



ENCROACHMENT LICENSE AGREEMENT

This Encroachment Agreement (“Agreement”) effective March 1, 2024 (“Effective Date”), including current, past use, and invoicing to the previous original agreement dated March 5, 2002, is by and between the PORT OF TILLAMOOK BAY (“the Port”), and CITY OF WHEELER (“Licensee”).

RECITALS:

- A. Due to changes in overall format, sections, requirements, language, and so forth, the Port desires to update the Licensee’s Agreement from its original format signed as stated in the dates above, to its current format on the effective date.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are made a part of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Port’s Address for Giving of Notices.

Port of Tillamook Bay
Attn: Michele Bradley, General Manager
4000 Blimp Blvd. Suite 100
Tillamook, OR 97141
(503) 842-2413
mbradley@potb.org

Port’s Address for Payment.

Port of Tillamook Bay
Attn: Accounts Receivable
4000 Blimp Blvd. Suite 100
Tillamook, OR 97141

Licensee Address for Giving of Notices.

City of Wheeler
Attn: City Manager
PO Box #177
Wheeler, OR 97147
(503) 368-5767
citymanager@ci.wheeler.or.us

1. Agreement Terms. If the Port determines that the Licensee is in good standing within the terms of this agreement, this agreement is on a year-to-year lease term in to perpetuity. Oregon Revised Statutes (ORS) 271.310 authorizes the Port to lease for any period not exceeding Ninety-Nine (99) years, or whatever the public interest may be furthered.

2. The Port hereby grants to Licensee (subject to the terms of this Agreement) a license to the right to construct, reconstruct, maintain 218' x 38' x 62' x 8' x 58' x 8' x 98' (approximately 8,748 sq. ft.) for the sole purpose of maintenance and beautification of and around the existing depot and restroom buildings, **and** a 218' x 38' (approximately 8,284 sq. ft.) pieces of property for the sole purpose of vehicle parking, as described and depicted on Exhibit A Section 1; **and** a 454' x 10' x 465' x 33' (approximately 12,228 sq. ft.) piece of property for the sole purpose of vehicle parking, as described and depicted on Exhibit A Section 2; a combined total of 29,260 square foot pieces of property belonging to the Port between Railroad Mile Post 833.11 and Railroad Mile Post 832.84 in or near the City of Wheeler, Tillamook County, State of Oregon, as described and depicted on Exhibit A hereto ("Licensed Property"), benefitting Tillamook County Map Tax Lot #2N1002BC03900.

This Agreement shall continue until terminated as provided in Section 17 through 20.

3. Licensee has inspected the Licensed Property and accepts the same "AS IS" without any express or implied warranties of any kind, including any warranties or representations by the Port as to title or the condition or fitness of the Licensed Property for any use.

4. The License granted in this Agreement is subject to all existing licenses, leases, easements, encumbrances, covenants, and claims of title affecting the Licensed Property, including, without limitation, the rights of the Port and the Salmonberry Trail Intergovernmental Agency ("STIA") under the Salmonberry Trail Rail Line Use Agreement dated April 6, 2018 between the Port and STIA ("STIA Agreement"), and to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions, and orders of any local, state, or federal agency now or later having jurisdiction over the Licensed Property or Licensee's use of the Licensed Property. Notwithstanding any term in this Agreement to the contrary, Licensee's rights in the Licensed Property are limited to the rights created by this Agreement, which create only a license in the Licensed Property, which is revocable as expressly set forth herein.

5. Upon Licensee's execution of this Agreement, Licensee shall pay to the Port a license fee ("License Fee") of \$2,488.60, plus a one-time fee of \$100.00 to amend an existing permit, for Licensee's use of the Licensed Property. The License Fee shall increase by at least 3% each year after the initial year that this Agreement remains in effect. Additionally, one-time fees, for agreement preparation and inspection, if required, will be assessed and payable with the initial License Fee payment. See current rate sheet attached hereto as Exhibit B. The License Fee is subject to change upon approval of the Port's Board of Commissioners and thirty (30) days' prior written notice to the Licensee.

