



Oregon

Tina Kotek, Governor

Parks and Recreation Department

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311601

ENTERED

Office of Chief Counsel

June 11, 2026

Part of

Public Record

June 10, 2026

VIA E-FILING

Re: Docket No. FD31676 – Port of Tillamook Bay Railroad – Modified Rail Certificate
Joint Notice of Trail Use Agreement

Dear Chief of Case Administration:

Attached please find the fully executed Trail Use Agreement between the Port of Tillamook Bay (POTB) and the Oregon Parks and Recreation Department (OPRD) covering the line of railroad from milepost 775.01, near Banks, Washington County, Oregon and milepost 856.08, near Tillamook, Tillamook County, Oregon.

As government entities working to preserve the corridor and support interim trail use in the best interest of the public, OPRD and POTB are requesting a waiver of any filing fees, as outlined in 49 CRF 1002(e)(1).

If you have questions about this filing or need further documents, please contact:

Jessica Horning
Salmonberry Trail Project Manager
725 Summer St. NE, Suite C; Salem, Oregon 97301
971-701-5593
Jessica.R.Horning@opr.oregon.gov

Sincerely,

/s/ Jessica Horning

Oregon Parks and Recreation Department

CC: Parties of Record (via email)

Attachments:

- Exhibit A – POTB Consent to Lease Assignment to OPRD
- Exhibit B – Rail Line Lease Agreement
- Exhibit C – Map of Rail Right-of-Way

EXHIBIT A

**Docket No. FD 31676 - Port of Tillamook Bay Railroad
ABANDONMENT EXEMPTION
IN TILLAMOOK AND WASHINGTON COUNTIES, OREGON**

**PORT OF TILLAMOOK BAY CONSENT TO LEASE ASSIGNMENT TO OREGON
PARKS AND RECREATION DEPARTMENT**

**CONSENT TO ASSIGNMENT OF
SALMONBERRY TRAIL RAIL LINE LEASE AGREEMENT**

This Consent to Assignment of the Salmonberry Trail Rail Line Lease Agreement ("Consent") is made this 28th day of May, 2026, between the Port of Tillamook Bay, an Oregon Port organized under ORS chapter 777 ("Port" or "POTB"), and Salmonberry Trail Intergovernmental Agency, an intergovernmental-governmental agency consisting of representatives of the STATE OF OREGON through its Oregon Parks and Recreation Department ("OPRD"), the Oregon Department of Forestry, Tillamook County, Washington County, and the Port (collectively, "STIA").

RECITALS

WHEREAS, the Port and STIA entered into the Salmonberry Trail Rail Line Lease Agreement dated effective April 6, 2018 (the "Lease Agreement") for STIA's construction, maintenance, operation, and repair of a multi-use trail to be used by the public; and

WHEREAS, the Salmonberry Trail Intergovernmental Agreement expires on September 23, 2026, and all parties agree to terminate the STIA. In advance of STIA's termination, STIA agrees to assign its interest in and obligations under the Lease Agreement to OPRD, and OPRD agrees to accept such assignment and assume STIA's Lease Agreement rights and obligations, as set forth in the Assignment and Assumption Agreement between STIA and OPRD attached hereto as Exhibit A ("Assignment"). OPRD's assumption of STIA's Lease Agreement obligations includes, without limitation, the full responsibilities required by the U.S. Surface Transportation Board ("STB") as the substitute Trail Manager and entering Trail Segment Operations Agreements with other interested state agencies, local governments, private for-profit or nonprofit entities for construction, operation, and management of the Salmonberry Trail; and

WHEREAS, the Lease Agreement prohibits STIA from transferring or assigning the Lease Agreement without the prior written consent of the Port; and

WHEREAS, on February 18, 2026, the STB issued a replacement Decision and Notice of Interim Trail Use or Abandonment (NITU) naming OPRD as the new interim trail sponsor.

NOW THEREFORE, the parties agree as follows:

1. The Recitals set forth in this Consent are true and correct and are incorporated herein as terms of this Consent.

2. Subject to Section 3 of this Consent, the Port consents to the assignment of the Lease Agreement to OPRD and OPRD's assumption of STIA's rights, obligations, and liabilities thereunder, as provided in the Assignment.

3. This Consent is effective upon STIA's and OPRD's full execution of the Assignment in the form attached hereto as Exhibit A and the delivery of the fully executed Assignment to the Port. If such condition is not satisfied, this Consent shall be null and void and of no force or effect.

4. This Consent does not amend or modify the Lease Agreement. All terms and conditions of the Lease Agreement shall continue in full force and effect.

5. This Assignment may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement. Counterpart signatures may be delivered by any transmission method (including PDF, DocuSign, or other electronic signature method), and any counterpart so delivered will be deemed to have been duly and validly delivered and effective for all purposes.

[Signatures on next page]

IN WITNESS WHEREOF, the undersigned parties have executed this Consent to Assignment of Lease Agreement on the dates indicated below.

**Salmonberry Trail Intergovernmental
Agency**

Signature: Kate J. Skinner
Kate J. Skinner (May 28, 2026 11:56:27 PDT)
Name: Kate J. Skinner
Title: Deputy State Forester
Date: 05/28/26

Port of Tillamook Bay

Signature: Michele Bradley
Michele Bradley (May 28, 2026 12:02:52 PDT)
Name: Michele Bradley
Title: General Manager
Date: 05/28/26

Oregon Parks and Recreation Department

Signature: Stefanie Coons
Stefanie Coons (May 28, 2026 16:07:03 PDT)
Name: Stefanie Coons
Title: (Int) Director, OPRD
Date: 05/28/26

Exhibit A

Assignment

[To be provided by STIA]

**ASSUMPTION AND ASSIGNMENT OF
SALMONBERRY TRAIL RAIL LINE LEASE AGREEMENT**

This Assumption and Assignment of the Salmonberry Trail Rail Line Lease Agreement ("Assignment") is made this 28th day of May, 2026, between the STATE OF OREGON through its Oregon Parks and Recreation Department ("OPRD") and Salmonberry Trail Intergovernmental Agency, an intergovernmental agency consisting of representatives of OPRD, the Oregon Department of Forestry ("ODF"), Tillamook County, Washington County, and the Port of Tillamook Bay (collectively, "STIA").

RECITALS

WHEREAS, the Port of Tillamook Bay ("Port") and STIA entered into the Salmonberry Trail Rail Line Lease Agreement dated effective April 6, 2018 (the "Lease Agreement") for STIA's construction, maintenance, operation, and repair of a multi-use trail to be used by the public; and

WHEREAS, the Salmonberry Trail Intergovernmental Agreement expires on September 23, 2026, and all parties agree to terminate the STIA. In advance of STIA's termination, STIA agrees to assign its interest in and obligations under the Lease Agreement to OPRD, and OPRD agrees to accept such assignment and assume STIA's Lease Agreement rights and obligations, as set forth in this Assignment; and

WHEREAS, the Lease Agreement prohibits STIA from transferring or assigning the Lease Agreement without the prior written consent of the Port, the Port has provided written consent to the assignment of the Lease Agreement to OPRD and OPRD's assumption of STIA's obligations and liabilities thereunder, as provided in the Consent to Assignment Agreement attached hereto as Exhibit A ("Consent"); and

WHEREAS, on February 18, 2026, the Surface Transportation Board ("STB") issued a replacement Decision and Notice of Interim Trail Use or Abandonment ("NITU") naming OPRD as the new interim trail sponsor.

NOW THEREFORE, the parties agree as follows:

1. The Recitals set forth in this Assignment are true and correct and are incorporated herein as terms of this Assignment.

2. STIA hereby assigns, grants, transfers, and conveys to OPRD the Lease Agreement and all STIA's right, title, interest, and obligations under the Lease Agreement.

3. OPRD accepts such assignment and agrees to assume and timely perform the obligations and liabilities of STIA under the Lease Agreement, including, without limitation, the full responsibilities required by the STB of the substitute interim trail sponsor, which include assuming full responsibility for (i) management of the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way, and (iv) entering into Trail Segment Operations Agreements with other interested state agencies, local governments, private for-profit or nonprofit entities for construction, operation, and management of the Salmonberry Trail.

4. This Assignment is effective upon the full execution of this Assignment by STIA and OPRD and the full execution of the Consent by STIA, the Port and OPRD.

5. This Assignment does not amend or modify the Lease Agreement. All terms and conditions of the Lease Agreement shall continue in full force and effect.

[Signatures on next page]

IN WITNESS WHEREOF, the undersigned parties have executed this Assumption and Assignment of Lease Agreement on the dates indicated below.

**Salmonberry Trail Intergovernmental
Agency**

Signature: *Kate J. Skinner*
Kate J. Skinner (May 28, 2026 11:57:40 PDT)
Name: Kate J. Skinner
Title: Deputy State Forester
Date: 05/28/26

**Oregon Parks and Recreation
Department**

Signature: *Stefanie Coons*
Stefanie Coons (May 28, 2026 16:06:14 PDT)
Name: Stefanie Coons
Title: (Int) Director, OPRD
Date: _____

EXHIBIT B

**Docket No. FD 31676 - Port of Tillamook Bay Railroad
ABANDONMENT EXEMPTION
IN TILLAMOOK AND WASHINGTON COUNTIES, OREGON**

RAIL LINE LEASE AGREEMENT

SALMONBERRY TRAIL RAIL LINE LEASE AGREEMENT

This Salmonberry Trail Rail Line Lease Agreement (“Agreement”) is made and entered into this 6th day of April, 2018 (“Effective Date”), by and between the Port of Tillamook Bay, an Oregon Port organized under ORS Chapter 777 (“Port”) and the Salmonberry Trail Intergovernmental Agency (“STIA”), hereinafter sometimes referred to individually as a “Party” or collectively as “Parties.”

RECITALS

Whereas, the Port railroad once connected the Willamette Valley to the Oregon Coast on an 86 mile corridor formerly owned by Southern Pacific, running from a point near the City of Banks to the Port Industrial Park through the canyon of the Salmonberry River and the Tillamook State Forest; and

Whereas, this unique passage, referred to as the Salmonberry Corridor (“Corridor”), has a rich history, and outstanding scenic context and the Parties to this Agreement recognize the potential to connect urban and rural Oregon through the construction of a multi-use trail within the Corridor which connects a wide network of existing recreation trails and parks, educational opportunities and heritage sites; and

Whereas, the 2014 Oregon State Legislature enacted SB 1516 requiring the Oregon Parks and Recreation Department (“OPRD”) and the Oregon Department of Forestry (“ODF”) in cooperation with other interested state agencies, local governments, nonprofit organizations and other stakeholders to develop a plan for constructing a trail along or adjacent to the Corridor between the cities of Banks and Tillamook; and

Whereas, the public agencies joined with other stakeholders, and after extensive public involvement and engagement, completed the Concept Plan, as defined in Section A.2 below, as the foundation for future development of this important landmark and as a guide for developing more specific plans and designs for individual Trail segments; and

Whereas, on September 23, 2015, STIA was formed as an intergovernmental agency consisting of OPRD, ODF, the Port and Tillamook County for the purpose of planning the development and maintenance of a multi-use trail within the Corridor consistent with the goals established within the Concept Plan, as defined in Section A.2 below; and

Whereas, the Parties have a mutual desire to establish interim trail use and rail banking under Section 8(d) of the National Trails System Act, 16 USC § 1247(d) (“National Trails Act”) and 49 CFR § 1152.29 in accordance with the Concept Plan, as defined in Section A.2 below; and

Whereas, on July 26, 2016, the Surface Transportation Board (“STB”) issued a decision (a copy of which is attached as Exhibit A) accepting STIA’s request for a Notice of Interim Trail Use (“NITU”) under 16 USC § 1247(d); and

Whereas, the NITU was issued on June 17, 2016 and authorizes the Port and STIA to negotiate a trail use agreement for the Corridor, which will allow STIA to become a Trail Manager and assume maintenance obligations and liability for the Corridor; and

Whereas, it is the Parties' intent that this Agreement will operate as the Trail Use Agreement required under the law to allow STIA to become a Trail Manager and will serve as the Port's official authorization and invitation to STIA to enter upon and conduct certain activities (as further described herein) upon the Leased Property; and

Whereas, the Port desires to lease the Leased Property to STIA, and STIA desires to lease the Leased Property from the Port, for the purposes and under the conditions provided herein.

Now therefore, the Parties agree as follows:

AGREEMENT

A. Grant of Lease; Premises; Use

(1) Grant of Lease; Leased Property. Port leases to STIA and STIA leases from Port, the surface portion of the Port's railroad right-of-way located between milepost 775.01, near Banks, Washington County, OR, and milepost 856.08, near Tillamook, Tillamook County, OR as more particularly shown on the attached Exhibit B ("Surface"), and additional areas beneath the surface of such railroad right-of-way as may be necessary or desirable for STIA's construction uses authorized in Section A.2 below ("Additional Right-of-Way"). The Surface and the Additional Right-of-Way are hereinafter collectively referred to as "the Leased Property." This grant of lease is specifically subject to the terms of this Agreement, including but not limited to the Port's reservation of rights as provided in Section D below, which includes but is not limited to the Oregon Coast Scenic Railroad ("OCSR") Rail Line Use Agreement dated March 29, 2012 and the BNSF Storage Use Agreement, dated January 15, 2016.

(2) Use. Subject to the terms of this Agreement, including Section D below, STIA may use, at its sole discretion, the Leased Property to: (a) establish, install, construct, maintain, operate and repair a trail and pathway (the "Trail"), parking lots, trailheads, bathrooms, picnic areas and similar structures or buildings consistent with a Trail ("Improvements") and any incidental uses thereto; and (b) permit the public to access and use the Trail for recreation and transportation purposes, including, but not limited to, walking, running, cycling, skating, skiing, and horseback riding. The Trail and Improvements, if undertaken by STIA, shall be constructed, maintained and operated in conformance with the Salmonberry Corridor Concept Plan or any subsequent amendments to the Concept plan or Master Plan (collectively referred to herein as the "Concept Plan"); however, any STIA proposed new construction or newly-constructed Improvements shall be subject to the notice and, opportunity to object provisions in Section H of this Agreement. Such authorized uses shall be referred to herein as "Trail Use." No other uses shall be allowed, without the express written permission of the Port. STIA shall provide Port with its plans and timelines for such Trail Use Improvements at least sixty (60) days prior to beginning Improvements or Trail construction. The Port may provide input and comment on such plans and timelines and may also request amendments.

B. Lease Term. The Term of the Agreement shall commence on the date it is signed by both Parties (the "Effective Date"), and shall expire on the date that is the 99th anniversary of the Effective Date, unless terminated earlier pursuant to the provisions of this Agreement.

C. Lease Consideration and the Port's Reservation of Certain Rights.

(1) STIA will pay \$990 (Nine Hundred and Ninety Dollars) payable in full, from STIA to Port, within seven (7) days after the Effective Date, as advance payment in full for the full lease Term.

(2) STIA will pay an additional fee of \$5 (Five Dollars) per linear foot for each segment of developed Trail which STIA constructs or opens to the public. This payment shall be known as the Trail Development Fee. The Trail Development Fee shall be payable in installments to Port, with the final payment due at least fifteen (15) days before STIA commences construction or opens the developed Trail segment to the public, whichever comes first.

(3) If the Port sells, transfers, or assigns to any person or entity including STIA, any ownership interest in any portion or all of the Leased Property at any time during the Term, the Port will refund to STIA any Trail Development Fees paid by STIA for the portion or portions of the Leased Property sold, transferred or assigned in an amount up to but not exceeding any monetary consideration received by the Port for any such sale, transfer, or assignment. The refund shall be paid without interest. Notwithstanding the immediately preceding, the Port has no refund responsibilities if it merely transfers, assigns or sells an easement, railroad crossing, or other similar access right to the Leased Property.

D. Port Reservation of Rights; Port Enterprises and Port Duties. The lease granted in this Agreement is subject to certain Port duties and Port ownership rights reserved in favor of the Port as discussed in this Section (collectively, these reserved Port rights are referred to herein as "Port Enterprise(s)").

(1) **Port Sale, Transfer, or Assignment of Leased Property.** The Port will not offer to sell or otherwise dispose of, assign, or transfer any of its interest in the Leased Property or the rail line unless: a) STIA provides prior written approval of such sale, transfer, assignment, or disposition, which shall not be unreasonably withheld, conditioned, or delayed, and the new owners, assignees, or transferees assume in writing all Port duties and responsibilities in this Agreement and agree in writing to remain subject to the terms of this Agreement; or b) such sale, transfer, or assignment is expressly allowed pursuant to subsections D(2), D(3), or D(6) of this Agreement.

(2) **Use Agreements.** The Parties acknowledge that the Port has entered into third party contracts affecting the Leased Property and that such contracts grant certain third parties limited, non-ownership rights to use or access the Leased Property, such as: right of way use agreements, rail line use agreements, licenses, easements, real property agreements, crossing agreements, encroachment agreements, or permits and other agreements pertaining to rail line or property that may be on, over or under and immediately adjacent to the Leased Property, or may include a portion of the Leased Property. Such third party contracts are collectively referred to

herein as “Use Agreements.” These Use Agreements may specifically include a granting of a non-ownership or non-controlling interest to a third party and may permit the third party some use of or access to a portion of the Leased Property, subject to this Section D. A list of all Use Agreements in effect as of the Effective Date is attached and incorporated herein as Exhibit C.

(3) Existing Use Agreements. In accordance with the terms of this Section D, the Parties agree that (a) the Port retains the right to administer, manage, and perform all Existing Use Agreements (which are unexpired Use Agreements valid and in effect as of the Effective Date of this Agreement) and to renew, without amendment, any Existing Use Agreements that include unilateral, unrestricted, and automatic third party rights to renew (“Automatic Renewal or Automatic Renewal Right”), (b) the Existing Use Agreements continue in full force and effect until the expiration or earlier termination of their terms, including any Automatic Renewal, (c) the parties to the Existing Use Agreements retain all rights and are subject to all obligations under the Existing Use Agreements, and (d) the Port retains all revenues from the Existing Use Agreements. The Port will notify STIA in writing thirty (30) days prior to any Automatic Renewal of any Existing Use Agreement that includes an Automatic Renewal Right and shall, upon request, provide STIA with a copy of the Existing Use Agreement that includes an Automatic Renewal Right.

(4) Objections to Existing Use Agreements. If STIA reasonably determines that an Existing Use Agreement or a proposed Automatic Renewal of an Existing Use Agreement that includes an Automatic Renewal Right: 1) is not in conformance with the Concept Plan; 2) constitutes Trail Use; 3) negatively affects STIA’s lease rights under this Agreement; or 4) imposes a Material Negative Impact on STIA’s Trail Use, STIA will provide written notice to the Port of this determination. In such a case, the Port agrees to cooperate in good faith with STIA to resolve STIA’s objection, but in no event will the Port be required to cancel, terminate, or amend any Existing Use Agreement, nor will it be prohibited from automatically renewing, without amendment, an Existing Use Agreement if that Existing Use Agreement includes an Automatic Renewal Right. No resolution of STIA’s objection shall cause the Port to breach its obligations or any party to an Existing Use Agreement to waive its rights under any Existing Use Agreement. If the Parties are unable to resolve STIA’s reasonable objection, either party may commence Steps 1 and 2, only, of the dispute resolution process in Section X below. As used in this Section D, the phrase “Material Negative Impact” means an activity or use that will impair or impede STIA’s Trail Use or STIA’s construction, operation, and maintenance of the Trail and Improvements.

(5) OCSR Agreement Extension. STIA acknowledges that the Port and OCSR are negotiating an amendment to the OCSR Agreement (“OCSR Amendment”). STIA agrees that if the Port and OCSR enter into the OCSR Amendment that includes only the following terms, STIA shall not object to the OCSR Amendment and the OCSR Amendment shall be an Existing Use Agreement under this Agreement. If the Port and OCSR enter into the OCSR Amendment that includes terms that are in addition to or different than the following terms, the OCSR Amendment shall be a New Use Agreement under this Agreement and the terms of Section (D)(6), (7), and (8) shall apply.

