

3318

**IMPROVEMENT AGREEMENT**  
(electric vehicle charging stations)

This Improvement Agreement (this "Agreement") is made and entered into as of 3/10/22 by and between the City of Newport, an Oregon municipal corporation (the "City"), and Oregon Coast Aquarium, Inc., an Oregon domestic nonprofit corporation, hereinafter referred to as "Developer."

**RECITALS:**

WHEREAS, Developer owns the real property at 2820 SE Ferry Slip Road, more specifically described in Exhibit A ("Property"), upon which they will be constructing three dual port electric vehicle chargers ("EV Chargers"); and

WHEREAS, the Newport Urban Renewal Agency ("Agency"), with the 14<sup>th</sup> Amendment to the South Beach Urban Renewal Plan and Report, identified \$50,000 in funding to offset a portion of Developers costs to install the EV Chargers; and

WHEREAS, in doing so, Agency determined that there is a substantial public benefit associated with the provision of EV Chargers at the Oregon Coast Aquarium, with the presence of such chargers expanding the range of travel options for visitors and enhancing the overall infrastructure of the area; and

WHEREAS, Agency's \$50,000 is budgeted as a City capital project, being a component of the larger utility undergrounding effort in South Beach, and is available for dispersal; and

WHEREAS, Developer has identified a preferred location for the EV Chargers, developed a project budget, and has advised City that they are prepared to move forward with construction provided an agreement is in place to reimburse their costs; and

WHEREAS, the parties are entering into this Agreement to confirm certain matters relating to the reimbursement of Developer's costs.

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 – Developer's cost estimate for installation of the EV Chargers.
- c. Exhibit C – Illustration showing where the EV Chargers are to be placed.

3. Identification of Required Improvements. Developer shall 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 three, dual port, 30amp level two electric vehicle chargers and related components in the location shown on Exhibit C.



4. Construction of Required Improvements. Developer shall obtain City building and electrical permits, as necessary, to install Required Improvements in accordance with the plans and construction specifications provided by the supplier of the EV Chargers.

5. License to Enter and Remain on Property. Developer hereby grants 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.

6. Payment for Required Improvements. City agrees to reimburse Developer for costs they incur 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 Developer shall be made as a lump sum once City has conducted a final inspection of Required Improvements and confirmed that they comply with applicable building and electrical codes.

7. Ownership of Required Improvements. The Required Improvements shall be owned, operated and maintained by the Developer. City will have no ownership stake or responsibility in the ongoing operation or maintenance of Required Improvements.

8. No Third-Party Beneficiaries. City 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.

9. 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.

10. No Agency. It is agreed by and between the parties that Developer is 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 Developer completes performance under this Agreement nor does City have a right to exercise any control over the activities of the Developer.

11. Liens. Developer shall pay as due all claims for work done on and for services rendered or material furnished to the Property and shall keep the Property free from liens.

12. 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.

13. 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.

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

15. 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.

16. 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.

17. 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.

18. Indemnification. 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 Developer under this Agreement and the failure of Developer to comply with this Agreement; and further agrees 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, 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.

19. 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.

20. 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 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 City Recorder. Any communication or notice mailed shall be deemed delivered three (3) days after mailing. Any notice under this Agreement shall be mailed by first class postage or delivered as follows:

To Developer:

Oregon Coast Aquarium  
Attn: Director of Development  
2820 SE Ferry Slip Road  
Newport, Oregon 97365

To City:

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

21. 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 10<sup>th</sup> day of March 2022.

City:

CITY OF NEWPORT

By: [Signature]  
Name: Spencer R. Noble  
Title: City Manager

Developer:

OREGON COAST AQUARIUM

By: [Signature]  
Name: Carric Lewis  
Title: President CEO

Approved as to Form:

[Signature]  
City Attorney





**EXHIBIT A**

**(Legal Description of Real Property Subject to this Agreement)**

**PARCEL 2 OF PARTITION PLAT 1991-32 RECORDED IN THE LINCOLN COUNTY PLAT RECORDS ON FEBRUARY 26, 1991 (Identified as Tax Lot 900, on Lincoln County Assessor's Map 11-11-17-AC).**



# EXHIBIT B

(Developer's Cost Estimate for Installation of the EV Chargers)

## Oregon Coast Aquarium EV Charging Station Project

Project Expense	Cost Per	2022	2023
		Total	Total
EV Equity Consultant		\$ 1,000	
Ethernet, Cellular Systems Testing		\$ 350	
3 Dual Phase II 30amp Port destalls with 6 ADA cable retractors	\$ 4,950	\$ 14,850	
Extended Warranty on EV Charging Equipment	\$ 410	\$ 1,230	
Operator Management software for 6 ports - 1yr onboarding plus	\$ 416	\$ 2,495	
Software subscription additional 4 yrs	\$ 1,867	\$ 5,600	
Central Lincoln PUD installation & transformer		\$ 5,200	
Excavation, site modifications, curbing, bollards, cement work		\$ 12,000	\$ 250
J&J Controls Electrical Service (\$5K per station x 3 stations)		\$ 15,000	
Permits, surveys		\$ 2,000	
<b>Aquarium Expense</b>			
Aquarium Maintenance Staff Time		\$ 2,500	\$ 2,500
Maintenance Supplies		\$ 500	\$ 500
Electric Utility expense		\$ 3,000	\$ 3,000
Tech Support		\$ 2,000	\$ 2,000
Interpretive Education & Wayfinding signage/online promotion		\$ 2,000	\$ 750
<b>TOTAL</b>		<b>\$ 69,725</b>	<b>\$ 9,000</b>

Revenue	Amount	Status
City of Newport	50000	Pending
Lincoln County Community & Economic Development	12525	Received
Other Aquarium donation	7200	Received
<b>TOTAL</b>	<b>69725</b>	



## EXHIBIT C

(Illustration Showing Where the EV Chargers are to be Placed)