6. Licensee, at Licensee's sole cost expense, shall maintain the Licensed Property in a good and safe condition acceptable to the Port and free and clear of all rubbish, debris, and any other materials. Licensee shall not remove, damage, or alter in any way any existing improvements or personal property of the Port within the Licensed Property without the Port's prior written approval, which may be withheld in the Port's sole discretion. Licensee, at Licensee's sole cost and expense, shall repair any damage or alteration to the Port's property or the Licensed Property to the same condition that existed before the damage or alteration, reasonable wear and tear excepted.

7. All Port property (including railroad right of ways) shall remain free of any political party affiliations, supportive campaign signage and/or language of any specific person affiliated or not affiliated to any such political party.

8. Licensee shall not perform any work of construction or repair on the Licensed Property (except emergency repairs) unless the Port is given five (5) days' advance written notice thereof and the approval of the Port for such work is obtained in writing. All improvements made by Licensee to the Licensed Property pursuant to the terms of this Agreement are subject to and must be in compliance with all applicable codes, ordinances, and laws. On the termination of this Agreement, if requested by the Port, Licensee, at its sole cost and expense, shall remove any improvements made to the Licensed Property by or on behalf of Licensee. Licensee shall reimburse the Port for all costs and expenses incurred by the Port in connection with the construction, maintenance, and removal of any improvements made by Licensee on the Licensed Property.

9. Licensee shall pay for all materials joined or affixed to, and for all labor performed upon, the Licensed Property at Licensee's instance or request, and Licensee shall not permit or suffer any mechanics' liens or materialmen's liens of any kind or nature to be levied against the Licensed Property for any such work done or materials joined or affixed thereto.

10. Licensee shall not obstruct or interfere or allow any other person or entity to obstruct or interfere, with the passage of the Port's trains or STIA's use of the Licensed Property in accordance with the STIA Agreement.

11. Licensee shall not produce, dispose, transport, treat, use, or store any hazardous waste or toxic substance upon or about the Licensed Property in violation of any federal, state, or local law pertaining to hazardous waste or toxic substances and shall not use the Licensed Property in a manner inconsistent with any regulations, permits, or approvals issued by any federal or state agency. Licensee shall defend, indemnify, and hold the Port and its elected or appointed officials, agents, boards, commissions, and employees (collectively, the "Port Parties") harmless against any damages, claims, losses, or liabilities (including attorney fees and expenses) ("Damages") incurred by the Port or a Port Party by reason of any hazardous waste or toxic substance on or affecting the Licensed Property attributable to or caused by Licensee or any of Licensee's officers, directors, shareholders, members, managers, employees, contractors, representatives, or invitees (collectively, "Licensee Parties"). Licensee shall immediately notify the Port of any hazardous waste or toxic substance at any time discovered or existing upon the Licensed Property. Licensee shall promptly and without request by the Port provide the Port with copies of all written communications between Licensee and any governmental agency concerning environmental inquiries, reports, or problems relating to hazardous waste or toxic substances on the Licensed Property. Licensee's obligations under this section shall survive the termination of this Agreement or Licensee's use of the Licensed Property.

12. Licensee shall indemnify, defend, and hold harmless the Port and the Port Parties from all Damages that arise out of any act or omission of Licensee or any of the Licensee Parties in connection with the use or operations on the Licensed Property and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that are caused by the failure of Licensee or any Licensee Party to comply with any term of this Agreement, except to the extent the Damages are caused by the Port's or its agents' gross negligence or willful misconduct. Licensee's obligations under this section shall survive the termination of this Agreement or Licensee's use of the Licensed Property.

13. In addition to the indemnity obligations of Licensee set forth in Sections 9 and 10, Licensee shall indemnify, defend, and hold harmless STIA against all Damages, whether or not involving a third-party claim, which arise out of or relate to the use or operation of the Licensed Property by Licensee or the Licensee Parties. Licensee's obligations under this section shall survive any termination of this Agreement or Licensee's use of the Licensed Property.