- i. The Term of the OCSR Agreement will be extended for twenty (20) years from the date the Port and OCSR enter into the OCSR Amendment, subject to

subsection viii, below ("Extended Term"), unless terminated earlier under the terms of the OCSR Agreement or the OCSR Amendment. OCSR shall have no right to renew or extend the Extended Term and any such renewal or extension must be mutually agreed upon by the Port and OCSR, shall constitute a New Use Agreement as defined in this Agreement, and will be subject to approval by STIA under Section D(7) of this Agreement.

ii. Upon the Port and OCSR's execution of the OCSR Amendment, OCSR's existing renewal rights under the OCSR Agreement shall be null and void and of no further force or effect.

iii. The OCSR Amendment shall include the following indemnification language:

OCSR shall hold harmless, indemnify, and defend STIA against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including, but not limited to, reasonable attorney's fees and costs), whether or not involving a third party claim, which arise out of or relate to the OCSR Agreement and any amendment thereto, including, without limitation, the OCSR Amendment.

iv. During the first five years of the Extended Term, OCSR shall pay the Port eight percent (8%) of Gross Revenues. In years six through 20 of the Extended Term, OCSR shall pay the Port twelve and one-half percent (12.5%) of Gross Revenues. Such payments shall be made when and as provided in the OCSR Agreement.

v. During the Extended Term, OCSR shall provide the Port with a written summary of the maintenance obligations performed by OCSR during each year of the Extended Term. Such summary shall be delivered to the Port not later than January 31 of the following year.

vi. All rights and obligations of the Port and OCSR as provided in the OCSR Agreement during a Renewal Term shall be the rights and obligations of the Port and OCSR during the Extended Term, except as amended in the OCSR Amendment.

vii. Except as modified by the OCSR Amendment, the terms of the OCSR Agreement shall remain in full force and effect.

viii. Prior to the Port and OCSR entering into the OCSR Amendment, OCSR must have complied with all requirements of the United States Environmental Protection Agency and the U.S. Army Corps of Engineers to resolve OCSR's unauthorized activity that has taken place on the Salmonberry River (NWP-2014-129) and take such steps as are necessary for OCSR to remain in compliance with such requirements and all other applicable laws, ordinances, statutes, orders, and regulations relating thereto. If OCSR fails to comply with such requirements by December 31, 2019, the Port shall have no obligation to enter into the OCSR Amendment. Unless and until

the Port and OCSR enter into the OCSR Amendment, the terms of the OCSR Agreement shall control the rights and obligations of the Port and OCSR with respect to the subject matter of the OCSR Agreement

(6) New Use Agreements. The Port may also enter into New Use Agreements (which are Use Agreements not valid and in effect as of the Effective Date of this Agreement) affecting the Leased Property under the following conditions: a) such New Use Agreements conform to the Concept Plan, do not constitute Trail Use, do not negatively affect STIA's lease rights under this Agreement, and do not impose a Material Negative Impact on STIA's Trail Use; and b) the Port provides the proposed New Use Agreements to STIA for review and STIA fails to object in writing within sixty (60) days, as further detailed in Subsection D.7 below.

(7) Objections to New Use Agreement. STIA may object to a New Use Agreement if STIA believes the New Use Agreement: a) fails to conform to the Concept Plan; b) constitutes Trail Use; c) negatively affects STIA's lease rights under this Agreement; or d) imposes a material negative impact on STIA's Trail Use. The Parties designate the Port's general manager, or his/her designee, for the Port, and STIA's executive director, or his/her designee for STIA, as the persons appointed to receive notice and resolve issues that arise under this Section D ("Designated Contact"). Either Party may, by providing written notice to the other party, substitute another person as the Designated Contact. Within 14 days after receiving STIA's objection, the Port and STIA will commence with Steps 1 and 2 of the dispute resolution process under Section X, and the Port will not enter into or execute the New Use Agreement unless the Parties have reached a written consensus about the proposed New Use Agreement.

(8) Use Agreement Indemnification. Any new or renewed Use Agreements shall require that the parties to such Use Agreements hold harmless, indemnify and defend STIA against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable attorney's fees and costs), whether or not involving a third party claim, which arise out of or relate to the Use Agreement. The Port may also seek indemnification or liability protection from third parties, as specifically provided in licenses, easements, permits or other written agreements. Existing Use Agreements that contain Automatic Renewal Rights are not subject to this provision.

(9) Right of First Refusal. During the term of the Agreement, should the Port desire to sell, transfer, or grant an ownership or controlling interest in any portion of the Leased Property, the Port shall give STIA a right of first refusal to purchase such portion of Leased Property. Specifically, within five (5) days after receiving an offer which the Port desires to accept, the Port will notify STIA in writing of the offer and of the essential business terms of the offer, and will not proceed with such sale or transfer. Instead, the Port will allow STIA sixty (60) days from the date of such notice to either refuse the offer or to match the offer and make substantial progress towards closing escrow. Notwithstanding the immediately preceding, any proposed transfer, sale, or grant of an ownership or controlling interest that is subject to OCSR's right of first refusal under Section 8 of its current Rail Line Use Agreement (which is attached hereto and incorporated herein as Exhibit D) with the Port is not subject to this subsection D(9), unless and until OCSR declines or fails to exercise its Section 8 rights under its current Rail Line Use Agreement. If OCSR declines or fails to exercise its prior right of first refusal under

Section 8 of its current Rail Line Use Agreement, then STIA's subsequent right of refusal, as described above in this subsection D(9), shall become effective.

(10) Notwithstanding anything herein to the contrary and pursuant to the National Trails Act and the NITU, the Port reserves the right to reactivate or restore freight rail service on the Leased Property, or to transfer the reactivation or restoration rights to a freight rail service operator, at a future date. The Port and STIA agree not to take any action that would preclude the Port from exercising this right.

(11) The Port reserves the right to take any other action with respect to the Leased Property and railroad right-of-way, or grant any other right or interest, so long as such action, right or interest is not inconsistent with STIA's rights under this Agreement.

E. STB/National Trails Act Compliance.

(1) A NITU has been issued by the STB in favor of STIA as the potential Trail Manager.

(2) STIA agrees that, as a Trail Manager, it is assuming, until relieved of such responsibility by the STB or until the termination or expiration of this Agreement (whichever comes first), the following responsibilities, subject to the terms of this Agreement:

i. Full Responsibility for the Leased Property as required by 16 USC 1247(d) and 49 CFR 1152.29(a)(2);

ii. Any legal liability required by federal statute or regulation for which STIA is not immune and that arises out of the transfer to STIA or to STIA's use of the Leased Property;

iii. Notwithstanding anything to the contrary in this Agreement, neither party waives any applicable tort claim limitations in the Oregon Tort Claims Act and the Oregon Constitution.

(3) STIA assumes responsibility for the payment of any and all taxes that may be levied or assessed against the Leased Property as further discussed in Section K(1) of this Agreement.

(4) STIA shall comply with the "statement of willingness" filed with the STB on June 17, 2016, a copy of which is attached hereto as Exhibit E and incorporated herein.

(5) STIA acknowledges and agrees that its lease and use of the Leased Property for interim trail use and rail banking is subject to any future use of the property for restoration of railroad operations, and to its continuing to meet the financial obligations for the Leased Property described in subsection D (2) above.

(6) Pursuant to 49 CFR sec 1152.29(d)(2) and (h), the parties agree to jointly notify the STB within 10 days after this Agreement has been executed that an interim trail use agreement has been reached.

(7) If STIA subsequently intends to terminate Trail Use over all or a portion of the Leased Property, STIA will notify the STB in accordance with the requirements of 49 CFR 1152.29(f) and will comply with the termination provisions of Section T and Section W below.

F. Construction; Repair; Operation and Maintenance of Trail.

(1) STIA is responsible for all costs it incurs regarding its construction, repair, operation and maintenance of the Trail and Improvements on the Leased Property. While the Port understands that STIA plans to enter into Trail Segment Operation Agreements, as discussed in Section P below, to offset some of this cost, STIA and the Port agree that STIA remains solely liable for all STIA-initiated unpaid costs related to STIA's Trail Use under this Agreement.

(2) STIA may take all actions necessary to construct, maintain, and repair the Trail and any segment of the Trail, including, without limitation, installing the following related utilities and improvements (all of such improvements shall be considered part of the "Trail" as that term is used herein): (i) trail surfaces, foot bridges and associated trail structures, (ii) trail markers, signs, lights, benches, and other security enhancements, and (iii) any barriers, fences, and gates necessary to prevent motorized vehicular access, and (iv) any other improvements specifically approved in the Concept Plan.

(3) Trail development and Improvements constructed by STIA shall be the property and responsibility of STIA during the Term of this Agreement, but shall revert to the Port after expiration or earlier termination of this Agreement.

(4) STIA shall be responsible for obtaining all governmental permits and approvals for construction of the Trail and Improvements or any other work on the Leased Property for which a permit or approval is needed, prior to commencing such construction or work. The Port shall cooperate in good faith with STIA in obtaining any necessary permits or approvals.

(5) STIA will not make any Improvements that would preclude or prevent the reactivation or restoration of freight rail service on the Leased Property in accordance with the provisions of the National Trails Act, the NITU, any other STB decisions or this Agreement.

(6) STIA's construction of Improvements and Trail Use is discretionary and is not mandated under this Agreement. However, STIA shall keep its constructed Improvements and developed Trail segments in good condition and repair, consistent with Section I of this Agreement.

G. Port's Access to Leased Property. The Port shall have the right to enter upon the Leased Property for the purposes of: (a) confirming the performance by STIA of all of STIA's obligations under this Agreement; (b) doing any other act which the Port may be obligated or have the right to perform under this Agreement; and (c) for any other lawful purpose. Such entry shall be made with reasonable advance notice and during normal business hours, where practical, except in cases of emergency or a suspected violation of this Agreement or the law. STIA waives any claim against the Port for damages for any loss of occupancy or

quiet enjoyment of the Leased Property or any other loss occasioned by such entry, except to the extent caused by the gross negligence or willful misconduct of the Port. This provision does not authorize the Port to do any work on the Leased Property unless such work is expressly authorized in this Agreement.

H. Encroachments; Improvements. STIA shall not construct or install any Trail segments or Improvements, without providing the Port with at least sixty (60) days advanced written notice of such construction or installation, which shall include the written plans and deadlines for the project. The Port may object to such construction or installation if it would prevent or preclude reactivation or restoration of freight rail service. If Port objects, the Parties shall apply Steps 1 and 2 of the dispute resolution process as provided in Section X. Any such improvements shall be considered Improvements, as that term is defined in this Agreement. The Port may also object if any construction schedule or timeline will create a conflict with Port duties or Port Enterprises, including, but not limited to schedule conflicts with other work being performed. In such cases, the parties do not need to apply the dispute resolution process, but agree to cooperate in good faith to adjust timelines to accommodate the Port's schedule. All work performed on the Leased Property shall be performed only in accordance with the Concept Plan, this Agreement, and any applicable federal, state, or local laws. All work performed on the Leased Property shall be performed in a workmanlike manner, and, once commenced, diligently pursued to completion.

I. Damage or Destruction.

(1) Damage. During the Term of this Agreement, in the event the Leased Property, the Trail, or the Improvements are materially damaged or destroyed by any cause, the Port shall be under no obligation to repair and reconstruct the Leased Property, the Trail, or such Improvements.

(2) Reconstruction. STIA has no obligation under this Agreement to reconstruct or repair unimproved Leased Property. In the event that a STIA-developed Trail segment or a STIA-constructed Improvement is significantly damaged, STIA, at its sole discretion, shall either: a) repair or reconstruct such damage; or b) take reasonable precautions to protect the public safety and avoid the risk of harm which may result from such damage. Such reasonable precautions may include but are not limited to: relocating or rerouting the damaged portion of the Trail and Improvements, removing debris, prohibiting public access, or adding signage and other appropriate safety measures. Any received proceeds of STIA's insurance must be used to restore the damaged developed Trail and constructed Improvements or to take the reasonable precautions.

(3) Timing of Repair. In the case of damage or destruction that negatively affects a STIA-developed Trail segment or a STIA-constructed Improvement and threatens public safety or poses an imminent risk of harm, STIA must develop a plan for risk avoidance within thirty (30) days of any such damage or destruction and must implement the plan within sixty (60) days of any such damage or destruction. In the case where Trail damage or destruction that does not threaten public safety or pose an imminent risk of harm, STIA must have a plan for reasonable precautions, repair, construction, relocation and/or rerouting, within two (2) years after the date of damage or destruction. If STIA fails to timely perform its obligations under this

section, the Port may enter into the Dispute Resolution process as described in Section X herein. If the dispute resolution process is unsuccessful at resolving the issue, the Port may then declare a default and proceed under Section W of this Agreement.

(4) No Proration or Abatement of Rent. In the case of destruction or damage, there shall be no prorated, abated, reduced, or refunded rent.

J. Compliance with Laws. STIA and STIA's officers, employees, invitees, agents and contractors shall comply with: (a) all applicable federal, state, and local laws, rules, regulations and ordinances, including, but not limited to: laws governing its relationship with its employees; (b) laws, rules, regulations and policies concerning workers' compensation and minimum and prevailing wage requirements; (c) laws, rules and regulations and policies relative to occupational safety and health; and (d) all Environmental Laws (as defined in Section N).

K. Taxes; Fees; Utilities.

(1) STIA shall pay, before due, all applicable assessments, real property taxes, other taxes, fees and other charges, however named, which are levied or imposed against the Leased Property and any Improvement, on or after the Effective Date, but not including assessments, taxes, fees or other charges from which STIA is exempt and not including any assessments, taxes, fees or other charges owed by a third party subject to a Use Agreement. There shall be no right to contribution from Port for such items.

(2) STIA shall promptly pay any charges for sanitary sewer, storm sewer, water, gas, electricity, and all other charges for utilities which are furnished to the Leased Property or STIA's Improvements, at the request of or for the benefit of STIA, including any and all drainage fees, connection fees and impervious surface fees charged by any governmental entity having jurisdiction. Port will provide any maps, as-builts, or other documentation it has regarding the location of utility lines and connections, but shall not be responsible for verification of location of existing utility lines and/or connections.

(3) STIA shall not create, permit or suffer to be created or to remain, any construction, supplier, materialman's or other statutory liens to be filed against the Leased Property by reason of any construction, labor, services, equipment or materials performed or furnished at the request of STIA or any of STIA's contractors or agents.

(4) If any such lien shall at any time be filed against the Leased Property, STIA may contest the same in good faith. Notwithstanding such contest, within thirty (30) calendar days after the filing thereof, STIA shall cause such lien to be released of record by payment, deposit, bond or order of a court of competent jurisdiction. STIA's obligation to observe and perform any of the provisions of this Section shall survive the expiration or earlier termination of this Agreement.

L. Liability and Indemnification.

(1) The parties acknowledge that, to the extent so provided in ORS 105.672 to ORS 105.696 and by any other statutory and common law governmental immunities, both the Port and STIA are immune from liability for injuries incurred on the Leased Property, Trail and

Improvements by members of the public who access the Leased Property and the Trail under authority of this Agreement.

(2) The parties agree to waive any claims, actions, or causes or action they may have against each other regarding compensation for any loss, damage, personal injury or death ("Losses") which arises out of or relates to the Parties' performance under this Agreement, unless such Losses are caused by a Party's unremedied breach of this Agreement, willful misconduct or gross negligence. Notwithstanding the immediately preceding, this waiver provision does not impair the Parties' indemnification rights under this Agreement or impair the Parties' rights to enforce the terms of this Agreement, including, but not limited to, the right to declare a default or pursue other remedies to enforce the terms of the Agreement.

(3) Pursuant to ORS 190.080(3), the Parties agree that: i) this Agreement shall not in any manner bind or encumber OPRD, ODF, Tillamook County, or the Port when the Port is acting solely in its capacity as a STIA Board Member and party to the intergovernmental agreement creating STIA; and ii) the STIA Board of Directors does not have the authority to bind or encumber OPRD, ODF Tillamook County, or the Port. The debts, liabilities and obligations of STIA under this Agreement shall not be the debts, liabilities or obligations of OPRD, ODF, Tillamook County, or the Port. Nothing in this subsection relieves the Port of its obligations or liabilities, or impairs or restricts the rights of the Port, when it is acting in its capacity as the lessor under this Agreement.

(4) Upon the Effective Date of the Agreement and subject to the tort claim limitations in the Oregon Tort Claims Act and the Oregon Constitution, the Port will hold harmless, defend, and indemnify STIA against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable attorney's fees and costs) (individually "Loss" or collectively, "Losses"), which arise out of or relate to the Port's (or the Port's agents, assignees, employees, or contractors), use, possession, or control of the Leased Property or actions regarding the Leased Property or arise out of or relate to any Port Enterprises on the Leased Property. The Port may also seek indemnification or liability protection from third parties.

(5) Upon the Effective Date of the Agreement and subject to the tort claim limitations in the Oregon Tort Claims Act and the Oregon Constitution, STIA will assume the liability required under federal statute or regulation for all Losses, whether or not involving a third party claim, which arise out of or relate to STIA's use, possession or control of the Leased Property or STIA's Trail Use and Improvements. Such liability assumption is subject to the condition that the Port indemnifies STIA as further specified in Section L (4) directly above. STIA may also seek indemnification or liability protection from third parties.

M. As-Is. The Leased Property shall be leased to STIA: (i) "AS IS WITH ALL FAULTS", (ii) the Port makes no warranties or representations as to the suitability of the Leased Property for any particular use or for soil or environmental conditions or any other conditions of the Leased Property for the Trail or any Improvements constructed by STIA or for any use, (iii) STIA has not relied on any representations or warranties outside the express terms of this Agreement made by the Port as to the environmental condition of the Leased Property, the suitability of the soil conditions, or any of the conditions of the Leased Property. Subject to the

terms of this Agreement, including but not limited to Section N below, STIA expressly waives and releases the Port from any such claims, and the Port will not be liable to STIA for any loss, cost or damage which may be caused or incurred by STIA by reason of any such existing soil, environmental or physical conditions of the Leased Property. The Leased Property shall be deemed accepted as of the Effective Date of this Agreement in its then condition, and subject to all covenants, conditions, and restrictions, and applicable zoning, county, state and federal laws, ordinances and regulations governing the Leased Property.

N. Environmental Management, Compliance, and Liability.

(1) Definitions. For the purposes of this Agreement, the following definitions shall apply.

i. **Environmental Cost.** "Environmental Cost" shall be interpreted in the broadest sense to include, but not be limited to, costs and damages arising from or relating to: (a) any actual or claimed violation of or noncompliance with any Environmental Law (as defined in subsection ii); (b) claims for damages, response costs, fines, fees or other relief relating to matters addressed in any Environmental Law; (c) injunctive relief relating to matters addressed in any Environmental Law; (d) Hazardous Substance Releases (as defined in Section N.1.iv); and (e) violations of any environmental provisions of this Agreement. Costs and damages as used in this Section shall include but not be limited to: (i) costs of evaluation, testing, analysis, cleanup, remediation, removal, disposal, monitoring and maintenance; (ii) costs of reporting to or negotiating with any government agency; and (iii) fees of attorneys, engineers, consultants, and experts, whether or not taxable as costs, incurred at, before or after trial, appeal or administrative proceedings; and (iv) diminution of value, loss, or restriction on use of property.

ii. **Environmental Law.** "Environmental Laws" shall be interpreted in the broadest sense to include, but not be limited to, any and all federal, State of Oregon and local laws, regulations, rules, permit terms, codes and ordinances now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which in any way govern materials, substances, regulated wastes, emissions, pollutants, animals or plants, noise, or products and/or relate to the protection of health, natural resources, safety or the environment.

iii. **Hazardous Substance.** "Hazardous Substance" shall be interpreted in the broadest sense to include, but not be limited to, any and all substances, emissions, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any Environmental Law. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum-derived products.

iv. **Hazardous Substance Release.** "Hazardous Substance Release" shall be interpreted in the broadest sense to include, but not be limited to, the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking or placing of any Hazardous Substance into the air or into or on any land or waters, except in compliance

with Environmental Law, the terms of this Agreement, or as authorized by a then current and valid permit issued under applicable Environmental Law.

(2) **General Environmental Obligations of STIA.** STIA shall manage and conduct all of its activities on or relating to the Leased Property: (a) in compliance with Environmental Law and the environmental provisions of this Agreement; (b) in cooperation with the Port in the Port's efforts to comply with Environmental Law; and (c) in adherence with best management practices applicable to STIA's use of the Leased Property.

(3) **Use of Hazardous Substances.** In conjunction with and in the ordinary course of STIA's authorized uses, and without further written consent other than that granted by this Section, STIA shall be permitted to use, handle or store, for their intended purposes in accordance with all manufacturers' instructions, Hazardous Substances consisting of: (a) petroleum-derived products fully contained within motor vehicles; (b) Hazardous Substances to the extent reasonably and necessarily used in the course of STIA's normal operations and subject to applicable Port rules, ordinances, and policies, if applicable; and (d) small quantities of used petroleum-derived products to be recycled. STIA shall be responsible and liable for any Losses caused by or arising out of the use of Hazardous Substances by STIA or its officers, directors, employees, invitees, agents, and contractors.

