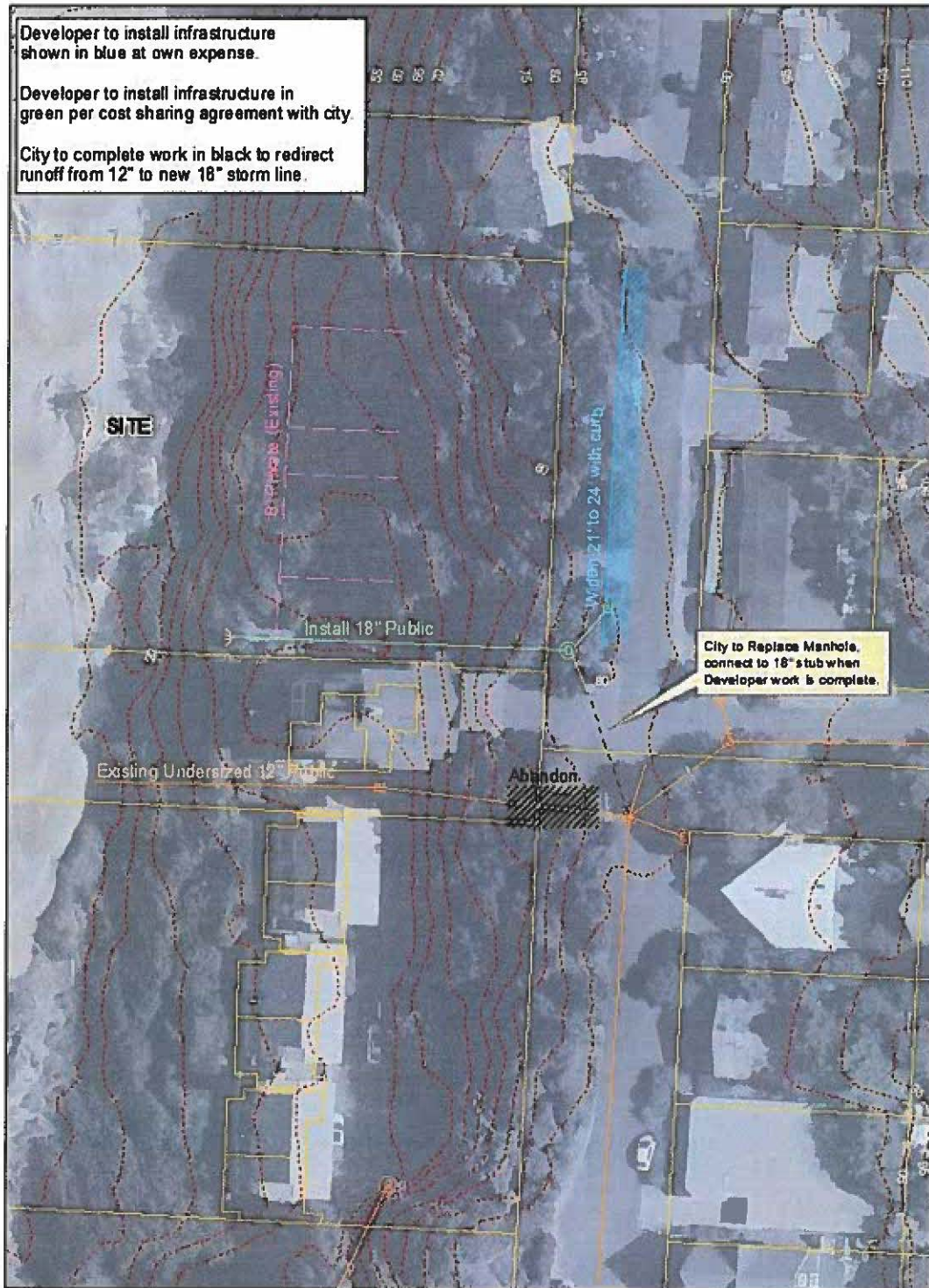
Item	Description	Qty	Unit	Unit Price	Amount
1	3-ft to 4-ft precast concrete catch basin	1	ea	\$3,000	\$3,000
2	4-ft to 5-ft precast concrete manhole	1	ea	\$5,000	\$5,000
3	30-ft, 8-in PVC storm pipe connecting catch basin to manhole	30	ft	\$100	\$3,000
4	15-ft, 18-in PVC storm pipe lateral off manhole for future connection	15	ft	\$186.67	\$2,800
5	140-ft, 18-in PVC storm pipe	140	ft	\$128.57	\$18,000
6	18-in to 8-in "T" fitting connecting existing 8-in to new 18-in storm pipe	1	ea	\$900	\$900
7	18-in to 8-in "T" fitting for cleanout at 8-in storm pipe connection	1	ea	\$900	\$900
8	20-ft-25-ft/ 18-in outfall storm pipe, riprap/ 3-in drain rock/diffuser	1	ls	\$8,800	\$8,800
9	Joint restraints / pipe anchors	2	ea	\$2,750	\$5,500
10	Base rock (24-in bottom, 12-in top and side)	1	ls	\$9,500	\$9,500
11	Erosion Control	1	ls	\$2,000	\$2,000
12	Signage	1	ls	\$500	\$500
13	Testing/video	1	ls	\$2,200	\$2,200
	<b>HARD COST SUBTOTAL</b>				<b>\$62,100</b>
14	Civil design plans and specifications				\$5,500
15	Geotechnical Control Management				\$3,500
16	Surveying				\$1,500
17	Project management and coordination				\$5,500
18	As-built drawings				\$1,500
19	Contingency				\$5,000
	<b>PROJECT TOTAL</b>				<b>\$84,600</b>

