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May 31, 2018

245858

ENTERED
Office of Proceedings
May 31, 2018
Part of
Public Record

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

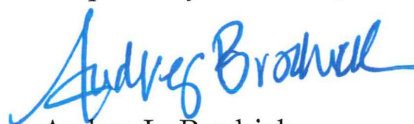
Re: **Docket No. FD 36199**
Oregon International Port of Coos Bay and Coos Bay Rail Line, Inc.--
Intra-Corporate Family Transaction Exemption

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Oregon International Port of Coos Bay and Coos Bay Rail Line, Inc. Pursuant to 49 C.F.R. § 1180.2(d)(2)**, dated May 31, 2018. A check in the amount of \$1,500, representing the appropriate fee for this filing, was delivered to your office yesterday by overnight courier.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,



Audrey L. Brodrick
Attorney for International Port of Coos Bay and
Coos Bay Rail Line, Inc.

FEE RECEIVED
May 31, 2018
SURFACE
TRANSPORTATION BOARD

ALB:dg

Attachment

FILED
May 31, 2018
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36199

OREGON INTERNATIONAL PORT OF COOS BAY AND
COOS BAY RAIL LINE, INC. –
INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

Audrey L. Brodrick
Robert A. Wimbish
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312-252-1500 Telephone
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**ATTORNEYS FOR OREGON INTERNATIONAL
PORT OF COOS BAY AND COOS BAY RAIL
LINE, INC.**

Dated: May 31, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36199

OREGON INTERNATIONAL PORT OF COOS BAY AND
COOS BAY RAIL LINE, INC. –
INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

Oregon International Port of Coos Bay (the “Port”) and Coos Bay Rail Line, Inc. (“Coos Rail”) (collectively, the “Parties”) hereby invoke the Surface Transportation Board’s (the “Board”) class exemption at 49 C.F.R. § 1180.2(d)(3) in connection with a transaction within a corporate family. The subject transaction entails a proposed rail line lease to from the Port to its subsidiary, Coos Rail, permitting Coos Rail to commence operations over Port-owned railroad lines. In support of this notice of exemption and in compliance with 49 C.F.R. § 1180.4(g), the Parties provide the following information:

49 C.F.R. § 1180.6(a)(1)(i) – Description of Transaction and Parties Thereto

a. Description of Transaction

The Port is a rail common carrier by virtue of its ownership of certain interconnected railroad lines extending generally from Eugene, Oregon, westward and southward to Coquille, Oregon, via Coos Bay, Oregon, a total of roughly 133 route miles. Specifically, the lines in question (hereinafter, collectively, the “Line”) extend from milepost 652.114 at Danebo, Oregon, to

milepost 763.13 at Cordes, Oregon; and from milepost 761.13 at Cordes to milepost 785.5 at Coquille. The Port acquired portions of the Line at separate times via appropriate Board processes.¹

The Line is currently operated by Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link (“CBRL”) pursuant to a lease agreement with the Port.² The parent company of CBRL has advised the Port that it no longer wishes to operate the line, and the Port has sent CBRL a letter inviting them to cure breach of contract issues. Under the circumstances, the Port has begun to contemplate assuming operation of the Line in place of CBRL. But the Port, as constituted, does not desire to become an operating common carrier itself, due to the potential regulatory, tax and other commercial and legal ramifications that may flow from its assumption of operations. Instead, the Port has created Coos Rail as a public benefit corporation under the control of the Port for purposes of assuming operations over the Line in place of the Port. Under the Port’s proposal, the Port would retain ownership of the Line, but common carrier service would be provided by Coos Rail, either jointly with CBRL (if necessary) or in place of CBRL as circumstances may dictate.³

¹ Oregon International Port of Coos Bay – Acquisition Exemption – Rail Line of Union Pacific Railroad Company in Coos County, Or., Docket No. FD 35385 (STB served Jul. 9, 2010); Oregon International Port of Coos Bay – Feeder Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc., Docket No. FD 35160 (STB served Oct. 31, 2008; modified Mar. 12, 2009).

² Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link – Operation Exemption – Line of Railroad owned by the Oregon International Port of Coos Bay, Docket No. FD 35551 (STB served Sep. 14, 2011).

³ The Port would prefer an orderly and cooperative transition from CBRL to Coos Rail, but such a transition is not yet assured. The Port may deem it necessary or appropriate, in the event of a continuing contract dispute with CBRL, to permit Coos Rail to assume operations over the Line pending the transfer or termination of CBRL’s common carrier status. The Parties therefore seek exemption authority for the subject transaction to enable Coos Rail to commence operations, potentially jointly with CBRL, on short notice (on after June 1, 2018) in the event that CBRL is no longer contractually entitled to operate over the Port’s Line.

Pursuant to 49 C.F.R. § 1180.2(d)(3), the Parties hereby invoke the Board's class exemption procedures for a transaction within the corporate family involving the conveyance of a leasehold interest from the Port to its subsidiary corporation (Coos Bay), enabling Coos Bay to commence operations over its parent entity's Line. The subject transaction, involving the division of rail line ownership and rail line operation among related entities, qualifies for a class exemption and is consistent with agency precedent.⁴

b. Names, Addresses, and Phone Numbers of Involved Parties

OREGON INTERNATIONAL
PORT OF COOS BAY
125 W Central Avenue
Suite 300
Coos Bay, OR 97420
Phone: 541-267-7678

COOS BAY RAIL LINE, INC.
125 W Central Avenue
Suite 300
Coos Bay, OR 97420
Phone: 541-267-7678

c. Name of Counsel to Whom Questions Can Be Addressed

Correspondence with respect to this verified notice of exemption should be addressed to:

Audrey L. Brodrick
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
Tel: (312) 252-1500
Fax: (312) 252-2400

⁴ See, e.g., Housatonic Railroad Company, Inc., Maybrook Railroad Company, and Housatonic Transportation Company – Intra-Corporate Family Transaction Exemption, STB Docket No. FD FD 35723 (STB served Mar. 22, 2013); Nicholas B. Temple, Eric Temple, Columbia Basin Railroad Company, Central Washington Railroad Company and Portland Vancouver Junction Railroad, LLC – Corporate Family Transaction Exemption, Docket No. FD 35210 (STB served Jan. 16, 2009); Pioneer Railcorp and Michigan Southern Railroad Company – Corporate Family Transaction Exemption, Docket No. FD 33941 (STB served Oct. 10, 2000).

49 C.F.R. § 1180.6 (a)(1)(ii) – Consummation Schedule

The Parties anticipate that the subject exemption will take effect as of June 30, 2018.

The Parties propose to consummate the proposed transaction – the lease of the Port’s lines to Coos Rail and Coos Rail’s commencement of common carrier operations pursuant thereto – on or after June 30, 2018, as circumstances warrant.

49 C.F.R. § 1180.6(a)(1)(iii) – Purpose of the Transaction

The purpose of this transaction is to facilitate a transition in operations from CBRL to Coos Rail, enabling the Port to take the operation of its Line “in house,” albeit by way of a Port-controlled corporate subsidiary designated to assume the specific role of functioning as an operating rail common carrier in place of the Port. The transaction will permit the Port to take common carrier operations in house quickly (if necessary), and it also will serve to limit the Port’s exposure to rail safety, taxation and legal regimes generally applicable to operating common carriers (as opposed to those that own rail lines as common carriers, but who contract with others to provide common carrier operations through lease arrangements and operating agreements). The result will be that a discrete corporate subdivision of the Port will be entrusted, and vested with the requisite regulatory authority and contractual rights, to handle the business of running the Line as ancillary to the Port’s primary functions.

49 C.F.R. §1180.6(a)(5) – List of States in Which the Parties’ Property is Located

The Line (as described above) is located entirely in the State of Oregon.