(4) **Solid Waste Management and Recycling.** STIA shall manage all waste stream in accordance with applicable federal, State and local laws and regulations, including meeting recycling goals established by regulatory authorities.

(5) **Hazardous Substance Storage Tanks.** Except with the prior written consent of the Port, which consent may be granted or denied in the Port's sole discretion, no above-ground, underground or mobile storage tanks (including fueling trucks) for the storage of Hazardous Substances shall be installed or operated by STIA on the Leased Property. As a condition of its consent, the Port may require STIA to sign the then-current agreement applicable to such uses including, but not limited to a storage tank agreement.

(6) **Soil or Waste.** STIA shall not store, treat, deposit, place or dispose of treated or contaminated soil, industrial by-products, or waste on the Leased Property, without the prior written consent of the Port, which consent may be granted or denied in the Port's sole discretion.

(7) **Environmental Inspection.** The Port reserves the right, at any time and from time to time, after notice to STIA as provided in Section G, to inspect the Leased Property, STIA's operations on and use of the Leased Property, and STIA's environmental records.

(8) **STIA's Environmental Liability.**

i **Hazardous Substance Releases.** STIA shall be liable for any Hazardous Substance Release on the Leased Property, on other properties, in the air, or in adjacent or nearby waterways (including groundwater) which results from any Hazardous Substance brought onto the Leased Property by STIA or by any STIA-authorized contractor, agent, employee or invitee, and which either occurs during the term of this Agreement or occurs or continues after the term of this Agreement.

ii **STIA's Liability for Environmental Cost.** Subject to the limitations on STIA's liability as set forth in this Agreement, STIA shall be responsible for all Environmental Costs incurred from Hazardous Substance Releases, as those terms are specifically defined in Section N above.

iii **Limitation of STIA's Liability.** Notwithstanding anything to the contrary provided in this Agreement, STIA shall have no liability for Hazardous Substances or Hazardous Substance Releases, or any Environmental Cost arising from Hazardous Substances or Hazardous Substance Releases that: (a) existed on the Leased Property prior to the Effective Date of this Agreement; (b) are caused by the Port or the agents, employees, contractors, agents or other lessees of the Port; (c) are caused by the Port or a third party's activities related to the Port Enterprises; or (d) which STIA can demonstrate were caused by a third party which is not a contractor, agent, invitee or employee of STIA and was not exacerbated by the actions of STIA.

(9) **Port's Indemnity.** The Port will indemnify and defend STIA for Hazardous Substance Releases and Environmental Costs arising from Hazardous Substances or Hazardous Substance Releases that: (a) existed on the Leased Property prior to the Effective Date of this Agreement; (b) are caused by the Port or the agents, employees, contractors, or other lessees of the Port; (c) are caused by the Port or a third party's activities related to the Port Enterprises; or (d) STIA can demonstrate was caused by a third party that is not a contractor, agent, invitee or employee of STIA or was not exacerbated by the actions of the Port. Such indemnification shall expressly include, but shall not be limited to, all Port Enterprises.

(10) **STIA's Indemnity.** STIA will indemnify and defend the Port for Hazardous Substance Releases and Environmental Costs arising from Hazardous Substances or Hazardous Substance Releases that are caused by STIA or the agents, employees, invitees, contractors of STIA.

(11) **Environmental Remediation.**

i. **Releases and Violations.** In the event that STIA violates an Environmental Law, an environmental provision of this Agreement, or causes a Hazardous Substance Release, or in the event that STIA is responsible for the reasonable threat or reasonable suspicion of the same for which STIA is liable under this Agreement, STIA shall immediately undertake all acts necessary and appropriate to cure or correct the violation or investigate, contain and stop the Hazardous Substance Release.

ii. **Remediation and Removal.** STIA shall promptly undertake all remedial and/or removal actions necessary and appropriate to ensure that any Hazardous Substance Release for which STIA is liable as specifically described in Section N(8) above, is eliminated and that any associated violation of any Environmental Law or environmental provision of this Agreement is cured or corrected. STIA shall remove, at STIA's sole expense, all Hazardous Substances for which STIA is liable under Section N(8)(i) of this Agreement, and shall restore the Leased Property and any impacted water to its baseline condition existing on the Effective Date. In the event that any remediation or removal required by this Agreement cannot reasonably be completed prior to the

termination or expiration of this Agreement, STIA shall not be in violation of its remediation obligations so long as STIA immediately commences all investigation, containment, remediation, or removal activities and diligently and continuously pursues such activities until completion. STIA's remediation and removal obligations pursuant to this Section N shall survive termination of the Agreement if the Hazardous Substance Release, as specifically defined by Section N(8)(i), can be shown to have occurred during the Term of this Agreement.

iii. **Report to Port.** Within twenty (20) calendar days following completion of any investigatory, containment, remediation and/or removal action required by this Agreement, STIA shall provide Port with a written report outlining in detail what has been done and the results thereof. STIA shall also provide oral notice to Port of such action within two (2) business days.

iv. **Port's Approval Rights.** STIA shall not initiate any risk assessment based remediation or closure without the prior written consent of the Port. STIA shall provide the Port with no less than thirty (30) days' advance written notice of its intention to initiate any risk assessment based remediation or closure, and shall provide the Port with a copy of the proposed remediation or closure plan for the Port's review and evaluation. STIA shall not submit any such plan for regulatory approval without the Port's prior written consent, which consent shall not be unreasonably withheld. The Port shall respond to such request within fifteen (15) days. Failure to respond within fifteen (15) days shall be deemed approval to proceed. STIA shall, within 48 hours, provide notice to Port of any regulatory order or directive it receives regarding the Leased Property. STIA, notwithstanding the Port's denial of consent, may still submit a proposed risk assessment based remediation or closure for regulatory approval if STIA can demonstrate it is being required to submit such a plan pursuant to validly issued regulatory order or directive to do the same. In such an event, STIA shall simultaneously provide a copy to the Port of the plan submitted to the regulatory agency or authority. The Port shall have the right to require STIA to request oversight from the Department of Environmental Quality ("DEQ") of any investigatory, containment, remediation and removal activities and/or require STIA to seek a statement from the DEQ of "No Further Action".

(12) **Notice.** Each Party shall promptly notify the other Party upon becoming aware of: (a) a violation or alleged violation of Environmental Law related to the Leased Property or related to any occupation or use of the Leased Property or any environmental provision of this Agreement; and (b) any Hazardous Substance Release whatsoever on, under or adjacent to the Leased Property or any threat of or reasonable suspicion of any of the above.

(13) **Port's Right to Perform on Behalf of STIA.** Except in the event of an emergency or an agency order requiring immediate action, the Port shall have the right, upon giving STIA seven (7) calendar days' written notice, to perform STIA obligations arising under Section N of this Agreement and charge STIA the resulting Environmental Cost. The Port may not commence performance on behalf of STIA under this Section if, within the seven (7) calendar day notice period, STIA promptly plans and begins or diligently pursues to completion the performance of the obligations set forth in the Port's notice.

O. Insurance.

(1) Insurance requirements set forth below do not in any way limit the amount or scope of liability of the Parties under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage the Parties are willing to accept to help insure full performance of all terms and conditions of this Agreement. All insurance required under this Agreement shall meet the following minimum requirements.

i. **Certificates; Notice of Cancellation.** On or before the Effective Date and thereafter during the term of this Agreement, the Parties shall provide each other with current certificates of their insurance, including an additional insured endorsement, executed by a duly authorized representative of each insurer, evidencing the existence of all insurance policies required under Section O(2). No insurance policy may be canceled, materially revised, or allowed to expire without at least thirty (30) calendar days prior written notice being given to the other Party. Upon written request, the parties shall also provide copies of policies of insurance to the other party.

ii. The Port shall provide STIA with certificates of insurance for Port Enterprises to the extent the Port has such certificates of insurance in its possession or control. Notwithstanding the immediately preceding, regarding any Port Enterprises on the Leased Property that are newly entered into after the Effective Date or are renegotiated during the Term of this Agreement, Port shall provide STIA with current certificates of insurance for such Port Enterprises, including an additional insured endorsement, executed by a duly authorized representative of each insurer, evidencing the existence of all insurance policies required under Section O(2). No insurance policy required under this Agreement may be canceled, materially revised, or allowed to expire without at least thirty (30) calendar days prior written notice being given to the other party. Upon written request, the Port shall also be provided copies of STIA's policies of insurance.

iii. **Additional Insured; Separation of Insureds.** The Parties shall each be named as an additional insured under liability coverages, but only with respect to their own operations and as their respective interests may appear in each general liability policy and as additional insured and loss payee in each property insurance policy. Such insurances shall provide cross liability coverage equivalent to the standard Separation of Insureds clause published by the Insurance Services Offices or a successor organization.

iv. **Primary Coverage.** The required policies shall provide that the coverage is primary, and will not seek any contribution from any insurance or self-insurance carried by the Parties.

v. **Company Ratings.** All policies of insurance must be written by companies having an A.M. Best rating of "A-" or better, or equivalent. The Parties may, upon thirty (30) calendar days' written notice, require the other Party to change any carrier whose rating drops below an "A-" rating.

vi. **Periodic Review.** The Parties shall have the right to periodically review the types, limits and terms of insurance coverage. In the event either Party reasonably determines that such types, limits, and/or terms should be changed, the Party seeking the change will give the other Party a minimum of thirty (30) calendar days' notice of such determination and the other Party shall consult and confer with the Party requesting the change. If both Parties agree that increased insurance coverage is beneficial and if commercially reasonable insurance rates can be attained, the Parties shall jointly increase coverage to comply with the new insurance requirements. The Parties shall also provide each other with proof of such compliance by providing an updated certificate of insurance within thirty (30) calendar days.

(2) **Required Insurance.** At all times during this Agreement, STIA shall provide and maintain insurance in an amount exceeding the applicable limitation on liability under the Oregon Tort Claims Act or the following minimum types of coverage, whichever is greater, regarding all aspects of STIA's Trail Use and STIA's possession or control of the Leased Property. At all times during this Agreement, the Port shall provide and maintain insurance in an amount exceeding the applicable limitation on liability under the Oregon Tort Claims Act or the following minimum types of coverage, whichever is greater, regarding all Port activities on the Leased Property, including Port Enterprises.

i. **General Liability** Commercial general liability insurance covering the insured against claims of bodily injury, personal injury and property damage arising out of the Parties' respective operations, assumed liabilities or use of the Leased Property, including a commercial general liability endorsement covering the insuring provisions of this Agreement and the performance by the Parties of the indemnity agreements set forth in Section L of this Agreement with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence with a Two Million Dollar (\$2,000,000) aggregate limit.

ii. **Property Damage:** Property Damage Insurance covering all Improvements. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the guaranteed replacement cost value new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include a vandalism and malicious mischief endorsement.

iii. **Automobile Liability Insurance.** In the event that automobiles are used in connection with either Party's operations at the Leased property, the parties shall maintain an occurrence form automobile liability policy or policies insuring against liability for damage because of bodily injury, death, or damage to property, including loss of use thereof, and occurring in any way related to the use, loading or unloading of any automobiles (including owned, hired and non-owned vehicles) on and around the Leased Property. Coverage shall be in an amount of not less than ONE MILLION DOLLARS (\$1,000,000).

iv. **Workers' Compensation Insurance.** The Parties shall maintain in force workers' compensation insurance for all of employees in accordance with all

requirements of Oregon law. The Parties shall also maintain employer's liability coverage in an amount of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per accident and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per employee for disease. In lieu of such insurance, the Parties may maintain a self-insurance program meeting the requirements of the State of Oregon and a policy of excess workers' compensation and employer's liability insurance.

v. **The Parties' Risks.** Subject to the provisions herein, each Party shall be responsible for obtaining any insurance it deems necessary to cover its own risks.

(3) **Waiver of Subrogation; Waiver** If any required property or automobile insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to loss, the insurance policy holder shall cause such policies to be endorsed with a waiver of subrogation that allows the waivers required by this Section. STIA and the Port waive any right of action that they and/or their insurance carriers might have against each other (including their respective employees, officers, commissioners, or agents) for any Loss to the extent that such Loss is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Agreement and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the Loss. The Parties each waive any right of action it and/or its insurance carrier might have against the other (including employees, officers, commissioners, or agents) for any Loss to the extent such Loss is covered under any applicable automobile liability policy or policies required by this Agreement.

(4) **Survival of Indemnities.** The indemnity agreements set forth in this Agreement shall survive the expiration or earlier termination of this Agreement and be fully enforceable thereafter.

(5) **Insurance obligations for Contractor or Agents.** The Parties will require the same or greater insurance coverage as described herein for all contractors and subcontractors performing services on the Leased Property, and will require that all related policies name the other Party as an additional insured.

P. Trail Segment Operations Agreements.

(1) STIA anticipates constructing the Trail and related Improvements in segments. As STIA is able to identify entities, including but not limited to: state agencies, local governments or private for-profit or nonprofit entities willing and able to develop, maintain and operate segments of the Trail, STIA may enter into a Trail Segment Operations Agreement (TSOA) with each such entity.

(2) STIA will not commit to construct any Trail segments until such time as it determines it has the capacity to successfully operate and maintain a Trail, or until such time a TSOA has been established with an appropriate entity with the capacity to successfully operate and maintain the trail.

Q. Revenues.

(1) All revenues derived by the Port from the Port Enterprises identified in Section D of this Agreement, or otherwise derived from the Port's ownership or operation of the rail line, will be retained by the Port.

(2) All revenues received by STIA from grants, bequests, agreements or other sources related to the planning, development, construction, maintenance, use and operation of the Leased Property, Trail and Improvements will be retained by STIA.

R. Rail Line Salvage.

(1) The Parties acknowledge that this Agreement may result in the dismantling of a significant amount of rails, cross ties, other rail infrastructure and rail-related equipment ("Salvage Equipment"). The Parties further agree that the handling and disposition of this Salvage Equipment is considered part of trail construction and, if undertaken at STIA's sole discretion, will be the responsibility of STIA.

(2) Notwithstanding the above subparagraph, STIA cannot salvage any tracks that are subject to a rail line Existing Use Agreement.

(3) If STIA undertakes rail line salvage work, STIA agrees to perform any rail salvage work consistently with FEMA requirements and any applicable limitations on the use of (if any) salvage proceeds, and any other generally-applicable laws and regulations.

S. Default.

(1) Port's Breach of Lease.

i. Port shall not be in default unless Port fails to perform obligations required of Port within thirty (30) calendar days after written notice by STIA (without waiving rights with respect to such failure) to Port specifying wherein Port has failed to perform such obligations; provided, however, that if the nature of Port's obligation is such that more than thirty (30) calendar days are required for performance, then Port shall not be in default if Port commences performance within such thirty (30) calendar day period and thereafter diligently prosecutes the same to completion.

ii. Port's decision to restore freight rail service will not be considered a breach of this Agreement.

(2) STIA's Breach of Lease. If STIA fails to perform any of STIA's obligations under this Agreement, the Port, without waiving rights with respect to such failure, may (but shall not be obligated to) enter onto the Leased Property, and perform the same for the account of and at the expense of STIA, without notice in a case of emergency, and in any other cases, only if such failure continues after the expiration of thirty (30) calendar days from the date the Port gives STIA written notice of the failure. However, if the nature of STIA's obligation is such that more than thirty (30) calendar days are required for performance, then STIA shall not be in default if it commences performance within such thirty (30) calendar day

period and thereafter diligently prosecutes the same to completion. The Port shall not be liable to STIA for any claim for damages resulting from such action by the Port. The Port shall have the same rights and remedies in the event of the nonpayment of amounts due to be reimbursed under this Section as in the case of Default by STIA in the payment of rent, or any other amount owed and not paid by STIA.

(3) The occurrence of any one or more of the following events ("Events of Default" or "Default") shall constitute a breach of this Agreement.

i. **Payment Defaults.** Any Party's failure to pay any rent, or other amounts required to be paid under this Agreement, when due and such failure shall continue for thirty (30) calendar days after the date it is due. No notice by the Party that such payment is past due shall be required.

ii. **Default in Other Covenants.** Either Party fails to comply with any term, covenant or condition of this Agreement (other than the payment of rent or other amounts) within thirty (30) calendar days after written notice describing the nature of the Default. If the Default is of such a nature that it cannot be completely remedied within the thirty (30) calendar day period, this provision shall be complied with if a Party begins correction of the Default within the thirty (30) calendar day period and thereafter proceeds in good faith and with reasonable diligence to effect the cure as soon as practical, so long as done to the satisfaction of the other Party. If any Event of Default threatens to cause serious harm to either party or other persons, then the parties shall not be required to serve any notice before proceeding to request immediate injunctive relief.

iii. **Insolvency.** If any event shall occur whereby this Agreement, the Leased Property, or the unexpired balance of the term hereof would, by operation of law or otherwise, be transferred to any person, firm or corporation, except as expressly permitted by this Agreement;

iv. If either Party shall make a general assignment for the benefit of creditors, or shall be unable to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or shall fail timely to contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator or any material part of its properties;

v. If within thirty (30) days after the commencement of any proceeding against either Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed or if, within thirty (30) days after the appointment without the consent or acquiescence of any trustee, receiver or liquidator or of any material part of its properties, such appointment shall not have been vacated; or

vi. If this Agreement or any estate of either Party hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days.

T. Termination.

(1) Notice of Termination.

i. **Unilateral Termination by Port.** Port may unilaterally terminate this Agreement to reactivate or restore rail service on the Leased Property, consistent with federal law and STB rules. Prior to such termination, the Port shall provide 180 days' notice to STIA and comply with all STB requirements, including, if required, filing a new notice of exemption or new modified rail certificate, as applicable. Upon receipt of the written notice required in this subparagraph, the Parties will proceed under Section W, the termination section of this Agreement and the Port will reimburse to STIA any Trail Development Fees paid by STIA to the Port to the extent that any monetary consideration is received by the Port on such reactivation or restoration of rail service on the Leased Property.

ii. **Unilateral Termination by STIA.** STIA may unilaterally terminate this Agreement if STIA no longer is able to, or no longer wishes to, perform the duties of Trail Manager. Prior to such termination, STIA shall provide 180 days' notice to the Port and comply with all STB requirements. Upon receipt of the written notice required in this subparagraph, the Parties will proceed under Section W, the termination section of this Agreement.

iii. **Mutual Termination.** The Parties may mutually terminate this Agreement in writing at any time.

(2) Duties on Termination. Upon the expiration or earlier termination of this Agreement, the Parties must have fully performed or entered into an agreement to fully perform all of their obligations under this Agreement including: (a) removal of all personal property (not including Improvements, which shall revert to the Port); and (b) performance of any other obligations required to be performed pursuant to this Agreement prior to expiration or termination under this Agreement.

U. Title to Improvements. Upon the expiration or earlier termination of this Agreement, the Improvements erected or installed by STIA after the Effective Date shall become the property of the Port.

V. Remedies of Default Prior to Termination.

(1) Immediately following an uncured Event of Default or an Event of Default for which there is no cure period, the Port and STIA agree to commence with the Dispute Resolution provisions of Section X.

(2) Additionally, the Port may, in its sole discretion, commence to take over, or contract with another party to take over, any function necessary to protect and maintain the Trail and Improvements during the pendency of the resolution of the Event of Default.

(3) **Remedies Cumulative and Nonexclusive.** Subject at all times to the Dispute Resolution Requirements in Section X, each right and remedy in this Agreement will be cumulative and will be in addition to every other right or remedy in this Agreement or existing at law or in equity, including, without limitation specific performance. The exercise or beginning of the exercise by either party of any such rights or remedies will not preclude the simultaneous or later exercise by such party of any other such rights or remedies. All such rights and remedies are nonexclusive. Notwithstanding the immediately preceding, the parties reserve the right to pursue claims for injunctive relief.

W. Termination Process.

(1) If this Agreement is terminated as otherwise provided herein, for any reason, the Parties agree to proceed under the termination process set forth in this Section ("Termination Process").

(2) Either Party may commence the Termination Process by providing written notice to the other Party of intent to proceed with the Termination Process and after providing the required notices described in Section S above.