14. At all times during this Agreement, Licensee shall provide and maintain insurance in the following minimum amounts and types of coverage, insuring Licensee's possession, use, and control of the Licensed Property.

i. General liability insurance, naming the Port as an additional insured, covering Licensee against claims of bodily injury, personal injury, and property damage arising out of the Licensee's operations, assumed liabilities, or use of the Licensed Property, including a liability endorsement covering the insuring provisions of this Agreement and the performance by Licensee of the indemnity agreements set forth in this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence, with a \$2,000,000 aggregate limit.

ii. Property damage insurance covering all improvements on the Licensed Property. 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. In the event that automobiles are used in connection with Licensee's use of the Licensed Property, Licensee 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 Licensed Property. Coverage shall be in an amount of not less than \$1,000,000.

iv. If Licensee has employees, Licensee shall maintain in force workers' compensation insurance for all of Licensee's employees in accordance with all requirements of Oregon law and employer's liability coverage in an amount of not less than \$500,000 per accident and \$500,000 per employee for disease. In lieu of such insurance, Licensee 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.

15. The insurance requirements set forth in Section 12 do not in any way limit the amount or scope of liability of Licensee under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage the Port is 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. On or before the Effective Date and annually thereafter during the term of this Agreement, Licensee shall provide the Port with current certificates of 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 12. No insurance policy may be canceled, materially revised, or allowed to expire without at least thirty (30) days' prior written notice being given by Licensee to the Port. Upon written request, Licensee shall also provide copies of its policies of insurance to the Port.

ii. 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 Port.

iii. All policies of insurance must be written by companies having an A.M. Best rating of "A-" or better, or equivalent.

iv. The Port shall have the right to periodically review the types, limits, and terms of insurance coverage required of Licensee by this Agreement. If the Port reasonably determines that such types, limits, and/or terms should be changed, the Port will give Licensee a minimum of thirty (30) days' notice of such determination. Licensee shall promptly increase coverage to comply with the new insurance requirements and provide the Port with proof of such compliance by providing updated certificates of insurance within thirty (30) days of Licensee's receipt of the Port's notice.

16. Licensee shall pay any tax or assessment arising out of or as a result of its use of the Licensed Property and is responsible for obtaining and paying for all utilities necessary for its use of the Licensed Property.

17. The Port may, at any time, enter upon the Licensed Property for any lawful purpose, so long as the action does not unreasonably interfere with Licensee's use of the Licensed Property in accordance with this Agreement. Without limiting the generality of the foregoing, the Port and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical, and other systems and to enter upon the Licensed Property at all times to make repairs, replacements, or alterations thereto that may, in the opinion of the Port, be deemed necessary or advisable and from time to time to construct or install over, in, or under the Licensed Property the systems or parts thereof and, in connection with maintenance, use the Licensed Property for access to other parts in and around the Licensed Property; provided that in the exercise of the right of access, repair, alteration, or new construction, the Port shall not unreasonably interfere with the use of the Licensed Property by Licensee in accordance with the terms of this Agreement.

18. This Agreement may be terminated by a notice given of at least 30 days written notice by either party; however, if the 30-day expiration date falls into the following calendar month, the expiration date will expire on the last day of that calendar month, or such earlier date of termination pursuant to the terms of this Lease. No partial rent is eligible for return or credit.

19. If Licensee's structure(s) is destroyed or if Licensee demolishes the structure(s), this Agreement shall automatically terminate, and Licensee shall not have the right to rebuild any portion of the Encroachment Improvements in the Encroachment Area. If the portion of the Licensee's structure(s) located in the Encroachment Area is damaged and Licensee does not repair such damage within one (1) year after the occurrence of the damage, this Agreement shall automatically terminate.