49 C.F.R. § 1180.6(a)(6) – Map (Exhibit A)

A map of the Line is attached as Exhibit A.

49 C.F.R. § 1180.6(a)(7)(ii) – Agreement (Exhibit B)

The proposed merger transaction will be governed by an as-yet-unexecuted lease agreement. A draft copy of the draft agreement is attached as Exhibit B.

49 C.F.R. § 1180.4(g)(1)(i) – Level of Labor Protection

Because the proposed transaction involves only a Class III carrier (the Port) and a commonly-controlled non-carrier that would become a Class III carrier (Coos Rail), the employee protective provisions of 49 U.S.C. § 11326 do not apply. See 49 U.S.C. § 11326(c).

49 C.F.R. § 1180.4(g)(4) – Interchange Commitments

The Parties hereby certify that the proposed transaction and underlying lease agreement do *not* involve or contain any provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means.

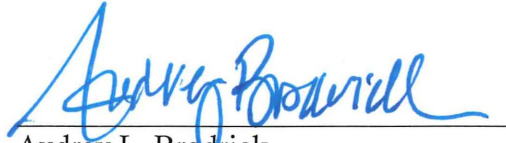
49 C.F.R. § 1105.6 through 1105.8 – Environmental and Historic Report

The proposed transaction will not result in material changes to the operations on the Line (i.e., changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5)). Accordingly, the transaction is exempt from the requirement to provide environmental documentation pursuant to 49 C.F.R. §§ 1105.6(c)(2) and (4).

Because rail operations will continue, separate Board approval would be required if Coos Rail were at some future date to discontinue operations or if the Port were to seek to abandon any portion of the Line (or all of it). Furthermore, there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Hence, pursuant

to 49 C.F.R. §1105.8(b)(2-3), the transaction is exempt from historic preservation reporting requirements.

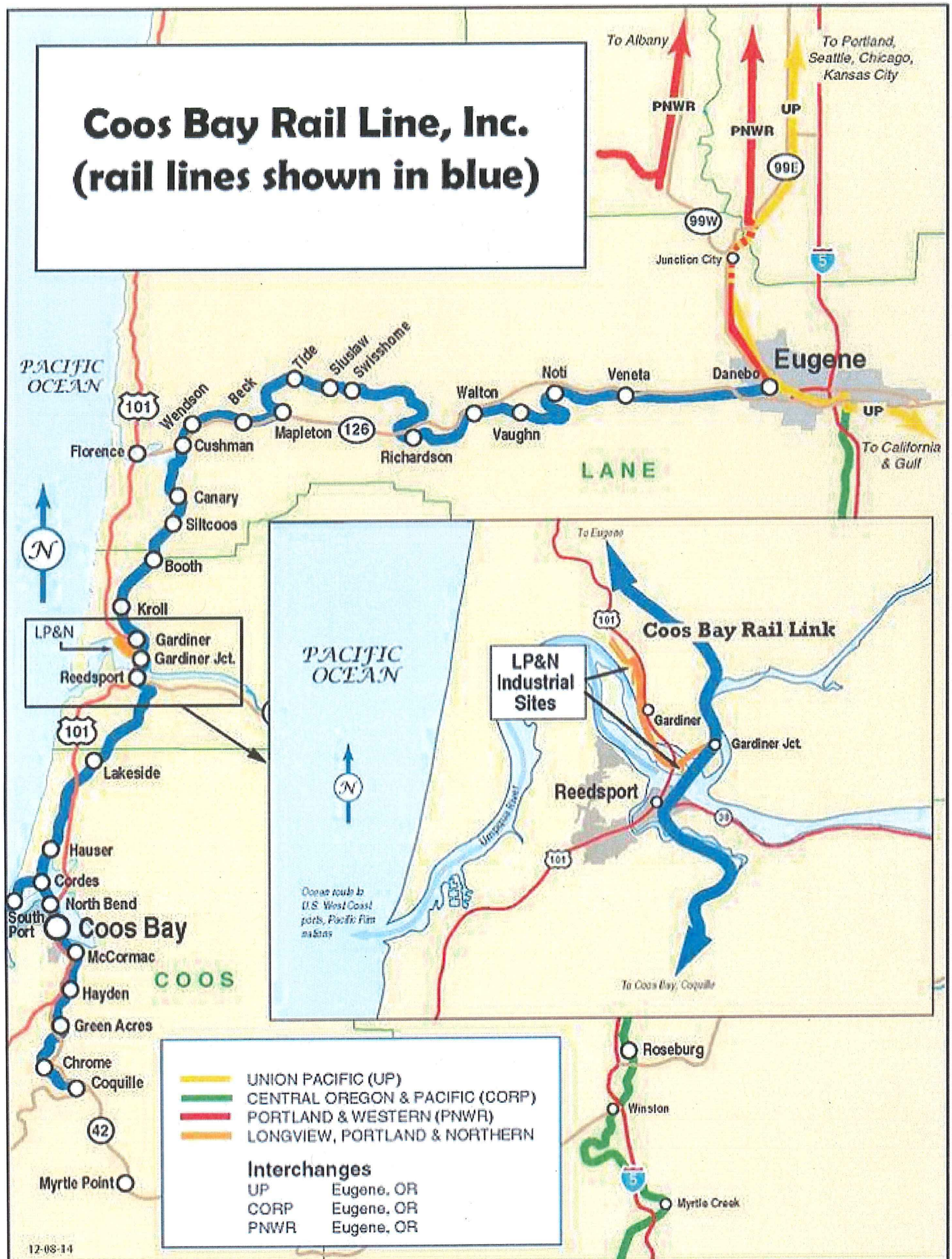
Respectfully submitted this 31st day of May, 2018