(3) After either Party sends the notice of intent to proceed with the Termination Process, the Parties agree, within 180 days of the date of such notice, to either complete, or begin the process and work diligently with the goal of completing the following:

i. Identify and negotiate with a governmental or non-profit entity to take over as Trail Manager under this Agreement;

ii. STIA, with full cooperation of the Port, will file appropriate notices, and undertake all activities necessary, to have the new entity named as Trail Manager, by order of the STB;

iii. The Parties will negotiate a payment plan between STIA, the Trail Manager and the Port, for payment to the Port or to STIA for all damages amounts due to the parties for costs arising from any and all Events of Default and/or termination of the Agreement.

iv. The Port and the new entity will, negotiate and enter into a new Trail Use agreement or an MOU setting forth the major terms of the agreement, to be formalized into an agreement after the STB issues an order naming the new entity as Trail Manager;

v. Any and all other activities necessary to complete the termination process.

vi. If a new Trail Manager is not issued a replacement NITU by the STB during the 180 day period, or upon such other date the Parties agree to, the Port's abandonment shall, pursuant to STB regulations, become effective upon the termination of Trail Use.

(4) The Parties acknowledge and agree that STIA's liability as Trail Manager under the STB, does not terminate upon the expiration or earlier termination of this Agreement, but continues in effect until the STB approves a Trail Use agreement between the Port and a new Trail Manager.

X. Dispute Resolution.

(1) Following an uncured Event of Default, a Default for which there is no cure, or any other time the parties fail to reach agreement, the parties shall first attempt to resolve the dispute by negotiation, followed by mediation, if negotiation fails to resolve the dispute, before proceeding to arbitration or litigation.

(2) **Step One: (Negotiation).** The Port Manager and Director of the STIA or other persons designated by each Party will meet and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by the appropriate designee for each Party and ratified by the governing bodies, which shall be binding upon the Parties.

(3) **Step Two: (Mediation).** If the dispute cannot be resolved within thirty (30) days at Step One, the Parties shall submit the matter to non-binding mediation. The Parties shall attempt to agree on a mediator. If they cannot agree, the parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The Parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, each party shall select one (1) name. The two mediators selected shall select a third mediator. The dispute shall be heard by a panel of three (3) mediators and any common costs of mediation shall be borne equally by the Parties, who shall each bear their own costs and fees therefor. If the issue is resolved at this step, a written determination of such resolution shall be signed by the appropriate designee for each Party and approved by the governing bodies, which shall be binding on the Parties.

(4) **Step Three (Legal Action).** After exhaustion of the preceding processes, if the Parties agree, any dispute or claim shall be settled by arbitration under the jurisdiction of the Circuit Court of the State of Oregon for Tillamook County pursuant to ORS Chapter 36, or by arbitration provided by the Arbitration Services of Portland. In the absence of such an agreement, an action may be brought in any court, pursuant to Section Z(11) of this Agreement.

(5) Notwithstanding the above dispute resolution steps, the parties may seek injunctive relief, at any time, in any court where an action may be brought, under this Agreement.

Y. Assignment. STIA shall not sell, assign, sublet, encumber or otherwise transfer by operation of law or otherwise this Agreement or any interest herein, or the Leased Property or

any portion thereof, without the prior written consent of Port (which Port may approve or disapprove, in its sole discretion).

Z. General Provisions.

(1) **Further Cooperation.** Each of the Parties agrees to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intended purpose of this Agreement.

(2) **No Limitations on Government Power.** Nothing in this Agreement shall be construed to limit the general power and right of either Party to exercise its governmental powers in any way.

(3) **Broker.** Neither Party has been represented by a broker in this transaction. No obligation to pay commission shall arise from the execution of this Agreement and each party shall hold the other Party harmless from any commission claims arising out of this transaction.

(4) **Capacity to Execute.** The Port and STIA each warrant and represent to one another that this Agreement constitutes a legal, valid and binding obligation of that Party. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the Party for whom they purport to be acting.

(5) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

(6) **Covenants, Conditions, and Restrictions.** This Agreement is subject and subordinate to the effect of any recorded: covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record now imposed upon or pertaining to the Leased Property and to any applicable land use or zoning laws or regulations. STIA shall, upon request of the Port, execute and deliver agreements of subordination in the form reasonably requested by the Port.

(7) **Effect of Expiration.** Upon the expiration or earlier termination of this Agreement, neither Party shall have any further obligation or liability to the other except as otherwise expressly provided in this Agreement and except for such obligations as by their nature or under the circumstances can only be, or by the provisions of this Agreement, may be, performed after such expiration or other termination. In any event, unless otherwise expressly provided in this Agreement, any liability for a payment or performance of an obligation which shall have accrued prior to such expiration or termination shall survive the expiration or termination of this Agreement.

(8) **Entire Agreement; Modification.** This Agreement and the attached and referenced Exhibits represent the entire agreement between the Port and STIA relating to STIA's leasing of the Leased Property. It is understood and agreed by STIA that neither the Port nor the Port's agents or employees have made any representations or promises with respect to this Agreement or the making or entry into this Agreement, except as expressly set forth in this

Agreement. No agreement shall be effective to change, modify, waive, release, discharge, terminate or effect an amendment of this Agreement, in whole or in part unless such agreement is in writing, refers expressly to this Agreement, and is signed by both Port and STIA.

(9) Exhibits Incorporated by Reference. Any and all exhibits attached hereto are incorporated by reference in this Agreement for all purposes.

(10) Force Majeure. If the performance by either of the parties of their respective obligations under this Agreement (excluding monetary obligations) is delayed or prevented, in whole or in part, by any extraordinary act of terrorism, nature, explosion, epidemic, war, civil disorder, change in laws, or unexpected and unavoidable labor strike or material shortage that could not have been reasonably anticipated or avoided by the impacted party (collectively, "Force Majeure"), then that party shall be excused from performance of its obligations until the Force Majeure event has resolved without liability so long as performance occurs as soon as reasonably possible, to the extent performance can occur.

(11) Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Oregon. Jurisdiction shall be with Circuit Court of the State of Oregon, Tillamook County or the Federal Court located in Portland, Oregon.

(12) Headings, Table of Contents and Definitions. The section headings, table of contents and table of definitions contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

(13) Interpretation of Lease, Status or Parties. This Agreement is the result of arm's length negotiations between the Port and STIA and shall not be construed against either Party. Nothing contained in this Agreement shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the Parties hereto.

(14) No Intended Third Party Benefit. Nothing in this Agreement gives or shall be construed to create a benefit to any party who is not a signatory party to this Agreement or a permitted assignee.

(15) No Limit on Port's Powers. Nothing in this Agreement shall limit, in anyway, the power and right of the Port to exercise its governmental rights and powers.

(16) Notices. All notices required under this Agreement shall be deemed to be properly served if sent by certified mail, return receipt requested, delivered by hand to the "Attention" person identified below at the last address previously furnished by the parties hereto or by e-mail as provided below. Until hereafter changed by the parties by notice in writing, notices shall be sent as follows:

To the Port at: The Port of Tillamook Bay
Attention: Michele Bradley, General Manager
4000 Blimp Blvd
Tillamook, OR 97141
Email: mbradley@potb.org

with a copy to: Jordan Ramis, PC
Attention: Kathleen M. Bertero
2 Centerpointe Drive, 6th Floor
Lake Oswego, OR 97007
Email: kathleen.bertero@jordanramis.com

To STIA at: Oregon Parks and Recreation Department
Attention: Dennis Wiley
725 Summer St.
Salem, OR 97301-1266
Email: dennis.wiley@oregon.gov

with a copy to: The Local Government Law Group
Attention: Christy Monson
975 Oak Street, Suite 700
Eugene, OR 97401
Email: Christy@localgovtlaw.com

The date of service of such notice by mail is agreed to be three (3) calendar days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail or, if delivered by hand or e-mail, then the actual date of delivery. Notice given by e-mail shall be sent to the address stated above as may be changed by notice in writing. The burden of proof concerning receipt of the e-mail will be on the sender who may satisfy the burden by presenting confirmation of delivery.

(17) No Waiver. Waiver by the Port of strict performance of any provision of this Agreement shall not be deemed a waiver of or prejudice the Port's right to require strict performance of the same provision in the future or of any other provision of this Agreement.

(18) Consent or Action. In the event this Agreement is silent as to the standard for any consent, approval, determination or similar discretionary action by the Parties, the standard shall be in the sole discretion of the Parties.

(19) Prorations. Any apportionments or prorations of Rent or other payments to be made under this Agreement shall be computed on the basis of a three hundred sixty (360) day year, with twelve (12) months of thirty (30) days each.

(20) Provisions Applicable to Others. All provisions of this Agreement governing the Parties' use of the Leased Property and the Parties' activities and conduct on, about or from the Leased Property shall apply to the respective Parties' officers, agents, employees, invitees and contractors.

(21) Quiet Enjoyment. So long as STIA pays all of the rent and performs all of STIA's other obligations hereunder, STIA shall peaceably and quietly have, hold and enjoy the Leased Property without hindrance or ejection by Port or any person lawfully claiming through or under Port, subject nevertheless, to the provisions of this Agreement, including, but not limited to, the Port's reserved rights.

(22) Severability. If any provision contained herein is held to be invalid or unenforceable, the remaining provisions, or the application of such provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision contained herein shall be valid and enforceable to the fullest extent permitted by law.

(23) Successors; Parties. The rights, liabilities and remedies provided for in this Agreement shall extend to the legal representatives and, so far as the terms of this Agreement permit, successors and assigns and transferees of the parties hereto. The words Port and STIA and their accompanying verbs or pronouns, wherever used in this Agreement, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto.

(24) Survival. Any covenant or condition (including, but not limited to, indemnification provisions), set forth in this Agreement, the full performance of which is not specifically required prior to the expiration or earlier termination of this Agreement, and any covenant or condition which by their terms are to survive the termination of this Agreement, shall survive the expiration or earlier termination of this Agreement and shall remain fully enforceable thereafter.

(25) Representations. If the Parties are entities other than an individual, each person executing this Agreement on behalf of each Party does hereby covenant and warrant that that party : (i) is duly organized and validly existing under the laws of its state of formation, and, if such entity is existing under the laws of a jurisdiction other than Oregon, is qualified to transact business in Oregon; (ii) has full right and authority to enter into this Agreement and perform all obligations hereunder; and (iii) each person signing this Agreement is duly and validly authorized to do so.

(26) Time of the Essence. Time is of the essence in the performance of and adherence to each and every covenant and condition contained in this Agreement.

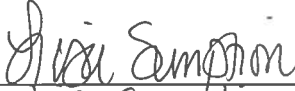
(27) STB. This Agreement shall be deemed to be the interim trail use agreement between Port and STIA for purposes of the National Trails Act, the NITU and any other STB orders relating to the same.

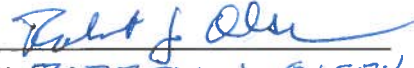
(28) Reservation of Freight Rail Service. STIA acknowledges that the Leased Property is subject to the future restoration of freight rail service. Nothing in this Agreement shall be construed as creating, granting or in any way transferring to STIA any right of possession, estate, title, ownership or other interest in or to the Leased Property that is inconsistent with such restoration rights.

IN WITNESS HEREOF, the Parties have subscribed their names to this Salmonberry Trail Rail Line Lease Agreement effective as of the Effective Date.

STIA

THE PORT OF TILLAMOOK BAY

By: 
Name: LISA SUMPTION
Its: STIA Co-convenor
Date: 4/6/2018

By: 
Name: ROBERT J. OLSEN
Its: BOARD PRESIDENT
Date: 3/23/2018


Peter Daugherty
STIA Co-convenor
04/06/2018

Exhibit A

45337
DO

SERVICE DATE – LATE RELEASE JULY 26, 2016

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. FD 31676

PORT OF TILLAMOOK BAY RAILROAD—MODIFIED RAIL CERTIFICATE

Decided: July 26, 2016

In a decision served on June 1, 1990 (and corrected by decision served on June 4, 1990), the Port of Tillamook Bay (Port) was issued a modified certificate of public convenience and necessity (modified certificate) under 49 C.F.R. § 1150.23 to operate rail service over the Tillamook Branch line between milepost 770.5, at Schefflin, Or., and milepost 856.08, at Tillamook, Or. (the Line).

On May 26, 2016, the Port of Tillamook Bay Railroad (POTB), a division of the Port and operator of the Line, filed a notice of its intent to terminate service over an 81.07-mile segment of the Line, between milepost 775.01, near Banks, Washington County, Or., and milepost 856.08, near Tillamook, Tillamook County, Or.¹ POTB states that it will continue to provide service on the portion of the Line that remains covered by the modified certificate, between milepost 774.0 and milepost 775.01.²

On June 17, 2016, the Salmonberry Trail Intergovernmental Agency (STIA) filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), for a portion of the Line between milepost 775.01 and milepost 856.06 (the Trail Use Segment). STIA has submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way (ROW) as required pursuant to 49 C.F.R. § 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. By letter filed on July 1, 2016, POTB indicated its willingness to negotiate interim trail use with STIA.

¹ POTB stated that its notice to terminate service would be effective July 28, 2016. By letter filed July 26, 2016, POTB states that it is extending the effective date of termination to August 31, 2016.

² In 2015, Portland & Western Railroad acquired 3.5 miles of the Line that was originally included in the modified certificate, between milepost 770.5 and milepost 774.0. Portland & W. R.R.—Acquis. & Operation Exemption—Port of Tillamook Bay, FD 35911 (STB served Apr. 1, 2015).

The Board has jurisdiction to impose interim trail use in a proceeding where a notice is filed under 49 C.F.R. § 1150.24 to terminate operations under a modified certificate. See Wis. & Calumet R.R.—Notice of Interim Trail Use & Termination of Modified Certificate, FD 30724 (Sub-No. 1) (ICC served Aug. 8, 1989); Sammamish Transp. Co.—Notice of Interim Trail Use & Termination of Modified Certificate, FD 33398 (Sub-No. 1) (STB served Feb. 26, 1998).

Because STIA's request complies with the requirements of 49 C.F.R. § 1152.29 and POTB agrees to negotiate for interim trail use, a NITU will be issued for the Trail Use Segment. STIA is free to negotiate an agreement during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). Because POTB has already filed its termination notice under 49 C.F.R. § 1150.24, if no interim trail use agreement is reached, the modified certificate shall be considered terminated as of the end of the NITU negotiating period. Use of the right-of-way for trail purposes is subject to future restoration for railroad purposes. See 49 C.F.R. § 1152.29(d)(2).

STIA has also requested the imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way to allow STIA to explore alternative public use of the Line, namely use as a recreational trail. In its July 1 letter, POTB states that it objects to the imposition of a public use condition because such a condition is available only in the course of abandonment proceedings, from which it is exempt. STIA's request for a public use condition will be denied. Public use conditions under 49 U.S.C. § 10905 are available under certain circumstances where the Board authorizes abandonment of a rail line, either by application or through an exemption. See 49 U.S.C. § 10905; 49 C.F.R. § 1152.28. However, under 49 C.F.R. § 1150.22, carriers operating under a modified certificate are exempt from the statutory requirement to seek Board authority to abandon the operated line. While granting a NITU is consistent with agency precedent, STIA has not shown that public use conditions are appropriate in modified certificate proceedings.

It is ordered:

1. The request for a notice of interim trail use under 16 U.S.C. § 1247(d) is accepted. STIA may negotiate with POTB for interim trail use for the Trail Use Segment for a period of 180 days from the service date of this decision and notice, until January 22, 2017.
2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

3. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the trail sponsor's continuing to meet the financial obligations for the right-of-way described in paragraph 2 above.

4. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

5. If an interim trail use agreement is reached by January 22, 2017 (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no interim trail use agreement is reached, the modified certificate shall be considered terminated as of the end of the NITU negotiating period.

6. STIA's request for a public use condition is denied.

7. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Exhibit B

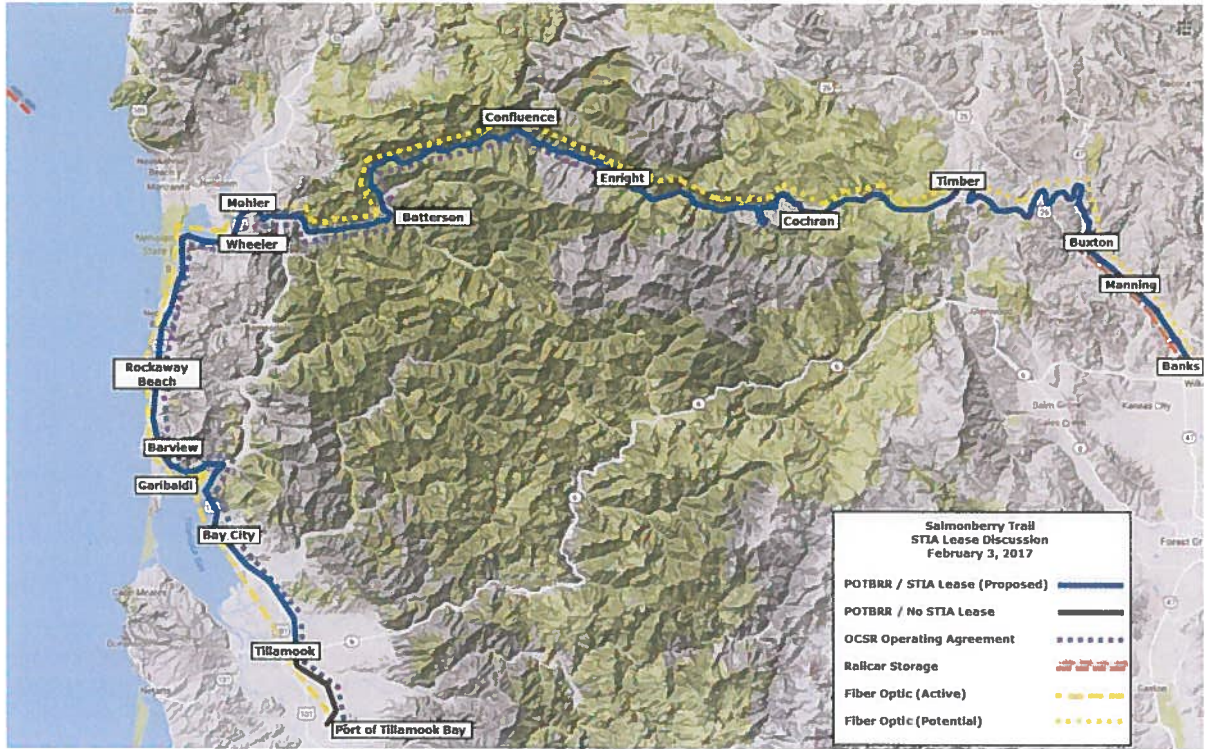


Exhibit C

PORT OF TILLAMOOK BAY RAILROAD RIGHT-OF-WAY LEASES

MILE POST	PERMIT #	PERMIT HOLDER	DESCRIPTION	ROW WIDTH
774.7	99-045	HAMPTON LUMBER	PRIVATE ROAD CROSSING	
774.7 +/-	99-045	HAMPTON LUMBER	OH TELEPHONE LINE XING	
774.7 +/-	99-045	HAMPTON LUMBER	OH POWER LINE XING	
774.7 +/-	99	PORTLAND GENERAL ELECTRIC	OH POWER LINE XING	
774.7 +/-	99	VERIZON NORTHWEST	OH TELEPHONE LINE XING	
774.7 +/-	07-008	CITY OF BANKS	UG WATER LINE & CULVERT	
775.01		BANKS ROAD	PUBLIC CROSSING	
775.01	99	PORTLAND GENERAL ELECTRIC	OH POWER LINE XING	
775.01	99	VERIZON NORTHWEST	OH TELEPHONE LINE XING	
775.01	99-010	CITY OF BANKS	UG WATER LINE XING	
775.01	99-002	NORTHWEST NATURAL GAS - Current as of 1/27/04	UG GAS LINE XING - Roy Road	V
775.03		SELLERS ROAD	PUBLIC CROSSING	80'
775.03	99	PORTLAND GENERAL ELECTRIC	OH POWER LINE XING	V
775.7	06-012	RIGOBERTO RIVAS	PRIVATE ROAD CROSSING	
776.0	No Charge	FARM CROSSING - OKAY AS OF 2/1/04	FARM CROSSING	
776.4	No Charge	FARM CROSSING - OKAY AS OF 2/1/04	FARM CROSSING	
776.9		SUNSET HIGHWAY US 26	HIGHWAY BRIDGE	
778.13	99	VERIZON NORTHWEST	UG TELEPHONE LINE XING	
778.63	11-001	MANNING GOSPEL CHURCH	ENCROACHMENT	
778.9		PIHL ROAD	PUBLIC CROSSING	
778.9		PORTLAND GENERAL ELECTRIC	OH POWER LINE XING (2)	
778.9	99	VERIZON NORTHWEST	OH TELEPHONE LINE XING	
778.9	99	VERIZON NORTHWEST	UG TELEPHONE LINE XING	
779.2	No Charge	FARM CROSSING - OKAY AS OF 2/1/04	FARM CROSSING	
779.4	99-011	MARGARET E. DAY LIVING TRUST-OK AS OF 2/9/04	FARM CROSSING	
780.0	No Charge	FARM CROSSING - OKAY AS OF 2/1/04	FARM CROSSING	
780.3	No Charge	FARM CROSSING - OKAY AS OF 2/1/04	FARM CROSSING	
780.7		FISCHER ROAD	PUBLIC CROSSING	
780.7	99	PORTLAND GENERAL ELECTRIC	OH POWER LINE XING	
780.7	99	VERIZON NORTHWEST	UG TELEPHONE LINE XING	V
780.8	No Charge		FARM CROSSING	80'
781.2		FISCHER ROAD	PUBLIC CROSSING	
781.2	99	PORTLAND GENERAL ELECTRIC	OH POWER LINE XING	
781.2	99	VERIZON NORTHWEST	OH TELEPHONE LINE XING	
781.6	99-032	PORTLAND GENERAL ELECTRIC	OH POWER LINE XING	
781.68	No Charge		FARM CROSSING	
781.68	99-039	VERIZON NORTHWEST	OH TELEPHONE LINE XING	V
781.77		START OF 100' RIGHT-OF-WAY		100'
782.66	99-044	RINCK, ANTONE & EDITH	FARM CROSSING	
784.5	No Charge	FARM CROSSING - OKAY AS OF 2/1/04	FARM CROSSING	
784.85		LOWER SCOFIELD ROAD	PUBLIC CROSSING	
784.85	99-040	VERIZON NORTHWEST	UG TELEPHONE LINE XING	
784.84	99	PORTLAND GENERAL ELECTRIC	OH POWER LINE XING	
784.85	99	VERIZON NORTHWEST	UG TELEPHONE LINE XING	
785		JOHN & MARGIE ANDERSON LIVING ESTATE TRUS	PRIVATE ROADWAY CROSSING	
785.35		UPPER SCOFIELD ROAD	PUBLIC CROSSING	
785.35	99	PORTLAND GENERAL ELECTRIC	OH POWER LINE XING	
785.35	99	VERIZON NORTHWEST	UG TELEPHONE LINE XING	
786.96	02-003	KENT GAMBEE	PRIVATE ROAD CROSSING	
786.96	08-009	LYAL PURINTON	PRIVATE ROAD CROSSING	
786.96	99	PORTLAND GENERAL ELECTRIC	UTILITY XING	