20. The Port and Licensee agree that the Port may record this Agreement in the county in which the Licensed Property is located. The Port and Licensee shall execute, simultaneously with the execution of this Agreement, a termination of this Agreement ("Termination") in the form attached hereto as Exhibit C and such other instruments required to record the Termination, which shall be held by the Port pending termination of this Agreement for any reason. Upon any such termination, the Port shall record the Termination in the county in which the Licensed Property is located, without any further action by or agreement from Licensee.

21. Upon termination of this Agreement, the license granted herein shall cease and Licensee, at Licensee's expense and if requested by the Port, promptly shall remove from the Licensed Property any and all improvements made to the Licensed Property by Licensee, stored materials, and other personal property, leaving the Licensed Property in a neat, safe, and clean condition. If Licensee fails to perform its obligations under this section, the Port may perform such work at the expense of Licensee and Licensee shall pay the Port for such work, on demand. In the Port's sole discretion, any improvements, materials, and personal property left on the Licensed Property shall become the property of the Port.

22. Licensee shall not assign this Agreement or Licensee's rights and obligations under this Agreement.

23. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth in the introductory paragraph of this Agreement or such other address as either party may designate in writing to the other party. Any notice given by certified mail shall be deemed to be received on the third business day after the date of mailing.

24. This Agreement shall be construed in accordance with and be governed by the laws of the State of Oregon. Venue for any proceeding at law or in equity shall be Tillamook County, Oregon and the parties hereby waive any right to object to venue.

25. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective.

26. If any action is instituted to interpret or enforce the terms of this Agreement, or otherwise with respect to the subject matter of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorney fees and other court and direct costs incurred in connection with such action or proceeding and any appeal or review thereof.

27. This Agreement constitutes the entire agreement between the parties concerning the subject matter of the Agreement and supersedes all prior negotiations, understandings, and agreements between the parties concerning those matters. This Agreement shall be interpreted, applied, and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its terms. No term of this Agreement may be waived or modified except by a writing signed by the party against whom the waiver or modification is sought to be enforced. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument. The terms of this Agreement are binding upon and inure to the benefit of the parties' successors and permitted assigns.

(Remaining page left blank intentionally)

(Signatures and Acknowledgments on following page)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**PORT
PORT OF TILLAMOOK BAY**

By: _____

Name: Michele Bradley
Title: General Manager

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20____, by
_____ as General Manager of the Port of Tillamook Bay.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

**LICENSEE
CITY OF WHEELER**

By: _____

Name: _____

Title: City Manager

STATE OF _____)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20____, by
_____ as Licensee.

NOTARY PUBLIC FOR _____
My Commission Expires: _____

Exhibit C
Termination

AFTER RECORDING RETURN TO:

Port of Tillamook Bay
4000 Blimp Blvd Ste 100
Tillamook OR 97141-9695

This space is reserved for recorder's use.

TERMINATION OF LICENSE AGREEMENT

Reference is made to that certain License Agreement (the "License Agreement") dated _____, 20____, between the Port of Tillamook Bay ("Licensor") and _____ ("Licensee"), which was recorded on _____, 20____, as Instrument No. _____ in the real estate records of _____ County, Oregon and affects the real property described on Exhibit A attached hereto.

The License Agreement has terminated. This Termination of License Agreement is being executed and recorded solely to give notice that the License Agreement has terminated and to release the License Agreement of record.

(Remaining page left blank intentionally)

(Signatures and Acknowledgments on following page)

IN WITNESS WHEREOF, the parties have executed this Termination of License Agreement as of the dates set forth below.

PORT

PORT OF TILLAMOOK BAY

By: _____

Name: Michele Bradley
Title: General Manager

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20____, by _____ as General Manager of the Port of Tillamook Bay.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

LICENSEE
CITY OF WHEELER

By: _____

Name: _____

Title: City Manager

STATE OF _____)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20____, by _____ as Licensee.

