

**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: LANDWAVES IMPROVEMENT AGREEMENT Date: 8.15.22

Statement of Purpose: GUARANTEE IMPROVEMENTS SO THAT CAN RECORD

Department Head Signature: [Signature]

Remarks, if any: _____

City Attorney Review and Signature: (ATTACHED) Date: _____

Other Signatures as Requested by the City Attorney: _____

	Signature				Name/Position
Budget Confirmed:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>		Date: _____
Certificate of Insurance Attached:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>		
City Council Approval Needed:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>			Date: _____

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: 08-19-22

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: _____

IMPROVEMENT AGREEMENT
(sidewalk, ADA ramp, and storm drainage improvements)

This Improvement Agreement (this “Agreement”) is made and entered into as of the date set forth on the signature page by and between the City of Newport, an Oregon municipal corporation (the “City”), and Landwaves, Inc., an Oregon corporation, hereinafter referred to as “Developer.”

RECITALS:

WHEREAS, Developer owns the real property identified by the Lincoln County Assessor as Tax Lots 03200 and 03300 on Tax Map 11-11-20-AD, more specifically described in Exhibit A (“Property”); and

WHEREAS, Developer intends to file a final subdivision plat (“Final Plat”) to divide the Property into 26 residential lots, said subdivision having been tentatively approved by the Newport Planning Commission on August 23, 2021 (File No. 1-PD-21/1-SUB-21); and

WHEREAS, the Newport Planning Commission’s tentative subdivision approval included conditions requiring Developer construct streets and utilities internal and along the frontage of the Property (“Required Improvements”) in a manner acceptable to the Newport Public Works Department before the final subdivision plat is recorded; and

WHEREAS, Developer has substantially completed Required Improvements, the lone exception being the alteration of an ADA ramp at SE 46th Street to correct a drainage problem; and

WHEREAS, correcting the drainage problem will require additional survey and engineering that will take a significant amount of time to resolve, unduly delaying the planned start date for residential construction by homebuilder Fowler Homes, LLC; and

WHEREAS, the Newport Municipal Code provides that Developer may, in lieu of completing Required Improvements prior to recordation of a Final Plat, enter into an Agreement with the City for the completion of the Required Improvements; and

WHEREAS, Required Improvements under this Agreement do not constitute a Public Improvement as the term is defined in ORS 279C; and

WHEREAS, this Agreement is required by Newport Municipal Code (NMC) 13.05.090(C) in order to allow the City of Newport to move ahead with approval of the Final Plat.

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 – Performance Bond issued by Liberty Mutual Insurance Company, on behalf of James W. Fowler Company, dated July 8, 2022.

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. Reconstruction of an ADA ramp at SE 46th Street, including associated sidewalk and grading work, to prevent stormwater from pooling at that location.

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 dwelling units 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.

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. Ownership of Required Improvements. The Required Improvements shall be owned and maintained by City upon its acceptance of the same. Developer shall warrant all Required Improvements and repairs for a period of one year after acceptance by City, as provided under NMC 13.05.090(G).

7. License to Use Permits, Specifications and Plans. If Required Improvements are not completed and accepted by the City within 24 months of this Agreement, as such deadline will be extended due to any delay in the City's inspection of the Required Improvements after the Developer substantially completes the Required Improvements, Developer shall, upon request of the City, license to and provide City with all of Developer's applicable permits, plans and specifications and other documents necessary or useful in the completion of or related in any manner to the applicable 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. Security for Required Improvements. The Developer's security is in the form of a Performance Bond executed on behalf of James W. Fowler Company by Liberty Mutual Insurance Company, a surety company authorized to transact business in the State of Oregon, in the amount of \$22,500, as set forth in Exhibit B. This amount represents 150% of the estimated cost of the Required Improvements.

10. Developer's Obligation for Costs. Developer expressly acknowledges, understands, and agrees that this Agreement shall not relieve Developer from the obligation to complete and fully pay for the Required Improvements. Should Developer fail to perform its responsibilities under this Agreement in any manner, Developer agrees to compensate City for all costs related to Developer's failure to perform its obligations to complete the Required Improvements.

11. Release of Security or Obligation. After the Required Improvements have been inspected and approved by the City Engineer, the City shall release Developer's security required pursuant to Section 9. City may make partial releases of any security when appropriate.

12. Shortfall in Security. If the amount available to be drawn from Developer's security is less than the costs and expenses anticipated to be incurred, or actually incurred, by City, City may apply the proceeds of the security to the anticipated or actual costs and expenses of completion of the Required Improvements and then hold Developer responsible and liable for the difference between anticipated and actual costs and expenses of completion and the amount of the remaining security.