MILE POST	PERMIT #	PERMIT HOLDER	DESCRIPTION	ROW WIDTH
787.7		SUNSET HWY US 26	HIGHWAY UNDERPASS	
788.4	No Charge		FARM CROSSING	100'
788.4	99	VERIZON NORTHWEST	UG TELEPHONE LINE XING	
789.62		LONGVIEW FIBER	LOGGING CROSSING	
791.36	02-005	STIMSON LUMBER COMPANY	PRIVATE ROAD CROSSING	
791.5	99	VERIZON NORTHWEST	OH TELEPHONE LINE	
792	10-005	MIKE & VICKIE PARKS	UG SATELLITE TV CABLE	
792.78	99-017	TIMBER WATER ASSOCIATION	UG WATER LINE ALONG ROW	
792.8		WEST OREGON ELECTRIC CO-OP	OH POWER LINE XING	
792.81	99-017	TIMBER WATER ASSOCIATION (s/b fee)	UG WATER LINE CROSSING	
793	99-056	WA. CO. Timber Bridge Easement	PUBLIC EASEMENT	
793.0		TIMBER ROAD	PUBLIC CROSSING	
793.01	99-017	TIMBER WATER ASSOCIATION	UG WATER LINE ALONG ROW	
793.04	99-041	VERIZON NORTHWEST	UG TELEPHONE LINE XING	
793.07	99-017	TIMBER WATER ASSOCIATION (s/b fee)	UG WATERPIPE XING	
793.3	99-050	VERIZON WIRELESS	Utility Public Crossing	
794.1		RICE ROAD	PUBLIC CROSSING	
794.2	06-016	LONGVIEW FIBER	LOGGING CROSSING	
794.2	09-006	OREGON DEPT. OF FORESTRY	LOGGING CROSSING	
794.2	06-017	MID VALLEY RESOURCES INC.	LOGGING CROSSING	
797.33		WASHINGTON CO. CONSOLIDATED COMM. AGENCY	UTILITY CROSSING ENCROACHMENT	
797.39	02-006	DEPT. OF FORESTRY	PRIVATE ROAD CROSSING	
800.0	02-014	DEPT. OF FORESTRY	PRIVATE ROAD CROSSING	
810.92		ANDREW MENEFEE	ENCROACHMENT	
815.68		DON & PHYLLIS WHITE	PRIVATE ROAD CROSSING-RELOCATE	
815.7		DON & PHYLLIS WHITE	PRIVATE ROAD CROSSING-RELOCATE	
815.7	08-013	ERICKSON REALTY, LTD.	PRIVATE ROAD CROSSING	100'
815.8		LWR NEHALEM RIVER ROAD	PUBLIC CROSSING	
815.8	10-004	NEHALEM TEL & TEL	OH TELEPHONE LINE XING	
823.17		LWR NEHALEM RIVER ROAD	PUBLIC CROSSING	
823.17	99-007	TILLAMOOK COUNTY	ROAD ENCROACHMENT	
823.17	99-049	TILLAMOOK PUD	OH POWER LINE XING	
824.1		FOSS ROAD	PUBLIC CROSSING	
824.1	99-049	TILLAMOOK PUD	OH POWER LINE XING	
824.42	99-028	NEHALEM COMMUNICATIONS	U/G FIBER CABLE	
824.46		FOSS ROAD	PUBLIC CROSSING	
824.46	99-049	TILLAMOOK PUD	OH POWER LINE XING	
824.9	03-004	G.D. GRECK	PRIVATE ROAD CROSSING	
824.9		JIM MALONE	PRIVATE ROAD CROSSING	
824.9	99-049	TILLAMOOK PUD	OH POWER LINE XING	
825.25	02-003A	NEHALEM TEL & TEL	OH TELEPHONE LINE XING	
825.28	99-049	TILLAMOOK PUD	OH POWER LINE XING	
825.7		BLUE RIVER RUN LLC	PRIVATE ROAD CROSSING	
825.70 +/-		MOHLER SAND AND GRAVEL	PRIVATE ROAD CROSSING	
826.25		LUKE & SUSAN SHEPARD	PRIVATE ROAD CROSSING	
826.25	99-049	TILLAMOOK PUD	OH POWER LINE XING	
826.33	99-049	TILLAMOOK PUD	OH POWER LINE XING	
826.71	04-001	R. J. FORSTER	PRIVATE ROAD CROSSING	100'
826.71	99-049	TILLAMOOK PUD	OH POWER LINE XING	V
827.2	02-001	R. J. FORSTER	ENCROACHMENT	
827.2	04-002	R. J. FORSTER	PRIVATE ROAD CROSSING	
827.2		NEHALEM TEL & TEL	UG TELEPHONE LINE XING	
827.2	99-049	TILLAMOOK PUD #83152	OH POWER LINE XING	
827.72	99-049	TILLAMOOK PUD	OH POWER LINE XING	

MILE POST	PERMIT #	PERMIT HOLDER	DESCRIPTION	ROW WIDTH
827.8	99-049	TILLAMOOK PUD	OH POWER LINE XING	
827.92	Easement	MOHLER SAND & GRAVEL	PRIVATE ROAD CROSSING	
827.92	06-010	CITY OF WHEELER - WATER DEPT.	PRIVATE ROAD CROSSING	
827.92	01-002	CITY OF MANZANITA-PUBLIC WORKS	UG WATER LINE CROSSING	
829.0	99-049	TILLAMOOK PUD	OH POWER LINE XING	
829.52		FOSS ROAD	PUBLIC CROSSING	
829.52	01-002	CITY OF MANZANITA-PUBLIC WORKS	UG WATER LINE CROSSING	
829.8		MIAMI RIVER ROAD	PUBLIC CROSSING	
829.8	99-008	NEHALEM TEL & TEL	UG TELEPHONE LINE XING	
829.8	99-049	TILLAMOOK PUD	ENCROACHMENT	
829.8	01-002	CITY OF MANZANITA-PUBLIC WORKS	UG WATER LINE CROSSING & ENCHR	
829.9	99-042	NEHALEM TEL & TEL (current as of 12/29/03)	UG WATER LINE CROSSING & ENCHR	
830.02		OLD LOMMEN ROAD	PUBLIC OVERCROSSING	
831.27		OLD MOHLER ROAD	PUBLIC CROSSING	100'
831.27	99-049	TILLAMOOK PUD	OH POWER LINE XING	V
831.27		NEHALEM BAY WINERY	ENCROACHMENT	
831.65	99-049	TILLAMOOK PUD	OH POWER LINE XING	
832.1	99-049	TILLAMOOK PUD	OH POWER LINE	
832.11	05-006	N.TILLAMOOK CO. SANITARY	UG SEWER LINE XING	
832.24	99-020	STATE OF OREGON, DOT	HIGHWAY EASEMENT	
832.28	99-020	OREGON COAST HWY US 101- CURRENT 2/1/04	HIGHWAY OVERPASS	
832.29	99-020	OREGON COAST HWY US 101- CURRENT 2/1/04	HIGHWAY OVERPASS	
832.29	99-049	TILLAMOOK PUD	OH POWER LINE XING	
832.29	01-002	CITY OF MANZANITA-PUBLIC WORKS	UG WATER LINE CROSSING	
832.5	99-048	CITY OF WHEELER	LANDSCAPE ENCROACHMENT ALONG ROW	
832.8	05-006	N.TILLAMOOK CO. SANITARY	UG SEWER LINE XING	
832.8		CITY OF WHEELER	WATER MAIN CROSSING	
832.82	08-002	WHEELER VILLAGE INN	SIGN ENCROACHMENT	
832.84		HEMLOCK STREET	PUBLIC CROSSING	
832.84	04-008A	CITY OF WHEELER	UG WATER LINE XING	
832.89	04-008B	CITY OF WHEELER	UG WATER LINE XING	
833.05		RECTOR STREET	PUBLIC CROSSING	
833.05	05-006	N.TILLAMOOK CO. SANITARY	UG SEWER LINE XING	
833.07	03-011	CITY OF WHEELER	DEPOT SITE, PARKING, & LANDSCAPE	
833.08	05-006	N.TILLAMOOK CO. SANITARY	UG SEWER LINE XING	V
833.1		CITY OF WHEELER	WATER MAIN CROSSING	
833.11	06-013A & B	WHEELER ON THE BAY LODGE	PRIVATE ROAD XING & ENCROACHMENT	100'
833.11	99-049-NO	TILLAMOOK PUD	OH ELECTRICAL LINE XING	V
833.12		START OF 60' RIGHT-OF-WAY FOR 250'		60'
833.12	11-004 A	DAVID MIOTTEL & HEAVEN HARTFORD	PRIVATE ROAD AND CROSSING	V
833.12	05-006	N. TILLAMOOK CO. SANITARY	UG SEWER LINE ALONG ROW	
833.15	12-003	TILLAMOOK P.U.D.	OH POWER LINE XING	
833.15	11-004B	DAVID MIOTTEL & HEAVEN HARTFORD	PRIVATE ROAD AND CROSSING	
833.6	03-006	DESLEE & DONNA KAHRS	ENCROACHMENT-COMMERCIAL	
833.6	03-006	DESLEE & DONNA KAHRS	PRIVATE XING-COMMERCIAL	
833.64	99-013	PARADISE COVE RESORT- ONE TIME FEE	UG SEWER LINE ALONG ROW	
833.68	06-008	PARADISE COVE RESORT	UG WATER LINE XING	
833.68	06-007	PARADISE COVE RESORT	UG SEWER LINE XING	
833.70 +/-	99-049	TILLAMOOK PUD	OH POWER LINE XING	
833.75+/-	99-049	TILLAMOOK PUD	OH POWER LINE XING	
834.10+/-	99-049	TILLAMOOK PUD	OH POWER LINE XING	
834.14	06-003	PARADISE COVE RESORT	PRIVATE ROAD CROSSING	
834.14		PARADISE COVE RESORT	ENCROACHMENT	
834.43		START OF 100' RIGHT-OF-WAY FOR 350'		100'

MILE POST	PERMIT #	PERMIT HOLDER	DESCRIPTION	ROW WIDTH
834.67		START OF 60' RIGHT-OF-WAY		60'
834.818		START OF 100' RIGHT-OF-WAY		100'
835.19		ADD 30' WEST 70' EAST RIGHT-OF-WAY		< SEE NOTES
835.313		ADD 70' EAST ONLY RIGHT-OF-WAY UNTIL 835.417		< SEE NOTES
835.417		START OF 100' RIGHT-OF-WAY		100'
836.45	03-002	NEHALEM TEL & TEL	OH TELEPHONE LINE XING & ENCRO.	
836.5	99-049	TILLAMOOK PUD	OH POWER LINE XINGS	
836.5	04-004	BRIGHTON MOORAGE	PRIVATE ROAD CROSSING	
836.6	09-009	NEHALEM TEL & TEL - current as of 12/29/03	OH POWER LINE ALONG ROW 863.6 - 837.13	
836.83	99-049	TILLAMOOK PUD	OH POWER LINE ALONG ROW	
836.95	99-049	TILLAMOOK P.U.D.	OH POWER LINE ALONG ROW	
836.99	11-004	D.W. SHEPHERD - renewed 11/2003	PRIVATE ROAD CROSSING	
837.03	02-003C	NEHALEM TELECOMMUNICATIONS	MULTI-SERVICE UTILITY LINE	
837.09	99-049	TILLAMOOK P.U.D.	OH POWER LINE XING	
837.13	09-009B	NEHALEM TEL & TEL - current as of 12/29/03	OH POWER LINE XING	
837.14	99-047	3&3 LLC (GARY DINGES)	PRIVATE CROSSING & ENCROACH.	
837.28	11-005	JETTY FISHERY	ENCROACHMENT	
837.27	11-005	JETTY FISHERY	PRIVATE ROAD CROSSING	
837.28	99-049	TILLAMOOK PUD	OH POWER LINE XING (2)	
837.28	11-009A	CAMP DOUBLE J - JEFF JOSLIN	ENCROACHMENT 12/30/04	
837.32	11-009B	CAMP DOUBLE J - JEFF JOSLIN	PRIVATE ROAD XING 12/30/04	
837.42	99-049	TILLAMOOK PUD	OH POWER LINE XING	
837.42	06-005	D.W. SHEPHERD - renewed 11/2003	PRIVATE ROAD CROSSING	
837.43	05-001	D.W. SHEPHERD - renewed 11/2003	ENCROACHMENT	
837.43	99-025	CITY OF ROCKAWAY BEACH	UG WATER LINE XING	V
837.7		NEHALEM COMMUNICATIONS		V
837.78	99-033	TILLAMOOK P.U.D.	OH POWER LINE XING	
838.04	99-026	CITY OF ROCKAWAY BEACH	UG WATER LINE XING	
838.2	99-027	CITY OF ROCKAWAY BEACH	UG WATER LINE XING	
838.3-839.37		CITY OF ROCKAWAY BEACH	UG SEWER EASEMENT	
838.57	99-029	CHARTER COMMUNICATIONS	UG CABLE TV XING	
838.6		NEDONNA BEACH ROAD	PUBLIC CROSSING	
838.6	99-049	TILLAMOOK PUD	OH POWER LINE XING	
838.6	99	SPRINT	UG TELEPHONE LINE XING	
838.6	99	CHARTER COMMUNICATIONS	OH CABLE TV LINE XING	
838.6	06-009	CITY OF ROCKAWAY BEACH	UG SEWER LINE	
838.98	99-014	OREGON DOT	UG SEWER LINE XING	
839.12		START OF 60' RIGHT-OF-WAY		60'
839.1		CITY OF ROCKAWAY BEACH	UTILITY CROSSING ENCROACHMENT	V
839.1		NW 23RD AVENUE	PUBLIC CROSSING	
839.22	02-008	R. FINKLE	ENCROACHMENT	
839.3		NW 21ST AVENUE	PUBLIC CROSSING	
839.3	04-003	DORTHEA RADEL	ENCROACHMENT	
839.35		NW 19TH AVENUE	PUBLIC CROSSING	
839.4		NW 13TH AVENUE	PUBLIC CROSSING	
839.4	99	SPRINT	OH TELEPHONE LINE XING	
839.6		NW 11TH AVENUE	PUBLIC CROSSING	60'
839.77	99-029	CHARTER COMMUNICATIONS	UG CABLE TV LINE XING - wrote letter 12/19/03	
839.9		N 9TH AVENUE	PUBLIC CROSSING	
840		N 8TH AVENUE	PUBLIC CROSSING	
840.1		N 7TH AVE (FORMERLY JAMES)	PUBLIC CROSSING	
840.1	99-049	TILLAMOOK PUD	OH POWER LINE XING	
840.2		N 6TH AVENUE	PUBLIC CROSSING	
840.2	04-006	ROCKAWAY BEACH RESORT	SIGN ENCROACHMENT	

MILE POST	PERMIT #	PERMIT HOLDER	DESCRIPTION	ROW WIDTH
840.2	99-049	TILLAMOOK PUD	OH POWER LINE XING	
840.31	99-030	CHARTER COMMUNICATIONS	UG CABLE TV LINE XING - wrote letter 12/19/03	
840.31	06-001	TRADEWINDS MOTEL	SIGN ENCROACHMENT	
840.31	99-049	TILLAMOOK PUD	OH POWER LINE XING	
840.33		N 5TH AVE (FORMERLY SOUTH)	PUBLIC CROSSING	
840.33	99-049	TILLAMOOK PUD	OH POWER LINE XING	
840.5		SEASCAPE TOWN HOME OWNER ASSOCIATION	ENCROACHMENT	
840.51		N 3RD AVE (FORMERLY PARK)	PUBLIC CROSSING	
840.51	99-049	TILLAMOOK PUD	OH POWER LINE XING	
840.51	99	SPRINT	OH TELEPHONE LINE XING	
840.52	99-030	CHARTER COMMUNICATIONS	UG CABLE TV LINE XING - wrote letter 12/19/03	
840.63	99-030	CHARTER COMMUNICATIONS	UG CABLE TV LINE XING - wrote letter 12/19/03	
840.65	09-003	CITY OF ROCKAWAY BEACH	PARKING LOT ENCROACHMENT	
840.67	03-005	ROCKAWAY BEACH C OF C	DEPOT SITE	
840.68		S 1ST AVE (FORMERLY BEACH)	PUBLIC CROSSING	V
840.71	05-010	PATRICIA SWAIN	ENCROACHMENT	60'
840.71		CONNIE MACKRILL	ENCROACHMENT	V
840.71		RICHARD PATTEN	ENCROACHMENT	
840.76		S 2ND ST (FORMERLY OWENS)	PUBLIC CROSSING	
840.76	08-001	SILVER SANDS MOTEL	SIGN ENCROACHMENT	
840.76	99-022	SPRINT - ONE TIME ONLY FEE PAID IN FULL	UG FIBRE OPTIC TRUNK FROM 840.76-842.39	
840.76		ASTOUND BROADBAND, LLC	UG FIBER OPTIC ENCROACHMENT 840.76-840.8	
840.8	99-52	TILLAMOOK LIGHTWAVE	UTILITY CROSSING	
840.8	09-003	CITY OF ROCKAWAY BEACH	PARKING LOT ENCROACHMENT	
840.8		CENTURY LINK	GUY WIRE ENCROACHMENT	
840.8		LORA JONES	PARKING	V
840.87	09-007	ST. MARY'S BY THE SEA	SIGN ENCROACHMENT	60'
840.88		S 3RD ST (FORMERLY OCEAN)	PUBLIC CROSSING	
840.88	99-030	CHARTER COMMUNICATIONS	UG CABLE TV LINE XING - wrote letter 12/19/03	
840.88	99-049	TILLAMOOK PUD	OH POWER LINE XING	
840.9		ASTOUND BROADCAST	FIBER-OPTIC UTILITY LINE	
840.9	08-011	ROCKAWAY BEACH, CITY OF	MAIN UTILITY CROSSING	
840.9-841.5	05-013	CITY OF ROCKAWAY BEACH	UNDERGROUND WATERLINE	
841.00	07-009	DOLPHIN PROPERTIES (Gerald Janes)	RESIDENTIAL ENCROACHMENT	
841.0		S 4TH ST (FORMERLY MYRTLE)	PUBLIC CROSSING	
841.01	99-031	CHARTER COMMUNICATIONS	UG CABLE TV LINE XING - wrote letter 12/19/03	
841.17	04-007	KRATSKY & CHEREWATTI	ENCROACHMENT	
841.21		SALT AIR CONDO ASSOCIATION	SIGN ENCROACHMENT	
841.23		S 6TH AVE (FORMERLY PACIFIC)	PUBLIC CROSSING	
841.3		S 7TH AVENUE	PUBLIC CROSSING	
841.3	99-049	TILLAMOOK PUD	OH POWER LINE XING	
841.6		WASHINGTON STREET	PUBLIC CROSSING	
841.6	99	SPRINT	UG CABLE LINE XING	
841.6	99-022F	SPRINT	ENCROACHMENT NW CORNER	V
841.73		MINNEHAHA STREET	PUBLIC CROSSING	60'
841.73	99-006	TWIN ROCKS SANITARY	UG SEWER LINE XING	V
841.73	99-049	TILLAMOOK PUD	OH POWER LINE XING	
841.85		PANSY STREET	PUBLIC CROSSING	
842.07		SHAND AVENUE	PUBLIC CROSSING	
842.07		TWIN ROCKS SANITARY	UG SEWER LINE XING	
842.07	99-049	TILLAMOOK PUD	OH POWER LINE XING	
842.07	99	SPRINT	UG TELEPHONE LINE XING	
842.1	03-012	TWIN ROCKS FRIENDS CAMP	OVERHEAD PEDESTRIAN CROSSING	
842.2	07-002	TWIN ROCKS SANITARY DISTRICT	UTILITY ENCROACHMENT	