Audrey L. Brodrick
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29 North Wacker Drive
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Chicago, IL 60606-2832
Tel: (312) 252-1500
Fax: (312) 252-2400

**ATTORNEY FOR OREGON INTERNATIONAL PORT OF
COOS BAY AND COOS BAY RAIL LINE, INC.**

Coos Bay Rail Line, Inc. (rail lines shown in blue)



RAIL LINE LEASE

This Rail Line Lease (this “**Lease**”) is made and entered into effective as of this ____ day of _____, 2018 (the “**Effective Date**”), by and between Oregon International Port of Coos Bay, an instrumentality of the State of Oregon (“**Port**”) and Coos Bay Rail Line, Inc., an Oregon nonprofit corporation (“**Coos Rail**”). The Port and Coos Rail are each sometimes referred to individually herein as a “**Party**”, and are sometimes collectively referred to herein as the “**Parties**”.

RECITALS

A. The Port owns certain interconnected railroad lines extending generally from Eugene, Oregon, westward and southward to Coquille, Oregon, via Coos Bay, Oregon, a total of roughly 133 route miles (the “**Line**”). The Line extends from milepost 652.114 at Danebo, Oregon, to milepost 763.13 at Cordes, Oregon, and from milepost 761.13 at Cordes to milepost 785.5 at Coquille. The Line includes tracks and certain other facilities and infrastructure related to the operation of the Line.

B. The Port created Coos Rail as a public benefit corporation for purposes of leasing the Line and operating common carrier service over the Line and activities associated therewith.

C. The Port desires to grant to Coos Rail a leasehold interest in the Line for the purpose of operation of common carrier service over the Line, and Coos Rail desires to accept such leasehold interest from the Port.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are both hereby agreed upon and acknowledged by the Parties, the Parties agree as follows:

1. **LEASE OF THE LINE.**

1.1 **Grant.** The Port leases the Line to Coos Rail and Coos Rail leases the Line from the Port, subject to the terms and provisions of this Lease.