Note: Owners are dedicating a 10-ft wide utility easement to the City to maintain the 18-inch storm line adjacent and parallel to the south line of Lot 1 at no cost to the city. Development of the easement documents and recording with Lincoln County is a cost to the City, outside of this Exhibit B scope.



# EXHIBIT C

## (Illustration of Required Improvements)





**EXHIBIT D**

**After recording return to:  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365**

**CITY OF NEWPORT, OREGON  
PUBLIC UTILITY EASEMENT**

J.T. Roth Jr and Theresa Roth, hereinafter referred to as "Grantor", owns the real property described below and does hereby give, grant, and convey to the City of Newport, an Oregon Municipal Corporation of Lincoln County, Oregon, hereinafter referred to as "Grantee", a perpetual easement to construct and maintain storm drain lines, and all related storm drainage appurtenances, hereinafter referred to as "Public Utility", to be located on, across, under or over the surface of the following described real property:

**An area ten (10) feet in width, north of and parallel to the south property line of Lot 1, Block 49, Plat of Oceanview, as modified by the property line adjustment recorded under Instrument No. 200713004.**

**This easement will exclude all other below-surface installations, except as may be specifically approved by the Grantee or as may be required to comply with permits approved by the City of Newport.**

**Grantee and its contractors, subcontractors, agents or employees shall have the right to enter and occupy the easement for the purpose of constructing the Public Utility, to permanently operate and maintain the Public Utility, and to inspect, repair, replace, remove or renovate the Public Utility.**

**Grantor shall be permitted to construct a retaining wall along the south line of the easement, and is responsible for maintenance of the wall, landscaping, and other ground surfaces within the easement. Grantor agrees not to build any other structures or place any fence in the easement without first obtaining written permission from Grantee. Balm, poplar, locust, cottonwood or willow trees shall not be planted within the easement. Grantee may remove any physical obstructions including buildings, fences, trees, or shrubbery, and abate any use of the easement if Grantee finds that the physical obstruction or use will interfere with the Public Utility or Grantee's easement rights granted above, without recompense to the Grantor.**

**Grantor may use the easement for construction access to build a residential structure on the lot upon which the easement is located. Grantor covenants and agrees to inspect Grantee's Public Utility for damage once construction activities are concluded, and repair any disturbance or damage of the Public Utility that is occasioned by Grantor's exercise of the rights granted**

hereunder, whether such disturbance or damage is caused by Grantor or Grantor's agents, contractors or employees. Such repair shall include returning the Public Utility to the condition in which it was prior to Grantor's disturbance or damage of the Public Utility.

This easement and the covenants contained herein shall run with the property described herein and shall be binding on the heirs, successors and assigns of the parties. This easement will not be considered abandoned until Grantee has declared the easement abandoned and no longer in use by Grantee, and releases this easement in a duly executed and recorded Release of Easement.

In addition to all other remedies allowed by law, Grantee, its heirs, successors and assigns, shall have the right to seek injunctive relief for the enforcement of the terms and conditions of this easement against Grantor. If Grantee is required to bring suit or action to enforce the terms of this easement, Grantee shall be entitled to recover from Grantor such sums that the court may adjudge reasonable as attorney fees and costs in such suit or action, or on appeal.

Grantee shall, to the extent permitted by the Oregon Constitution and applicable Oregon law, hold Grantor harmless, and to indemnify and defend Grantor from any loss, claim or liability arising out of Grantee's use of the easement after the date of the execution and acceptance of this easement, including reimbursement for Grantor's attorney fees in defending any such claim.

The true and actual consideration for this easement is other than monetary.

DATED this 12<sup>th</sup> day of NOVEMBER, 2020.

[Signature]  
J.T. Roth, Jr

STATE OF OREGON }  
County of Washington } ss  
~~Lincoln~~

Personally appeared before me this 12 day of NOVEMBER, 2020 the above named J.T. Roth, Jr.



[Signature]  
Notary Public for Oregon

DATED this 12 day of NOVEMBER, 2020.

Theresa Roth  
Theresa Roth

STATE OF OREGON }  
County of Washington } ss  
County of Lincoln }

Personally appeared before me this 12 day of NOVEMBER, 2020 the above named Theresa Roth.



[Signature]  
Notary Public for Oregon

**ACCEPTANCE OF EASEMENT**

The City of Newport, Oregon, does hereby accept the above-described Public Utility Easement this \_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Spencer R. Nebel, City Manager

STATE OF OREGON )  
County of Lincoln ) ss:  
County of Lincoln )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2020 by Spencer R. Nebel as City Manager of the City of Newport.

\_\_\_\_\_  
Notary Public for Oregon