MILE POST	PERMIT #	PERMIT HOLDER	DESCRIPTION	ROW WIDTH
842.33	99-049	TILLAMOOK PUD	OH POWER LINE XING	
842.39		WATSECO ROAD	PUBLIC CROSSING	
842.39	99-022E	SPRINT	UG FIBRE OPTIC TRUNK FROM 840.76-842.39	
842.39	99-049	TILLAMOOK PUD	OH POWER LINE XING	
842.39		TWIN ROCKS SANITARY	UG SEWER LINE XING	
842.39	05-002	SHOREWOOD INC.	SIGN ENCROACHMENT	
842.39	11-004	CAMP MAGRUDER	SIGN ENCROACHMENT	
842.4		CENTURY LINK	OH TELEPHONE LINE XING	V
842.6		START OF 100' RIGHT-OF-WAY		100'
843.6		RIGHT-OF-WAY VARIES - SEE MAPS		SEE MAPS
843.64	04-009	DARLENE JOHNSON	ENCROACHMENT	V
843.67		CEDAR STREET	PUBLIC CROSSING	SEE MAPS
843.67		TWIN ROCKS SANITARY	UG SEWER LINE XING	V
843.67	99-049	TILLAMOOK PUD	OH POWER LINE XING	
843.67	99	SPRINT	100' OH TELEPHONE LINE/multi-service utility xing	
843.67	02-011	WATSECO-BARVIEW WATER	UG WATER LINE ALONG ROW	
843.75-844.04	03-001	TWIN ROCKS SANITARY	UG SEWER LINE ALONG ROW	
843.75	03-001	TWIN ROCKS SANITARY	UG SEWER LINE XING	
843.75	05-003	GUY NORMAN	PRIVATE ROAD CROSSING	
843.77		ROBERT & SANDRA HERDER	PRIVATE ROAD CROSSING	
843.79	01-004	WILLIAM & PAMELA WAIBEL	PRIVATE ROAD CROSSING	
843.8		TWIN ROCKS SANITARY	UG SEWER LINE	
844. ??	10-006	FARMINGTON-HUBBARD-ADAMS ENTERPRISES	ENCROACHMENT FOR PARKING	V
844.06		CITY OF GARIBALDI	UTILITY ENCROACHMENT	
844.08		START OF 100' RIGHT-OF-WAY		100'
844.17		CENTURY LINK	UG TELEPHONE CABLE MP 841.17 TO 844.56	
844.17	10-002	U.S. COAST GUARD	UG COMMUNICATION CABLE	
844.2		CENTURY LINK	UTILITY ENCROACHMENT	
844.56		CENTURY LINK	UG TELEPHONE CABLE ROW MP 84.17 TO 844.56	
845.1		GARIBALDI PIER XING	PUBLIC CROSSING	
845.13	12-002	CITY OF GARIBALDI	UG SEWER LINE ALONG ROW	
845.2		SCENIC TRAIL & BIKE PATH	PUBLIC CROSSING	
845.2	03-010	TERRY KANDLE	ENCROACHMENT	
845.3	06-019	STANFILL, RICHARD	ENCROACHMENT	
845.4	01-001	NORTHWEST HARDWOODS	ENCROACHMENT (SPUR)	
845.46		7TH STREET	PUBLIC CROSSING	
845.46	99-049	TILLAMOOK PUD	OH POWER LINE XING	
845.46	99	SPRINT	OH TELEPHONE LINE XING	
845.48	08-007	NORTHWEST HARDWOODS	ENCROACHMENT (PARKING)	
845.49		DOUGLAS CREASY DBA GARIBALDI CANNERY	ENCROACHMENT	
845.5	08-008	JACKSON & SON OIL CO.	ENCROACHMENT	100'
845.5		GARIBALDI DELI MART	PARKING ENCROACHMENT	
845.53		GARIBALDI HOOK LINE & SINKER	OUTDOOR SMOKING AREA	V
845.6	01-005 A & B	OREGON COAST SCENIC RAILROAD	ENCROACHMENT AND BUILDING	
845.65	06-005	JIM GADDIS	BUILDING ENCROACHMENT	
845.66		3RD STREET	PUBLIC CROSSING	
845.66	99-034	TILLAMOOK P.U.D.	OH POWER LINE XING	
845.66	99-012	CITY OF GARIBALDI	UG WATER LINE XING	
845.66		ASTOUND BROADBAND, LLC	UG FIBER OPTIC CROSSING	
845.66	99	SPRINT	OH TELEPHONE LINE XING	
845.67	99	SPRINT	UG TELEPHONE LINE XING	
845.84	12-001	CITY OF GARIBALDI	UG WATER LINE XING & ALONG ROW	
845.94	99-049	TILLAMOOK PUD	OH POWER LINE ALONG ROW	
845.97		CENTURY LINK	PEDESTAL ENCROACHMENT	

MILE POST	PERMIT #	PERMIT HOLDER	DESCRIPTION	ROW WIDTH
846.01	03-007	BAYOCEAN OYSTER-DOUG CREASY	PRIVATE ROAD CROSSING	
846.01	03-007	BAYOCEAN OYSTER-DOUG CREASY	UTILITY CROSSING	
846.1	99-049	TILLAMOOK PUD	OH POWER LINE XING	
846.19	99-049	TILLAMOOK PUD	OH POWER LINE XING	100'
846.99		PENNY CHILTON/RON CLEMEN ENTERPRISES	PRIVATE ROAD XING & ENCROACHMENT	
846.27	05-004	TED & DAVID MERRILL	PRIVATE ROAD XING & ENCROACHMENT	
846.27	99-049	TILLAMOOK PUD	OH POWER LINE XING	
846.44	02-013	TILLAMOOK PUD	OH POWER LINE ALONG ROW	
846.47		CENTURY LINK	PEDESTAL ENCROACHMENT	
846.5	99-049	TILLAMOOK PUD	PRIVATE ROAD CROSSING - not on list	
846.5	99-049	TILLAMOOK PUD	OH POWER LINE XING - not on list	
846.6	02-013	TILLAMOOK PUD	OH POWER LINE ALONG ROW	
847.38		CAMERON	ENCROACHMENT	
847.38		CAMERON	PRIVATE ROAD CROSSING	
847.38	99-049	TILLAMOOK PUD	OH POWER LINE XING - not on list	
847.38	99	SPRINT	OH TELEPHONE LINE XING	
847.42		OREGON COAST HWY 101	PUBLIC CROSSING	
847.42	99-049	TILLAMOOK PUD	UG POWERLINE ALONG ROW	
847.42	99-049	TILLAMOOK PUD	OH POWER LINE XING	
847.42		CENTURY LINK	UG TELEPHONE LINE XING	
847.5	99-015	STATE OF OREGON	ENCROACHMENT	
849.23		OREGON COAST HWY 101	HIGHWAY OVERCROSSING	
849.81	99-009	CITY OF BAY CITY	UG SEWER LINE XING	100'
849.84	99	SPRINT	OH TELEPHONE LINE XING	
849.87	99-005	CITY OF BAY CITY	UG WATER LINE XING	
849.9		OREGON COAST RAILRIDERS	PARKING LOT ENCROACHMENT	
849.9	99-043	C STREET	PUBLIC CROSSING	
849.9	03-009	PACIFIC OYSTER	ENCROACHMENT & UTILITY X	
849.9	99-049	TILLAMOOK PUD	OH POWER LINE XING	
849.9	99-021	SPRINT	UG FIBER OPTIC CABLE ALONG ROW TO MP 851.18	
849.9	99-043	CITY OF BAY CITY	NON-EXCLUSIVE EASEMENT	
850.3		TILLAMOOK AVENUE	PUBLIC CROSSING	
850.3	99-049	TILLAMOOK PUD	OH POWER LINE XING	
850.3	99	SPRINT	OH TELEPHONE LINE XING	
850.5	99-049	TILLAMOOK PUD	OH POWER LINE XING	
850.5	99-049	TILLAMOOK PUD	OH POWER LINE XING	
850.5	08-014	OYSTER BAY CONDOMINIUM	ENCROACHMENT	
850.55	99-054	CITY OF BAY CITY	UTILITY ENCROACHMENT	
850.7		WARREN STREET	PUBLIC CROSSING	
850.7	99-049	TILLAMOOK PUD	OH POWER LINE XING	
850.7	99	SPRINT	OH TELEPHONE LINE XING	
851.55	02-009	PIONEER MUSEUM	ROAD ENCROACHMENT	
851.6		IDAVILLE ROAD	PUBLIC CROSSING	
851.6	99-049	TILLAMOOK PUD	OH POWER LINE XING	
851.6	99	SPRINT	UG TELEPHONE LINE XING	
852.73		POSSETTI ROAD	PRIVATE UNDERCROSSING	
852.73	99-049	TILLAMOOK PUD	OH POWER LINE XINGS	
853.29	99-019	CITY OF BAY CITY	UG WATER LINE XING	100'
853.3		OREGON COAST HIGHWAY 101	HIGHWAY OVERCROSSING	
853.3	99-049	TILLAMOOK PUD	OH POWER LINE XING	
853.39	99	SPRINT	UG TELEPHONE LINE XING	
853.41	99	CHARTER COMMUNICATIONS	UG TELEVISION CABLE	
853.41	99-049	TILLAMOOK PUD	OH POWER LINE XING	
853.41	07-011	DANIEL YEOMAN	PRIVATE ROAD CROSSING	

MILE POST	PERMIT #	PERMIT HOLDER	DESCRIPTION	ROW WIDTH
853.42	07-003	JUNO NON-PROFIT WATER	UG WATER LINE XING	
853.62	99-049	TILLAMOOK PUD	OH POWER LINE XING	
853.7	07-005	TILLAMOOK COUNTY CREAMERY ASSOC.	PRIVATE ROADWAY CROSSING	
853.74	07-004	LATIMER ROAD WATER	UG WATER LINE ALONG ROW	
853.74	99-049	TILLAMOOK PUD	OH POWER LINE XING	
853.8	03-014	TCCA	UG EFFLUENT PIPE	
853.9		TCCA	UTILITY LINE	
853.9		LATIMER ROAD	PUBLIC CROSSING	
853.9	99	SPRINT	UG TELEPHONE LINE XING	
853.91	99-035	TILLAMOOK PUD	ENCROACHMENT	
854.21	99-018	CITY OF BAY CITY	UG WATER LINE XING	
854.32		VICTOR DAIRY	PRIVATE ROAD XING	
854.47		WILSON RIVER LOOP ROAD	PUBLIC CROSSING	
854.47	99	SPRINT	UG TELEPHONE LINE XING	
854.47	99-049	TILLAMOOK PUD	OH POWER LINE XING	
854.5	99	CHARTER COMMUNICATIONS	UG TELEVISION CABLE	
855.56	99-049	TILLAMOOK PUD	OH POWER LINE XING	
855.58		DAVE HOGAN DBA MISTY MEADOWS DAIRY	UTILITY ENCROACHMENT 855.58 - 857.5	
855.6	09-011	DAVE & RITA HOGAN (MISTY MEADOWS DAIRY)	ENCROACHMENT	V
855.68		WILSON RIVER HWY OSH 6	HIGHWAY UNDERCROSSING	100'
855.68	09-008	MEADOWS OUTDOOR ADVERTISING	SIGN ENCROACHMENT	V
855.73		3RD STREET	PUBLIC CROSSING	
855.73	99-049	TILLAMOOK PUD	OH POWER LINE XING	
855.73	99	SPRINT	UG TELEPHONE LINE XING	
855.8	99-003	TILLAMOOK LUMBER (HAMPTON)	FOUR SPUR TRACKS	
856.18		12TH STREET	PUBLIC CROSSING	
856.18	99-024-PEN	TILLAMOOK WATER COMMISSION-NEEDS AGRMT	UG WATER LINE XING	
856.18	03-013	TILLAMOOK LUMBER (HAMPTON)	ENCROACHMENT	
FEED MILL SPUR				
856.28C	99	SPRINT	UG TELEPHONE LINE XING	V
858.2		FARM POWER	COMMERCIAL CROSSING	
856.45		HAMPTON LUMBER	PRIVATE ROADWAY XING	

Exhibit D

Rail Use Agreement

OPERATIONS AND RAIL LINE USE AGREEMENT

This Agreement ("Agreement") is effective 3/29, 2012 ("Effective Date") between the Port of Tillamook Bay ("POTB"), a special district of the State of Oregon and the Oregon Coast Scenic Railroad ("OCSR"), an Oregon non-profit corporation.

This Agreement allows OCSR to use hereinafter defined POTB rail line and right-of-way and is in no way to be considered a partnership. POTB enters into this Agreement in part due to OCSR being a non-profit entity, in part as consideration for OCSR's commitment to rehabilitate and maintain the rail line and right-of-way, and in part due to POTB's desire to provide benefits to the community, including but not limited to, fulfillment of the POTB's Mission Statement and Strategic Business Plan which includes certain maintenance / rehabilitation of the POTB rail line and right-of-way and encouragement of tourism in the area.

RECITALS

A. In prior agreements between POTB and OCSR, OCSR leased a certain section of track owned by POTB for operation of a tourist railroad. Under these agreements, POTB provided the maintenance and inspection of the track utilized for the trains operated by OCSR. At the time the prior agreements were entered into, POTB actively operated freight trains over the railroad. In 2007, POTB's railroad was significantly damaged and freight traffic operated by POTB ceased on that portion of POTB track utilized by OCSR. As a result of declining revenue, maintenance was reduced. For OCSR to operate as described herein, deferred maintenance must be performed.

B. OCSR's business plan requires an increase in train speeds to a minimum of 15 MPH which requires additional upgrades to the POTB rail line. During the initial five (5) years of the Term of this Agreement, OCSR funds that may have been available

1 for payment to POTB are to be used by OCSR for deferred maintenance and upgrading
2 of POTB rail line and right-of-way.

3 C. OCSR and POTB desire to enter into a new agreement which accurately
4 reflects a new relationship between POTB and OCSR concerning OCSR's use and
5 operation of the rail lines and related facilities and equipment described herein.

6 D. In order to promote community support through the enhanced tourism-
7 related railroad business, POTB includes in this Agreement the use by OCSR of certain
8 POTB-owned railroad equipment, materials, and building, at no cost to OCSR for the
9 first 5-year period of this Agreement.

10 **TERMS AND CONDITIONS**

11 **1. TERM OF AGREEMENT**

12 This Agreement shall be effective as of the Effective Date through December 31,
13 2016 ("Term"). Two (2) five-year renewal periods ("Renewal Terms") are available to
14 OCSR if OCSR is not in default of this Agreement at the beginning of the applicable
15 Renewal Term, and OCSR's written notification of renewal to POTB no later than sixty (60)
16 days prior to the expiration of the initial Term or any subsequent Renewal Term. This
17 Agreement may be terminated pursuant to the termination provisions set forth herein.

18 **2. USE OF POTB PROPERTY; PARTY OBLIGATIONS**

19 2(A) Use of Rail, Right-of-Way and Shop. Pursuant to this Agreement, POTB
20 hereby grants to OCSR the exclusive right to utilize POTB's rail line between Milepost
21 859.13 (end of track –Industrial Park Yard) and Milepost 810.5 (Enright) including all
22 existing sidings and spurs (the "Rail"), together with such non-exclusive use of POTB's
23 railroad right-of-way between Mileposts 856.18 (12th St.) and 810.5, as necessary for
24 train operations as described herein and as necessary for OCSR's maintenance and
25 museum needs, located in the Rail and ROW (the "ROW") (collectively, the "OCSR
26 Rights"). Except for structures provided for under the Garibaldi Rights (defined below),

1 placement of any structures within the Rail and ROW shall be prohibited unless
2 approved in writing by POTB prior to commencement of construction. POTB reserves
3 the right to deny such approval in its sole discretion. The OCSR Rights shall be limited
4 to tourism-related train operations as further specified below. OCSR shall actively
5 conduct tourism-related train operations throughout the initial Term and all Renewal
6 Terms. For the purpose of providing additional community support, POTB grants to
7 OCSR the exclusive right to use the existing shop building at Garibaldi, Oregon and all
8 POTB right-of-way which provides access thereto and to make such use of the area
9 surrounding the shop building as is shown on Exhibit E to this Agreement (collectively,
10 the "Garibaldi Rights"), for OCSR operations, museum and maintenance needs
11 provided such uses shall not conflict with any existing POTB uses or any public utilities
12 located or to be located in the area identified on Exhibit E. OCSR is entitled to utilize
13 the area specified on Exhibit A for operation of tourist trains, passenger trains, charter
14 trains, including invited rail equipment, movement of gravel and rock only to the extent
15 necessary for OCSR's maintenance and expansion of OCSR, track maintenance and
16 inspection, and maintenance of above mentioned Garibaldi shop building.

17 2(B) POTB Reservations. Notwithstanding any provision of this Agreement to
18 the contrary, POTB reserves the right to continue use of the ROW which is the subject
19 of this Agreement, and to allow others to use the ROW to the extent provided under
20 existing or future agreements (i.e. encroachments, leases, licenses, easements, and
21 other property interests in the Rail and ROW), including any inspections thereon, which
22 inspections shall be subject to reasonable verbal notification provided to OCSR not less
23 than twenty-four (24) hours in advance, except in the case of an emergency, and said
24 inspections to reasonably avoid conflict with scheduled OCSR operations. POTB also
25 reserves the right to enter into new agreements involving use of the ROW, to the extent
26 that the rights granted pursuant to such agreements, do not unreasonably conflict with

1 the OCSR Rights. The area subject to the OCSR Rights and Garibaldi Rights are
2 described on the map attached hereto as Exhibit A, and by this reference made a part
3 hereof.

4 2(C) Inspections and Maintenance. During the initial Term and any Renewal
5 Term of this Agreement, OCSR shall be solely responsible for rehabilitation of the Rail
6 and ROW and for compliance with all Federal Railroad Administration ("FRA") and
7 Oregon Department of Transportation, Rail Division ("ODOT") requirements related to
8 the operation and maintenance of the Rail and ROW, including but not limited to all rail
9 inspections, and track, crossing and signal maintenance. All such actions shall proceed
10 according to the maintenance schedule and scope of work, attached hereto as Exhibit B
11 ("Rehabilitation Plan and Maintenance Agreement / Schedule") excepting therefrom, at
12 OCSR's sole discretion that portion designated as Milepost 856.12 to 859.13, which
13 may be designated as out-of-service and be subject to a lower level of maintenance.