1.2 **Condition of the Line.** The Line is leased on an “AS-IS” basis, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE. The Port does not guarantee the condition of the Line or that operation thereover will not be interrupted, and will not have any liability to Coos Rail whatsoever arising from the condition of the Line or Coos Rail’s ability to operate thereover.

1.3 **Non-Exclusive Use.** The Port reserves the right to allow one or more additional operators to operate over the Line. In such event, Coos Rail shall cooperate with the Port and any other operator to ensure the efficient operation of common carrier services over the Line.

2. **TERM.**

2.1 **Lease Term.** The term of this Lease (the “**Lease Term**”) shall commence on the Effective Date (the “**Commencement Date**”) and continue through and including the final day

of the two hundred fortieth (240th) full calendar month after the Commencement Date (the “**Expiration Date**”).

2.2 Option to Renew.

2.2.1 Grant of Option. The Port hereby grants to Coos Rail the option to renew this Lease for four (4) additional terms (each, a “Renewal Term”) of five (5) years each. If this option is exercised, references in the Lease to the Lease Term shall include the Renewal Term.

2.2.2 Exercise. Coos Rail must exercise the option to renew, if at all, by giving the Port written notice of such exercise not less than thirty (30) days prior to expiration of the then current Term. Upon exercise of the option to renew, the Lease Term shall be extended through the expiration date of the applicable Renewal Term on the same terms and conditions as contained herein, except that there shall be no further right to renew the Lease Term beyond the four (4) Renewal Terms.

2.2.3 Amendment to Lease. If Coos Rail exercises the option to renew this Lease, the Port and Coos Rail shall execute and deliver an amendment to this Lease setting forth such fact and other terms and provisions relevant to the Renewal Term, as reasonably determined by the Port.

3. COMPENSATION; PAYMENT. Coos Rail shall pay certain operating fees (“**Operating Fees**”) for use of the Line as set forth in Exhibit A (the “**Fee Schedule**”), which is attached hereto and incorporated herein. The Fee Schedule may be amended from time to time by agreement of the Parties. All payments required to be made pursuant to this Lease shall be paid on the date specified for payment or, if no date is specified for payment, then thirty (30) days after receipt of an invoice by the Party that is obligated to pay such amount.

4. USE.

4.1 General.

4.1.1 Operation. Coos Rail shall use the Line solely for the purpose of operating common carrier service over the Line and activities associated therewith. Coos Rail shall, at Coos Rail’s expense, comply with all laws and requirements of public authorities relating to Coos Rail’s use of and operation over the Line and shall cause the Line to comply with all such laws and legal requirements. Coos Rail shall also comply with all rules, requirements, procedures, and policies of the Port with respect to the Line, as they may be adopted, promulgated, amended, or modified from time to time, and with applicable industry standards. Coos Rail will maintain the Line throughout the Lease Term in good and safe condition and repair and in the condition reasonably necessary for the safe, reasonable, and efficient operation of common carrier service over the Line.

4.1.2 Licenses. If any governmental license or permit is required for the proper and lawful operation of the Line, Coos Rail, at its expense, shall procure, maintain and comply with the terms and conditions of each such license and permit.

4.1.3 Covenants and Restrictions. Coos Rail shall comply with all recorded covenants and restrictions applicable to the Line.

4.2 Negative Covenants as to Use. Coos Rail shall not at any time use the Line for, or suffer or permit anyone to use the Line for, or permit anything to be done with respect to the Line, in any manner which: (a) constitutes a violation of law or requirements of any government, the requirements of insurance bodies, industry standards, or the rules, regulations, policies, and procedures of the Port; (b) violates or many violate any covenant, condition, restriction, agreement, encumbrance or other matter of record to which the Line is or may be subject; or (c) violates the provisions of this Lease. Coos Rail shall not at any time use the Line in a manner that would adversely change service levels existing on the Effective Date, significantly change the manner of operation of the Line, or change the competitive balance with operators other than Coos Rail.