NOTARY PUBLIC FOR _____
My Commission Expires: _____

POTB Railroad MP 833.11 – 832.84 Encroachment

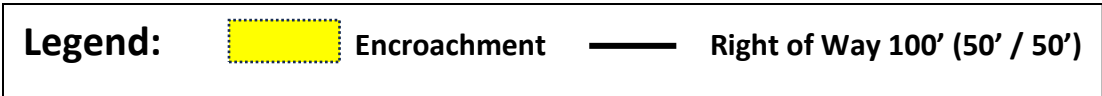
City of Wheeler – Gregory St. to Hemlock St.

EXHIBIT A



Legend:

- Map and Tax Lot #2N1002BC03900
- Encroachment
- Right of Way 100' (50' / 50')



POTB Railroad MP 833.11 – 832.84 Encroachment

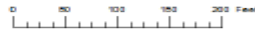
City of Wheeler – Gregory St. to Hemlock St.

EXHIBIT A



Legend: Encroachment Right of Way 100' (50' / 50')

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY



S.W. 1/4 N.W. 1/4 SEC. 2 T. 2N. R. 10W. W.M.
TILLAMOOK COUNTY

02N10W02BC
WHEELER





PORT OF TILLAMOOK BAY RAILROAD
 USE OF PROPERTY – FEE SCHEDULE
 Revised September, 2022

EXHIBIT B

One Time Preparation Fees

New Permit	\$300.00
Recording at County.....	at cost
Legal Description as required.....	at cost
Amend Existing Permit.....	\$100.00
New Permit – Cell Phone Tower*.....	\$2,500.00
New Permit – Fiber Optic*.....	\$2,500.00
New Permit – Utility*	\$2,500.00

*Applicant may be required to cover Port legal fees

One Time Inspection Fee

Actual Time (one hour minimum, if needed) per hour.....	\$100.00
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Annual Crossing Fees

Utility Line Crossing

Water/Sewer.....	\$300.00
Phone.....	\$400.00
Electrical (single service line).....	\$600.00
Fiber Optic.....	\$2,000.00

Private Road Crossing

Residential/Farm.....	\$125.00
Commercial/Industrial.....	\$300.00
Road Access.....	\$200.00

Property Use Fees (minimum \$50/year) - Annual unless marked

Residential/Farm-per sq. ft.....	\$0.50
Commercial/Industrial/Utility – per sq. ft.....	\$0.50
Signs (<25 sq. ft.).....	\$200.00
Signs (25-50 sq. ft.).....	\$300.00
Signs (51-100 sq. ft.).....	\$400.00
Signs (101-250 sq. ft.).....	\$750.00
Signs (> 250 sq. ft.).....	\$1,000.00
Cell Phone Tower (footprint <130 sf) monthly.....	\$1,200.00
Cell Phone Tower (footprint >130 sf) monthly.....	\$1,500.00



PORT OF TILLAMOOK BAY RAILROAD
USE OF PROPERTY – FEE SCHEDULE
Revised September, 2022

EXHIBIT B

Property Use Fees (minimum \$50/year) - Annual unless marked

Other Utility Tower (footprint <130 sf).....	\$4,500.00
Other Utility Tower (footprint >130 sf).....	\$7,500.00
Utility Line (per lineal foot; included 2-foot minimum).....	\$0.30
Fiber Optic Utility Line (per lineal foot, including 2-foot minimum width).....	\$0.75

NOTE: Underground Utility Encroachment minimum width shall be two (2) feet.
Additional width is negotiable per two-foot width increments.

NOTE: Fees are non-refundable

NOTE: The Port of Tillamook Bay Railroad reserves the right to waive any fees.

NOTE: RR Right of Way – Lineal foot uses must be reviewed by the Board.

NOTE: Requests for one-time payment in lieu of Fee Schedule shall be calculated as a 99-year lease with a COLI annual escalation rate (3% in 2022, subject to adjustment).

The above rates may be reviewed and adjusted by the Board of Commissioners at any time.