14 2(D) POTB recognizes that OCSR's activities currently qualify it for an FRA
15 tourist railroad exemption. POTB agrees to cooperate with OCSR and not to take any
16 action that would cause OCSR to fail to qualify for the FRA tourist railroad exemption,
17 unless such action is necessary due to emergency circumstances or to avoid breaching
18 an agreement POTB has with a third party; provided, however, any future agreements
19 shall not unreasonably conflict with the OCSR Rights.

20 2(E) Lease of POTB Equipment. Attached herein as Exhibit C is a list of
21 existing POTB equipment that is leased to OCSR to utilize in performance of its
22 obligations under this Agreement (collectively the "Equipment"). During the period of
23 use, OCSR agrees to maintain the Equipment in equal or better condition than said
24 Equipment was in on the Effective Date of this Agreement, subject to normal wear and
25 tear, and subject to natural disasters beyond the control of OCSR. POTB leases said
26 Equipment at no rental or lease cost during the first five (5) years of the Term in keeping

1 with its Mission Statement of supporting local economic stability, and in part, as
2 consideration for OCSR's assumption of the rehabilitation and maintenance obligations
3 under Paragraph 2(B) of this Agreement. At its sole cost, OCSR shall insure the
4 Equipment against loss, partial or complete, naming POTB as loss payee, at values as
5 of the Effective Date, established by a qualified appraiser selected and hired by OCSR
6 (the "Equipment Value"). After the initial 5-years of the Term, OCSR may elect to (i)
7 terminate the Equipment lease by returning all of the Equipment to POTB at its Port
8 Industrial Park yard or (ii) continue the Equipment lease for the remainder of the Term
9 and any Renewal Term. If OCSR elects to continue the Equipment lease after the initial
10 five (5) years of the Term, OCSR shall pay rent for the Equipment at its then annual fair
11 market lease value not to exceed eight percent (8%) of the Equipment Value. Said
12 rental shall be paid quarterly, not more than thirty (30) days following the end of each
13 calendar quarter. POTB also grants to OCSR the option to purchase the Equipment at
14 any time during the Term or any Renewal Term at its then appraised fair market value;
15 OCSR may not exercise this option if it is in default of this Agreement at the time of
16 exercise or on the date the sale is to close. All such appraisal costs shall be paid by
17 OCSR.

18 2(F) Materials and Supplies. Attached hereto as Exhibit D is a list of materials
19 and supplies that are provided by POTB at no cost to OCSR for use during the Term
20 and any Renewal Term in maintaining the Rail and ROW covered by this Agreement.
21 OCSR may not resell, lease or otherwise transfer such materials and supplies to any
22 third party. To the extent authorized by FRA and ODOT rules and regulations, POTB
23 will transfer ownership of pit materials to OCSR and OCSR will transfer ownership of
24 same materials back to POTB, at no cost, at a location designated by POTB, within
25 twenty (20) days after receipt of a request from POTB.

26 2(G) POTB High-Rail. Notwithstanding the provisions above, POTB reserves

1 the right to operate its high-rail vehicle under OCSR authority over the Rail and ROW
2 covered by this Agreement as set forth herein. The purpose of POTB's high-rail
3 operation is to allow POTB or its designee, assignee or contractor to inspect the fiber
4 optics along the Rail and ROW.

5 2(G)(1) The POTB high-rail vehicle shall only operate at such times as not
6 to unreasonably interfere with OCSR's operating schedule. POTB shall avoid conflict
7 with OCSR scheduled trains except in emergency situations. Emergencies are defined
8 as problems requiring immediate attention that could not have been reasonably
9 anticipated by POTB and that cannot meet the above notice requirement, or be delayed,
10 without serious damage resulting. In such emergency situations, POTB shall make all
11 reasonable effort to contact OCSR and shall make every reasonable effort to avoid
12 causing conflict with any OCSR operation. OCSR shall make all reasonable effort to
13 accommodate POTB needs in such emergency.

14 2(G)(2) The POTB high-rail vehicle shall only operate with FRA-qualified
15 personnel.

16 2(G)(3) POTB shall give OCSR at least twenty-four (24) hours' notice prior
17 to any POTB high-rail operation, except in emergency situations.

18 2(H) Track Maintenance and Inspection.

19 2(H)(1) It will be the sole obligation of OCSR under this Agreement
20 to perform all track inspections, track maintenance and signal maintenance required in
21 order to keep POTB's Rail and ROW in sufficient repair to allow lawful operation of
22 passenger trains pursuant to applicable FRA and ODOT rules and regulations. Except
23 as otherwise detailed herein, OCSR will be responsible to pay all costs required and
24 associated with such track and signal maintenance, operation and inspection in
25 accordance with the Rehabilitation Plan and Maintenance Agreement / Schedule
26 attached hereto as Exhibit B. This includes the obligation to pay, within thirty (30) days

1 of delivery of an invoice, the costs of all utilities associated with track and signal
2 maintenance, operation and inspection, including but not limited to electric bills from
3 Tillamook PUD for electricity needed to operate the mechanical signals and costs for
4 use of the radio repeater, associated with OCSR's use of POTB's radios.

5 2(H)(2) Notwithstanding the above, in the event of significant damage to
6 any portion of the Rail and ROW, OCSR may remove that portion of right-of-way from
7 service when, in the reasonable discretion of OCSR, it is impractical at the time to keep
8 that portion of the right-of-way in service. Notwithstanding the foregoing, no removal
9 from service shall exceed the time period necessary to undertake and complete repair
10 of such damage.

11 2(H)(3) OCSR shall furnish to POTB an update of the Maintenance
12 Agreement / Schedule portion of Exhibit B not less than 90-days prior to the expiration
13 of each 5-year period of this Agreement. Failure to comply with the Maintenance
14 Agreement / Schedule shall be subject to the default provisions herein.

15 2(H)(4) OCSR shall be responsible for maintenance of the Rail and ROW,
16 and the Garibaldi shop during the initial Term and each Renewal Term of this
17 Agreement in accordance with the Maintenance Agreement / Schedule portion of
18 Exhibit B in place for each such term.

19 2(I) Resumption of Freight Traffic. Should POTB's rail connection to a
20 mainline carrier providing service be re-established and freight traffic resume, the
21 parties agree to negotiate a modification of this Agreement to allow the continued train
22 operation covered by this Agreement, together with POTB's resumption of freight rail
23 traffic. In matters of conflict, POTB will endeavor to accommodate scheduled
24 operations of OCSR under this Agreement. OCSR shall furnish to POTB a schedule of
25 operations quarterly not less than ten (10) days prior to the beginning of each calendar
26 quarter.

1 2(J) Rails to Trails. OCSR acknowledges that POTB, at POTB's full cost and
2 expense, may enter into agreements with third parties in order to effectuate construction
3 of a public bicycle/pedestrian trail system which may be located within the ROW,
4 adjacent to the Rails ("Rails to Trails Agreements"). OCSR agrees that the uses
5 identified in Rails to Trails Agreements may occur within the ROW, that construction of
6 improvements and facilities associated with such uses are permitted within the ROW
7 during the initial Term and any Renewal Term, and that all such activities and uses do
8 not interfere with OCSR's use of the Rail and ROW. OCSR shall not incur any liability
9 or be responsible for maintenance, improvements, or insurance requirements related to
10 any Rails to Trails Agreement contemplated in this subsection.

11 **3. PAYMENTS TO POTB**

12 The consideration made by OCSR to POTB for this Agreement is as follows:

13 3(A) During the first five-years of the Term, POTB agrees that OCSR shall
14 have no obligation to compensate POTB for the OCSR Rights provided for in this
15 Agreement, so long as OCSR performs all of its obligations under Exhibit B including,
16 without limitation, payment of the costs set forth in Section 2(H)(1) above, and also the
17 costs associated with those obligations specified as OCSR obligations in
18 Paragraph 2(F) above and Paragraph 6 referenced below.

19 3(B) In addition to the consideration set forth in paragraph 3(A) above (i), in
20 years one(1) through five (5) of the first Renewal Term, OCSR will pay to POTB eight
21 percent (8%) of Gross Revenue as herein defined, in years one (1) through five (5) of
22 the second Renewal Term OCSR shall pay to POTB twelve and one-half percent
23 (12 1/2%) of the Gross Revenue. Said payments shall be made on or before
24 January 15 following the previously completed year during the Term and any Renewal
25 Term hereof. For all purposes of this paragraph 3(B) the term "Gross Revenue" shall
26 mean any and all revenues received from OCSR's tourism-related activities and

1 operations, whether generated within or outside POTB property or right-of-way, but
2 excluding monies received in the form of grants, memberships, or donations.

3 3(C) OCSR shall provide POTB with quarterly accounting reports of Gross
4 Revenue during the Term of this Agreement or any Renewal Term.

5 **4. TRAIN SCHEDULING**

6 OCSR shall have the sole responsibility of scheduling all passenger, work,
7 maintenance and inspection trains pursuant to the term of this Agreement. OCSR shall
8 provide to POTB its schedule for regular operations at the beginning of each year during
9 the Term and any Renewal Term of this Agreement and shall provide POTB with any
10 significant modifications to this schedule as may occur from time to time.

11 **5. OPERATION AND INDEMNITY**

12 OCSR shall have full and complete discretion regarding all aspects of its
13 operation and services to passengers, except as stated in this Agreement. OCSR
14 hereby agrees to indemnify, defend (with counsel reasonably approved by POTB) and
15 hold harmless POTB from any and all claims, actions, causes of action, demands,
16 demands for damages, damages, judgments, penalties and fines, including reasonable
17 costs and attorney fees (collectively, "Claims") that may be asserted against POTB as a
18 result of acts or omissions by OCSR or its agents. The foregoing indemnity is intended
19 to include any Claims which may arise in connection with OCSR's obligations to comply
20 with Environmental Laws as provided in Section 21 of this Agreement. POTB hereby
21 agrees to indemnify, defend and hold harmless OCSR from any and all claims, actions,
22 causes of action, demands, demands for damages, damages, judgments, penalties and
23 fines, including reasonable costs and attorney fees that may be asserted against OCSR
24 as a result of acts or omissions by POTB or its agents. The rights of indemnity
25 described herein shall be in addition to any and all rights of indemnity that either party
26 may have at common law. POTB and OCSR reserve any and all rights they may have

1 for contribution; and contribution rights and remedies are not intended herein to be
2 affected by the terms of this Agreement.

3 **6. ADDITIONAL OCSR OBLIGATIONS**

4 6(A) POTB grants to OCSR the option, at its cost and expense, to reinstall the
5 rail line and recover all but only all of the eighteen (18) used log cars that are currently
6 stranded along the POTB's rail line east of the Salmonberry area (roughly located at
7 Milepost 811) (the "Log Car Recovery"). The recovery of these log cars is for the
8 purpose of leasing, selling, or scrapping of said log cars at OCSR's sole discretion. The
9 gross proceeds for said lease, sale or scrapping of log cars will be split between POTB
10 and OCSR with POTB receiving one-third (1/3) and OCSR receiving two-thirds (2/3) of
11 the gross proceeds. OCSR will deliver to POTB its agreed 1/3 share within thirty (30)
12 days of receiving any payments.

13 6(B) OCSR shall be responsible to pay, and will indemnify the POTB against,
14 any fines or penalties it or POTB incurs as a result of its operations and Log Car
15 Recovery as herein described in this Agreement for the initial Term or any Renewal
16 Term.

17 6(C) OCSR has the right to generate revenue from use of the Rail and ROW
18 either for operating its own trains or allowing other tourist rail operators to operate rail
19 equipment on the line. Any revenue resulting from such operations shall be the sole
20 property of OCSR during the initial five-year Term and, thereafter, shall be considered
21 part of Gross Revenue and shared with POTB as per the revenue sharing formula
22 described in paragraph 6(A), during all Renewal Terms of this Agreement.

23 6(D) In the event OCSR desires to construct any structure within the Rail and
24 ROW, OCSR shall request a no-fee encroachment agreement ("Encroachment
25 Agreement") from POTB to accommodate such construction. POTB shall be under no
26 obligation to approve such request. If approved, OCSR shall construct the

1 improvements in strict compliance with the approval and applicable laws. If OCSR
2 defaults in its performance obligations under this Agreement or under any
3 Encroachment Agreement, OCSR will automatically be required to pay POTB a market
4 rate encroachment fee for continued use of that portion of the Rail and ROW which is
5 the subject of the Encroachment Agreement. OCSR agrees that, absent any
6 agreements with POTB to the contrary, any buildings or other improvements remaining
7 on POTB Rail and ROW at the expiration of this Agreement, or any Renewal Term, or at
8 expiration of the applicable Encroachment Agreement, shall become the property of
9 POTB. POTB retains the right to require OCSR to reserve any improvements which are
10 the subject of any Encroachment Agreement, upon any default or expiration thereof, or
11 upon expiration of the Term or any Renewal Term of this Agreement.

12 **7. DUTY TO COOPERATE**

13 7(A) It is hereby acknowledged that in order to achieve the revenue sharing
14 required herein that outside FRA and ODOT or other grants may be required for the
15 purpose of funding a portion of OCSR's maintenance obligations hereunder. POTB
16 agrees to reasonably cooperate with OCSR, and to endorse in writing, without cost to
17 POTB, any such grant applications made by OCSR for rail related projects associated
18 with OCSR's operations on POTB's rail line permitted under this Agreement. POTB will
19 charge OCSR for the time it expends in such cooperation, at their existing hourly rates.
20 OCSR shall develop such applications at its own expense and POTB shall support
21 those applications so long as such projects do not conflict with POTB's other business
22 interests.

23 7(B) Notwithstanding paragraph 7(A) above, POTB shall not be obligated to
24 cooperate with OCSR or endorse any grant, the application for or approval of which
25 would jeopardize or adversely affect POTB's ability to seek, qualify for or obtain
26 approval of any source of funding for POTB operations, campaigns, projects or

1 endeavors.

2 **8. RIGHT OF FIRST REFUSAL**

3 Subject to the provisions of Paragraph 11 of this Agreement, at any time during
4 the Term or Renewal Term of this Agreement, should POTB desire to sell all or any
5 portion of Rail and ROW, POTB shall give OCSR a right of first refusal to purchase
6 them subject to an offer by an outside party. Within five (5) days after receiving a bona
7 fide offer to purchase the Rail and ROW, which POTB desires to accept, POTB shall
8 notify OCSR of the offer and the essential business terms thereof and allow OCSR
9 sixty (60) days from the date of such notice within which to match and close escrow on
10 said offer.

11 **9. DEFAULT / TERMINATION**

12 9(A) A default under this Agreement shall exist when either party fails to
13 comply with a term of this Agreement and fails to correct such default after receiving (i)
14 ten (10) days' written notice from the non-defaulting party in the event of a payment
15 default or (ii) thirty (30) days' written notice from the non-defaulting party in the event of
16 all other defaults. If the non-payment default is of a type that cannot be substantially
17 remedied with thirty (30) days, it shall not be deemed a default on this Agreement
18 provided that the party who has failed to comply with the term commences a cure within
19 ten (10) days of receiving written notice from the non-breaching party and diligently
20 pursues the cure to completion; provided however, in no event shall the defaulting party
21 have more than ninety (90) days to complete the cure. Notice under this Agreement
22 shall be delivered in writing to the addresses specified herein.

23 9(B) Should a default as referenced above which is not remedied as required
24 herein occur, the non-defaulting party has the election to (i) immediately terminate this
25 Agreement upon providing written notice to the defaulting party or (ii) pursue any other
26 remedy available at law or in equity. Any notice of termination will be in writing and

1 addressed to the defaulting party at the address listed herein. The defaulting party
2 acknowledges that there are no cure rights associated with a notice of termination
3 action.

4 **10. INSURANCE AND INDEMNIFICATION**

5 10(A) Workers' Compensation. OCSR shall ensure that all its employees, to the
6 extent required by law, are covered by applicable workers' compensation and
7 employer's liability insurance at all times during the Term of this Agreement or any
8 Renewal Term.

9 10(B) Railroad Liability Insurance (on track). OCSR shall be required to
10 maintain Passenger Railroad Liability Insurance during the Term and any Renewal
11 Terms of this Agreement. OCSR shall provide to POTB a Certificate of Insurance
12 annually, naming the Port of Tillamook Bay as an additional insured, all at OCSR's sole
13 expense, for the Rail and ROW area (Milepost 859.13 to Milepost 810.5 for the Rail and
14 856.18 to 810.5 for the ROW). The policy shall be with at least an "A" rated company
15 and shall provide liability coverage, and any extended coverage, including both property
16 and pollution, as is usual and customary for OCSR's tourism-related operation, of at
17 least ten million dollars (\$10,000,000) in the aggregate and five million dollars
18 (\$5,000,000) per occurrence.

19 10(C) No material changes to any insurance policy required herein shall be made
20 without the prior notification to and approval of the POTB. Any cancellation or lapse of
21 insurance coverage shall require immediate notification to POTB.

22 **11. STATE OF OREGON**

23 POTB is the owner of the property described in Exhibit A. POTB's ownership
24 interest in the property described in Exhibit A may be subject to existing rights in favor
25 of the State of Oregon. Any and all rights of OCSR under this Agreement are subject to
26 the rights of the State of Oregon in the property described in Exhibit A; and the State

1 shall not be bound by any terms of this Agreement.

2 **12. NOTICES**

3 Any notice permitted or required to be given under this Agreement shall be in
4 writing and either delivered by hand, sent by certified or registered mail, return receipt
5 requested, with confirmed delivery:

- 6 (a) If to the Port of Tillamook Bay, at:
7 Port of Tillamook Bay
8 4000 Blimp Boulevard
9 Tillamook, Oregon 97141
10 Attention: Michele Bradley, General Manager
11 (b) If to Oregon Coast Scenic Railroad:
12 Scott and Kim Wickert
13 Oregon Coast Scenic Railroad
14 PO Box 669
15 Tillamook, Oregon 97141
16

17 Notice shall be effective two (2) days after sent in accordance with the requirements of
18 this paragraph.

19 **13. FORCE MAJEURE**

20 Neither POTB nor OCSR shall be liable for any failure to perform or for any delay
21 of performance which arises in connection with a failure or delay due to the enactment
22 of any law, statute or regulation by any governmental entity (other than POTB), or by
23 acts of God, derailment, strike, fire, fraud, landslides, war, or act of sabotage.

24 **14. AMENDMENTS**

25 No provision of this Agreement shall be modified unless in writing and signed by both
26 parties. The requirement for a written modification shall not otherwise impair or affect

1 the parties' ability to waive any conditions, duties, or requirements for performance
2 under this Agreement.

3 **15. GOVERNING LAW**

4 This Agreement shall be governed and interpreted in accordance with the laws of
5 the State of Oregon. The parties specifically agree that in the event any dispute arises
6 on this Agreement, then venue for any and all actions, whether by arbitration or at law,
7 shall be in Tillamook County, Oregon.

8 **16. ATTORNEY FEES**

9 In the event a legal action is commenced to interpret or enforce any provision of
10 this Agreement, to collect any sums asserted to be owing under the terms of this
11 Agreement, then the prevailing party shall be entitled to costs, expenses and attorney
12 fees, incurred prior to trial, at trial or on any appeal.

13 **17. ENTIRE AGREEMENT**

14 This document constitutes the entire agreement between the parties, and
15 supersedes all prior agreements between the parties regarding the subject matter
16 hereof, including, without limitation, the agreements referred to in the Recitals.

17 **18. WARRANTIES**

18 Both parties warrant and represent that they have full and complete authority to
19 enter into this Agreement and to implement its terms and that all terms and conditions
20 shall be legally binding and enforceable upon them.

21 **19. SUCCESSORS AND ASSIGNS**

22 No provision of this Agreement shall be assigned by OCSR to any other party,
23 without the prior written agreement of POTB, such agreement not to be unreasonably
24 withheld. This Agreement shall be binding on any POTB successors or assigns.

25 **20. CONSTRUCTION OF AGREEMENT**

26 This Agreement was prepared by both parties and is the subject of negotiations

1 and compromise. Neither party shall be deemed the drafter of the Agreement for the
2 purpose of construing any provision of this Agreement.