5. PROVISION OF PERSONNEL AND EQUIPMENT. Coos Rail shall be responsible to provide any and all personnel, equipment, and facilities required for the safe and reasonable operation and maintenance of the Line in the manner contemplated by this Agreement.

6. REPAIRS AND MAINTENANCE; IMPROVEMENTS.

6.1 Repair and Maintenance. Coos Rail shall, at its sole expense, maintain the Line and make all repairs and replacements needed to keep the Line in good and safe condition and in the condition reasonably necessary for the safe and reasonable operation of common carrier services over the Line in accordance with applicable laws and industry standards and the Port's applicable rules, regulations, procedures, and policies, and shall indemnify the Port. Any portion of the Line that does not presently comply with applicable laws and/or with the Port's applicable rules, regulations, procedures, and policies shall be improved to a condition that complies with such laws, rules, regulations, procedures, and policies within a reasonable period of time after the Effective Date. Coos Rail shall be responsible for all repairs, maintenance and replacement of the Line. The Port reserves the right to elect to perform any or all of these obligations of Coos Rail from time to time and to be reimbursed all costs of such performance within thirty (30) days of request.

6.2 Improvements. Coos Rail shall have the right, but not the obligation, to make, at its own expense and without notice to or consent of the Port, improvements to the Line that support its use of and operation over the Line. Such improvements shall automatically become the property of the Port upon the expiration or termination of this Lease.

7. NON-TRANSFERABILITY BY COOS RAIL.

7.1 Restriction. It is the Parties' intention that Coos Rail operate over the Line and, accordingly, that Coos Rail will not transfer its rights under this Lease or allow third parties to operate over the Line, but the Parties acknowledge that it may be necessary or desirable for the efficient operation of the Line to provide limited rights to third parties with respect to the Line. To that end, Coos Rail shall not, directly or indirectly, voluntarily or by operation of law, assign, sell, convey, sublet or otherwise transfer all or any part of Coos Rail's right or interest in this Lease, or allow any other person or entity to occupy or use or operate over all or any part of the

Line (collectively called "Transfer") without first obtaining the written consent of the Port which may be withheld or conditioned by the Port in its sole discretion, but the Port shall consider any Transfer request in good faith. Any Transfer without the prior written consent of the Port shall be void and shall, at the election of the Port, be a default. In the event that the Port approves a Transfer, the Transfer shall be documented using transfer documentation acceptable to the Port, in the Port's sole discretion.

7.2 No Release. Regardless of whether consent by the Port is granted in connection with any Transfer, no Transfer shall release Coos Rail from any obligation or liability hereunder; Coos Rail shall remain primarily liable to pay all rent and other sums due hereunder to the Port and to perform all other obligations hereunder.

7.3 Encumbrance. In no event shall Coos Rail mortgage, encumber, pledge or assign for security purposes all or any part of its interest in this Lease.

8. INSURANCE; LIABILITY; INDEMNITY.

8.1 Coos Rail Insurance. Coos Rail agrees to maintain in full force and effect at all times following execution of this Lease at its sole cost and expense, for the protection of Coos Rail and the Port, the insurance described in Exhibit B, which is attached hereto and incorporated herein.

8.2 Subrogation. Without limiting the effect of any other waiver of or limitation on the liability of the Port set forth herein, neither the Port nor Coos Rail shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) for any loss of or damage to real or tangible property of the other party, regardless of negligence. For purposes of this Section, "The Port" shall include the Port and the Port's affiliates (other than Coos Rail), subsidiaries (other than Coos Rail), and all officers, partners, owners, trustees, directors, agents and employees of the same.