13. Expiration. This Agreement shall expire at such time as Developer or Fowler Homes, LLC (or other builder) obtains a certificate of occupancy for the first home on the Property or twenty-four (24) months from the date of this Agreement, whichever is sooner.

14. 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.

15. Liens. Developer shall pay as due all claims for work done on and for services rendered or material furnished to the Property by Developer (or by Developer's contractor) and shall keep the Property free from liens.

16. 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.

17. 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.

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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, e-mail, 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:
Landwaves, Inc.
Attn: Bonnie Serkin
2712 SE 20th Avenue
Portland, Oregon 97202


To City:
City of Newport
Attn: City Engineer
169 SW Coast Highway
Newport, Oregon 97365

25. 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 ___ day of _____ 2022.

City:

CITY OF NEWPORT

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

Developer:

Landwaves, Inc.

By: _____
Name: _____
Title: _____

Approved as to Form:

City Attorney

EXHIBIT A

(Legal Description of Real Property Subject to this Agreement)

Lots 42 and 43, WILDER PHASE 3, in Lincoln County, Oregon, according to the official plat thereof, recorded May 19, 2017 in Plat Book 19, pages 15, 15A, 15B, Plat Records.

EXHIBIT B
(Performance Bond)

PERFORMANCE BOND

BOND NO. 023223186

KNOW ALL MEN BY THESE PRESENTS:

That we, James W. Fowler Co., as Principal(s)
and Liberty Mutual Insurance Company a Massachusetts corporation
authorized to transact surety business in the State of Oregon, as Surety, are held and firmly
bound unto The City of Newport

as Obligee, in the penal sum of Twenty Two Thousand Five Hundred and no/100ths (\$22,500.00)
DOLLARS, lawful money of the United States of America, for the payment of which, well and truly to be
made, we bind ourselves, our heirs, legal representatives, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS, Principal has made application for a City Right-of-Way Permit authorizing
private construction of public improvements as depicted by the City-approved plans for
Wilder Lots 42 and 43 infrastructure, ADA ramp grading revision at SE 46th Street

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That the said Principal(s) shall
perform all work in compliance with the plans and specifications filed with their application, and in full
accord and compliance with the standards and specifications for such work established by said City of
Newport.

PROVIDED, HOWEVER, That this bond shall continue in force until written acceptance thereof by said City
of Newport.

SIGNED AND SEALED this 8th day of July, 2022.

James W. Fowler Co.

BY: [Signature]

Principal

Liberty Mutual Insurance Company

BY: [Signature]

Susan B. Larson, Attorney-in-Fact Surety





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8207878-023001

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Charles W. Floberg, Drew D. Neessen, James Hamlin, John M. Miller, Mason M. Marks, Michael S. Cranston, Nicholas Warren and William M. Smith of Portland, OR; Ronald J. Lunge, Charla M. Boudle and Jennifer Barret of Spokane, WA; Abbie A. Bomey, Sandy L. Boswell, Jamie Ma, Marie I. Matetich and Sharon Pope of Anchorage, AK; Alec Gumpfer, Andrew Kerslake, Andrew P. Larsen, Deanna M French, Derek Sabo, Elizabeth R. Hahn, Guy Armfield, Jana M. Roy, John Claesys, Katelyn Cooper, Mindee L. Rankin, Nicholas Fredrickson, Roger Kaltenbach, Scott Fisher, Scott Garcia, Scott McGilvray, Susan B. Larson all of the city of Bellevue state of WA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 22nd day of April, 2022.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 22nd day of April, 2022 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1128044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 8th day of July, 2022.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

LMS-12873 LMC OCIC WAIC Multi Co 02/21

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

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.

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Newport, Oregon 97365

25. 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 ___ day of _____ 2022.

City:

CITY OF NEWPORT


By: _____
Name: _____
Title: _____

Developer:

Landwaves, Inc.

By: _____
Name: _____
Title: _____

Approved as to Form:



City Attorney

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.

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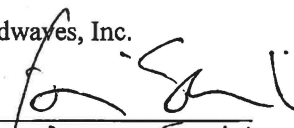
Executed as of this 15 day of August 2022.

City: CITY OF NEWPORT

By: _____
Name: _____
Title: _____

Developer:

Landwaves, Inc.

By: 
Name: Bonnie Serkin
Title: Chief Operating Officer

Approved as to Form:

City Attorney