3 **21. COMPLIANCE WITH LAWS**

4 All activities undertaken by OCSR and its employees, representatives, agents,
5 invitees, licensees, customers or contractors pursuant to this Agreement, and their use
6 of the Rails and ROW, shall be subject to, and at all times in compliance with, any and
7 all applicable laws, ordinances, statutes, orders and regulations as the same exist from
8 time to time ("Laws"); the term Laws shall include, without limitation, any and all local,
9 state and federal environmental, health and/or safety-related laws, statutes, orders,
10 regulations, ordinances, rules, decrees, permits and permit conditions (the
11 "Environmental Laws").
12

13 **OREGON COAST SCENIC RAILROAD**

14 Kim Wickert

15
16 By: Kim Wickert
17 Title: Sec. / Treas.
18 Date: 3/29/12
19

20 Scott Wickert

21 By: Scott Wickert
22 Title: President & CMO
23 Date: 3-29-12
24
25
26

PORT OF TILLAMOOK BAY

Michele Bradley

By: Michele Bradley
Title: General Manager
Date: 3/29/2012

1 Exhibits:

- 2 A. Description of Right-of-Way
3 B. Rehabilitation Plan and Maintenance Agreement/Schedule
4 C. Equipment List
5 D. Material Supplies List
6 E Shop building area

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EXHIBIT A
Description of Right-of-Way

§100-0	Department of Forestry	Private Road Crossing	100'
§100-5			100'
§133-12		Start 60' ROW for 250'	60'
§134-43		Start 100' ROW for 150'	100'
§134-67		Start 60' ROW	60'
§134-618		Start 100' ROW	100'
§135-19			ADD 30' WEST 70' EAST RIGHT-OF-WAY
§135-313			ADD 70' EAST ONLY RIGHT-OF-WAY UNTIL §135-417
§135-417			START OF 100' RIGHT-OF-WAY
§139-12		Start 60' ROW	60'
§142-6		Start 100' ROW	100'
§150-18	12TH STREET	Public Crossing	100'

43075-70273 306371_16 DOCWEE/3/23/2012

Exhibit B

OCSR Rehabilitation and Maintenance Plan

2012-2016

This is an overview of the general maintenance and upgrade program for the right of way. The main focus during this 5 year period is vegetation control between mp 859.13 – mp 815.7, maintenance that provides safe train operations, maintaining track structure to FRA regulations that apply, and minor upgrades to the track to improve the quality of ride for passengers. The material costs are based on current prices and are subject to change.

Overview of 2012 projects

- Weed spray mp 859.13 – mp 831.2
 - Consists of a minimum 13' wide spray pattern
 - 27.93 miles @ \$208.82/mile = \$5,832.34
- Brush cutting mp 833.6 – mp 825.1
 - Heavy brush and tree removal
 - Volunteer labor
 - Brush cutting machine rental \$300/day x 5 days = \$1,500.00
- Railroad tie replacement
 - 50 new ties between mp 840.7 – mp 841.6
 - \$45.00/tie x 50 = \$2,250.00
- Ballast
 - 60 yards between mp 840.7 – mp 841.6
 - \$17.00/yd x 60 = \$1,020.00

43073-70273 386371_10 DDCMEE/1/28/2012

Overview of 2013 projects

- Weed spray mp 859.13 – mp 825.1
 - Consists of a minimum 13' wide spray pattern
 - 34.03 miles @ \$208.82/mile = \$7,106.14
- Brush cutting mp 825.1 – mp 815.7
 - Heavy brush and tree removal
 - Volunteer labor
 - Brush cutting machine rental \$300/day x 9 days = \$2,700.00
- Clear large land slide from mp 823.25
- Small slide removal between mp 823.10 – mp 815.7
- Railroad tie replacement
 - 100 ties between mp 841.6 – mp 845.5
 - \$45.00/tie x 100 = \$4,500.00
- Ballast
 - 120 yards between mp 841.6 – mp 845.5
 - \$17.00/yard x 120 = \$2,040.00

Overview of 2014 projects

- Weed spray mp 859.13 – mp 815.7
 - 43.43 miles @ \$208.82/mile = \$9,069.05
- Minor brush and tree removal between mp 815.7 – mp 810.5
 - This will be done on foot in preparation for track repairs.
- Railroad tie replacement
 - 100 ties between mp 840.7 – mp 833.1

43075-70273 364371_10 DOCWEE/2/20/2012

- \$45.00/tie x 100 = \$4,500.00

- **Ballast**

- 120 yards between mp 840.7 – mp 833.1

- 200 yards between mp 840.7 – mp 841.6

- \$17.00/yard x 320 = \$5,440.00

- **Surface**

- Tamping and regulating between mp 840.7 – 841.6

Overview of 2015 projects

- **Weed spray mp 859.13 – mp 815.7**

- 43.43 miles @ \$208.82/mile = \$9,069.05

- **Begin roadbed and track work between mp 815.7 – mp 810.5**

- This consists of removal of debris on the track and repairing several washouts.

- **Brush cutting between mp 815.7 – mp 810.5**

- Volunteer labor

- Brush cutting machine rental \$300/day x 7 days = \$2,100.00

- **Railroad tie replacement**

- 200 ties between mp 845.5 – mp 855.4

- \$45.00/tie x 200 = \$9,000.00

- **Ballast**

- 240 yards between mp 841.6 – mp 855.4

- \$17.00/yard x 240 = \$4,080.00

- **Surface**

- Tamping and regulating between mp 841.6 – mp 855.4

43075-70273 388371_10 DOCWEE/9/28/2012

Overview of 2016 projects

-- Weed spray mp 859.13 – mp 810.5

-48.63 miles @ \$208.82/mile = \$10,154.91

- Railroad tie replacement

- 200 ties between mp 840.7 – mp 825.1

- \$45.00/tie x 200 = \$9,000.00

- Ballast

- 275 yards between mp 840.7 – mp 825.1

- \$17.00/yd x 275 = \$4,675.00

- Surface

- Tamping and regulating between mp 840.7 – mp 825.1

43075-70273 346371_10.DOCXWEE3/29/2012

Exhibit C
Equipment List

POTB-owned railroad equipment needed for maintenance and operation of the railroad.

1. Hytracker
2. Boom truck with small dump bed
3. Large Boom Truck --[Bridge Truck]
4. Side dump rock cars, #s 014, 015 018
5. Ballast cars, #s 017, 018
6. Heavy Duty Flat Car -- # 020
7. Two Light Duty Flat Cars
8. Depressed center Flat Car -- #008 (located at Timber)
9. Regulator (currently stranded near Cochran)
10. Small track tools, rail bender, track bolt machine, hydraulic power pack w/hand tamper, rerail frogs, etc.
11. Cline truck (bad engine)
12. 553 & 553 RDC cars
13. Spare parts for RDC cars (old seats, spare truck, engine, air brake valves and misc parts)
14. SD-9 locomotive 4406 (needs all wheels turned, radiator leak, and engine work)
15. First option to buy 6139 & 6116
16. Spare locomotive parts (mechanical & electrical) at Port enginehouse & around industrial park
17. Handheld and locomotive radios

43015-70273 JMS71_10.DOCWEB/3/28/2012

Exhibit D
Material Supplies List

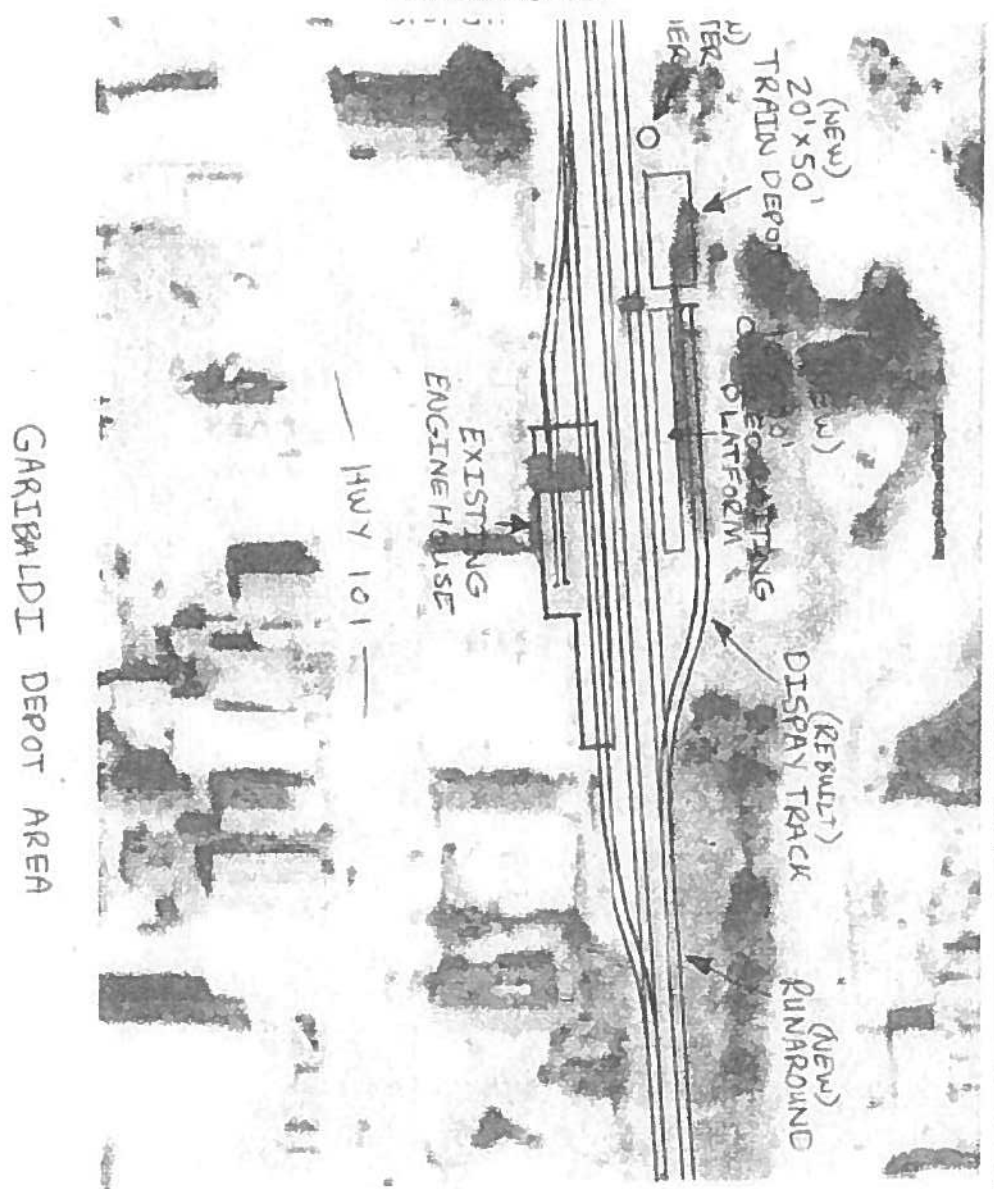
POTB railroad materials

- 1. Loose rail and OTM stored at Port industrial park and along the ROW**
- 2. New railroad ties and bridge timbers stored at Port industrial park**
- 3. Loose rail materials removed Werner property**

43075-70373 349371_10.DOCUMES/3/28/2012

Exhibit E

Shop building area



43075-70275 3B6371_10.DOC/ME/3/28/2012

Exhibit E

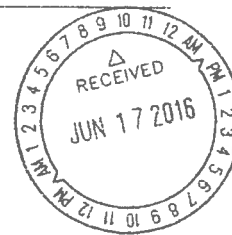
240928

SALMONBERRY TRAIL INTERGOVERNMENT AGENCY
725 Summer St. N.E., Suite C
Salem, Oregon 97301

ENTERED
Office of Proceedings
June 17, 2016
Part of
Public Record

June 7, 2016

Ms. Cynthia Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street
Washington, DC 20024



RE: ICC Finance Docket No. 31676
Port of Tillamook Bay Railroad – Modified Rail Certificate
Notice of Intent to Partially Terminate (Abandon) Service

Dear Ms. Brown:

This request is filed on behalf of the Salmonberry Trail Intergovernmental Agency (STIA), which is an intergovernmental agency interested in supporting local economies, conservation and outdoor recreation opportunities which is hereinafter referred to as 'proponent'.

While not taking a position on the merits of this abandonment, proponent requests issuance of a Public Use Condition, as well as a Certificate or Notice of Interim Trail Use for that portion of the Port of Tillamook Bay Railroad (POTB), between Milepost 775.01 near Banks, Washington County, Oregon, and Milepost 856.06 near Tillamook, Tillamook County, Oregon.

Proponent notes that the Board's predecessor, the Interstate Commerce Commission, desired to preserve the future possibility of public use by imposing conditions in previous decisions involving the subject line. In Finance Docket No. AB-339X, *Port of Tillamook Bay—Discontinuance of Trackage Rights Exemption—In Washington and Tillamook Counties, OR.*, served October 22, 1990, (copy attached) the Commission was petitioned by the Rails-to-Trails Conservancy and the Oregon Parks and Recreation Department to revisit an earlier AB-339X decision and impose an advance notice condition for the benefit of trail-use advocates. In the October 22, 1990, decision it was noted "that the Commission has held that it retains sufficient jurisdiction to entertain requests under the Trails Act when modified rail certificate service is terminated. They [the petitioners] request 60 days' advance notice by POTB of termination of rail service under the modified rail certificate in order to ensure that the Commission does not lose jurisdiction to entertain a Trails Act request. Under the circumstances, the requested relief is in effect an extension or continuation of the relief granted in Tillamook Branch Abandonment.¹ A condition requiring 60 days' notice to petitioners will be imposed."

A. Public Use Condition

Proponent requests the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except of public use on reasonable terms. The justification for this condition is that the corridor will make an excellent recreational trail connecting the coast with the urban Portland area. The railroad is along the Salmonberry River and conversion of the property to trail use is in accordance with local planning efforts. The corridor provides important wildlife habitat and its preservation as a recreational trail is consistent with that end. The time period sought is 180 days from the effective date of the abandonment authorization. Proponent needs this much time because we have not had an opportunity to commence negotiations with the carrier.

FILING FEE WAIVED

2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

B. Interim Trail Use

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, proponent also makes the following request:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 C.F.R. §1152.29, the Salmonberry Trail Intergovernmental Agency is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned and operated by the Port of Tillamook Bay.

The property, known as the Port of Tillamook Bay railroad extends from railroad milepost 775.01 near Banks, Washington County, Oregon to railroad milepost 856.08 near Tillamook, Tillamook County, Oregon a distance of 81.07 miles in Tillamook and Washington Counties, Oregon. The right-of-way is part of a line of railroad proposed for termination (abandonment) of service in ICC Finance Docket No. 31676, STB-filed May 26, 2016. A map depicting the right-of-way is attached.

The Salmonberry Trail Intergovernmental Agency acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon Port of Tillamook Bay, 4000 Blimp Blvd, Tillamook, OR 97141, by U.S. Mail, postage prepaid, first class, on [date].

With respect to the filing fee, the STIA is a local government entity. It is our understanding that this filing fee will likely be waived pursuant to the provisions of 49 C.F.R. 1002.2(e)(1), which allows for a waiver of such fees for local government entities.

Respectfully submitted,



Doug Decker and Lisa Sumption, Co-Chairs
On behalf of Salmonberry Trail Intergovernmental Agency

Attachments: Finance Docket No. AB-339X, *Port of Tillamook Bay—Discontinuation of Trackage Rights exemption—In Washington and Tillamook Counties, OR*

Map

ⁱ See Docket No. AB-12 (Sub-No. 108), *Southern Pacific Transportation Company—Abandonment—Tillamook Branch in Washington and Tillamook Counties, OR*, served August 28, 1986.

SERVICE DATE

OCT 22 1990

DO

INTERSTATE COMMERCE COMMISSION

DECISION

Docket No. AB-339X¹

PORT OF TILLAMOOK BAY--DISCONTINUANCE OF TRackage RIGHTS
EXEMPTION--IN WASHINGTON AND TILLAMOOK COUNTIES, OR

Decided: October 15, 1990

In a decision served September 18, 1990,² the Commission granted the Port of Tillamook Bay (POTB) an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903-10904 to discontinue local trackage rights over a rail line formerly owned by Southern Pacific Transportation Company (SP) and now owned by POTB. The line extends between milepost 770.5, at or near Schefflin, in Washington County, OR, and milepost 856.08, at or near Tillamook, in Tillamook County, OR. The exemption is scheduled to become effective October 18, 1990.

An agreement between POTB and SP granting the Port of Tillamook Bay Railroad (the same entity as POTB) local trackage rights over SP's line between milepost 765.5, at or near Hillsboro, OR, and milepost 856.08 was the subject of a notice of exemption in Finance Docket No. 30826, Port of Tillamook Bay Railroad--Trackage Rights--Southern Pacific Transportation Company (not printed), served and published May 21, 1986 (51 FR 18674), (PTBR Trackage Rights).

In Docket No. AB-12 (Sub-No. 108), Southern Pacific Transportation Company--Abandonment--Tillamook Branch in Washington and Tillamook Counties, OR (not printed), served August 28, 1986, (Tillamook Branch Abandonment) the Commission granted SP authority to abandon the segment of the Tillamook Branch line involved here and allowed POTB to operate the line for at least 2 years to determine the viability of operations over the line prior to a public agency acquiring the line from SP. Tillamook Branch Abandonment also required notice of POTB's trackage rights discontinuance to be given Rails-to-Trails Conservancy (RTC) and another interested person in order to allow them to submit an appropriate request for trails use under the provisions of 16 U.S.C. 1247(d) (Trails Act) or a request for a public use condition.

POTB acquired the line on February 1, 1990, and later filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150.23. Finance Docket No. 31676, Port of Tillamook Bay Modified Rail Certificate (not printed), notice served and published June 1, 1990 (55 FR 22415), corrected notice served and published June 4, 1990 (55 FR 22863), (POTB Modified Rail Certificate). In POTB Modified Rail Certificate it was noted that the trackage rights granted in PTBR Trackage Rights apparently were intended to be replaced by the modified rail certificate. As a modified certificate holder has no outstanding common carrier obligation, it was suggested that POTB seek authority to discontinue the trackage rights arrangement to ensure that the common carrier obligation that attaches to it is extinguished. The petition for exemption here was filed in response to that suggestion.

¹ A copy of this decision shall be filed under Finance Docket No. 31676.

² Notice was published in the Federal Register on the same date. 55 FR 38414.

2/6/2013

Docket No. AB-339X

By comment filed October 10, 1990, RTC and Oregon State Parks and Recreation Division (OSPARD) request advance notice should POTB abandon operations under the modified rail certificate. RTC and OSPARD point out that POTB is only required to notify shippers of an impending cancellation of service.³ They note that the Commission has held that it retains sufficient jurisdiction to entertain requests under the Trails Act when modified rail certificate service is terminated.⁴ They request 60 days' advance notice by POTB of termination of rail service under the modified rail certificate in order to ensure that the Commission does not lose jurisdiction to entertain a Trails Act request.

Under the circumstances, the requested relief is in effect an extension or continuation of the relief granted in Tillamook Branch Abandonment. A condition requiring 60 days' notice to petitioners will be imposed.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. The exemption granted by decision served on September 18, 1990, exempting the discontinuance of trackage rights described above, is modified by imposing the condition that the Port of Tillamook Bay, before it terminates service under the modified rail certificate noticed in Finance Docket No. 31676, provide to the Rails-to-Trails Conservancy and the Oregon State Parks and Recreation Division the same 60 days' notice of termination required to be given shippers by 49 CFR 1150.24.

3. This decision is effective on its service date.

By the Commission, David M. Konachnik, Director, Office of Proceedings.

(SEAL)

Sidney L. Strickland, Jr.
Secretary

³ 49 CFR 1150.24 requires an operator under a modified rail certificate to give 60 days' notice of termination (a) by filing with the State and the Commission, and (b) by mailing to all persons that have used the line within the 6 months preceding the date of the notice.

⁴ See Finance Docket No. 30724 (Sub-No. 1), Wisconsin and Calumet Railroad Company, Inc.--Notice of Interim Trail Use and Termination of Modified Certificate (not printed), served August 8, 1989.

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OFFICE OF THE SECRETARY
COMMISSION SERVICE SECTION
WASHINGTON, DC 20423

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EXHIBIT C

**Docket No. FD 31676 - Port of Tillamook Bay Railroad
ABANDONMENT EXEMPTION
IN TILLAMOOK AND WASHINGTON COUNTIES, OREGON**

MAP OF RIGHT-OF-WAY

Port of Tillamook Bay Railroad Proposed Railbanking Corridor

ICC Finance Docket
No. 31676