8.3 Waiver and Indemnification. Coos Rail waives all claims against the Port for any damage to any property arising from, in connection with or related to the Line, for any loss of business or income, and for injury to or death of any persons arising from, in connection with, or related to the Line, regardless of the cause of any such loss or event (including negligence). Coos Rail will indemnify, protect, defend and hold harmless the Port for, regarding, from and against all claims, losses, damages, causes of action, and liabilities, including all related costs and legal fees, regardless of cause (including negligence), (a) arising on or about the Line, (b) arising from Coos Rail's use of and operation over the Line or the conduct of Coos Rail's business, (c) arising from any default by Coos Rail, and/or (d) arising from any act, omission or neglect of Coos Rail, its agents, contractors, employees, suppliers, licensees or invitees. In the event any action or proceeding is brought against the Port by reason of the foregoing, Coos Rail, upon notice by the Port, will defend the Port at Coos Rail's sole cost and expense and by counsel reasonably satisfactory to the Port. For purposes of this Section 11.5, "The Port" shall include the Port and the Port's affiliates (other than Coos Rail), subsidiaries (other than Coos Rail), and all officers, partners, owners, trustees, directors, agents and employees of the same.

9. DAMAGE OR DESTRUCTION.

9.1 Restoration. If the Line is damaged or destroyed by fire or other casualty, Coos Rail will immediately give written notice to the Port of the casualty and return the Line to a safe, secure and stable condition as soon as reasonably possible. Unless Coos Rail and the Port mutually agree in writing to terminate this Lease, this Lease will remain in full force and effect, and Coos Rail will obtain all necessary permits and approvals, and upon receipt thereof, diligently repair and restore the Line to its prior condition, but in all events in conformity with then current laws and industry standards and with then current rules, regulations, policies, and procedures of the Port. Coos Rail shall complete such work diligently and promptly.

10. ACCESS TO THE LINE.

The Port shall have access to the Line upon twenty-four (24) hours prior oral or written notice to Coos Rail to inspect the same, to carry out its rights and obligations hereunder, or for any other purpose related to its ownership. No such notice shall be required in the event of an emergency. Coos Rail waives any claim against the Port arising from any entry permitted by this Section or the conduct of any such activities by the Port.

11. EVENTS OF DEFAULT.

11.1 Performance. Performance by Coos Rail of each of its obligations under this Lease is a condition as well as a covenant. Coos Rail's right to possession of the Line is conditioned upon such performance.

11.2 Default. Coos Rail will be in default if any of the following events occurs:

(a) Coos Rail fails to pay to the Port any Operating Fee within ten (10) days following written notice from the Port.

(b) Coos Rail fails to observe, perform or comply with any other provision of this Lease and such failure continues for thirty (30) days following written notice from the Port.

12. REMEDIES UPON DEFAULT.

12.1 Remedies. Upon a default, with or without notice or demand, and without limiting any of the other rights or remedies of the Port, the Port may terminate this Lease by notice to Coos Rail. The Port shall have the right to self-help repossession of the Line by entry and/or changing of locks. Coos Rail hereby grants the Port the full and free right to enter the Line with or without process of law. Any eviction of Coos Rail shall be governed by the process set forth in the Forcible Entry and Wrongful Detainer statutes set forth in ORS 105.105 et seq., or any successor statute, as the same may be amended, notwithstanding that all or part of any such statute may not otherwise apply to nonresidential space. Coos Rail releases the Port of any liability for any damage resulting from, and waives any right to claim damage for any such entry, repossession and/or changing of locks. On termination of this Lease the Port shall be entitled to recover from Coos Rail any other amount necessary to compensate the Port for all the detriment proximately caused by Coos Rail's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to

(A) all costs and expenses attributable to recovering possession of the Line, (B) expenses of procuring a different operator (including the costs and expenses of any necessary repairs, renovations and alterations to the Line), and (C) actual legal fees and associated costs and expenses; plus, at the Port's election, any other amounts in addition to or in lieu of the foregoing, as may be permitted from time to time by applicable law.

(a) Continue the Lease and Coos Rail's right to possession and recover amounts due under this Lease as they becomes due. Acts of maintenance or preservation, efforts to procure a substitute operator for the Line, removal or storage of Coos Rail's personal property or the appointment of a receiver to protect the Port's interest under this Lease, will not constitute a termination of Coos Rail's right to possession. The Port may sue periodically for damages as they accrue without barring subsequent actions for damages.

(b) Pursue any other remedy now or hereafter available to the Port under the laws of the state of Oregon, including equitable remedies.

12.2 No Release. The expiration or termination of this Lease, and/or the termination of Coos Rail's right to possession, will not relieve Coos Rail from any liability. Any efforts by the Port to mitigate damages will not waive the right to recover damages or any other right.

12.3 Additional Remedies. No right or remedy conferred upon or reserved to the Port in this Lease is intended to be exclusive of any other right or remedy of the Port hereunder or under applicable law.

13. DEFAULT BY THE PORT.

13.1 Notice. In the event the Port fails to perform any obligation required to be performed under this Lease, Coos Rail will notify the Port in writing of such failure at the Port's Address for Notices as specified in Section 15.1 below. The Port shall not be deemed in default hereunder unless and until such notice is actually received by the Port, and the Port then fails within thirty (30) days of receipt of such notice to commence to make a good faith effort to cure the failure or thereafter ceases to pursue such cure to completion.

13.2 Liability. The obligations of the Port under this Lease shall be binding only on the Port and not upon any of its subsidiaries or affiliates, nor upon any partners, owners, trustees, directors, officers, employees, or agents of the same in their individual capacities. With respect to any obligations of the Port to Coos Rail under this Lease, Coos Rail's sole and exclusive remedy shall be a claim against the Port. Any claims by either Party against the other Party will be limited to actual damages only and will not, under any circumstances, include lost profits, consequential damages, or punitive damages.

14. FORCE MAJEURE. Neither Party will be deemed in default or have liability to the other Party because of such Party's failure to perform any of its obligations under this Lease if the failure is due in whole or part to reasons beyond such non-performing Party's reasonable control. Such reasons include but are not limited to strike or other labor trouble, utility failure or defect, the inability to obtain or delay in obtaining, any governmental permit or approval (including building permits and certificates of occupancy), war, riot, mandatory or prohibitive injunction, civil insurrection, terrorism, accidents, acts of God, any governmental preemption in connection

with a national emergency, or any other cause, whether similar or dissimilar, which is beyond the reasonable control of the non-performing Party. If this Lease specifies a time period for performance of an obligation by a Party, such time period will be extended by the period of any delay in such non-performing Party's performance caused by such a cause beyond such non-performing Party's reasonable control.

15. MISCELLANEOUS.

15.1 Notices. Any notice, demand, request, or other communication (collectively referred to in this Section 24.1 as a "notice") required or permitted to be given or made by either party to the other pursuant to this Lease shall be in writing and shall be delivered to the other party by delivery service (including by overnight delivery service such as Federal Express) or sent postage prepaid by registered or certified U.S. mail (but if an address is a post office box, then by regular U.S. mail), addressed to the party at its Address(es) for Notice set forth below in this Section 15.1 or such other address as may be designated by such party by written notice hereunder. Notices shall be deemed given and shall be effective on the date of delivery or, if mailed, two (2) business days following the date of mailing.

The Port:

Attn: _____

Coos Rail:

Attn: _____

15.2 Time. Time is of the essence of this Lease.

15.3 Governing Law. This Lease shall be governed by the law of the state of Oregon.

15.4 Severability. If any provision contained herein is determined to be invalid, illegal or unenforceable in any respect, then (a) such provision shall be enforced to the fullest extent allowed, and (b) such invalidity, illegality, or unenforceability will not affect any other provision of this Lease.

15.5 Entire Agreement; Representations. All understandings and agreements between the parties are merged in this Lease which alone fully and completely expresses the agreement of the parties. Coos Rail is not relying upon any statement or representation which is not set forth in this Lease. This Lease supersedes all previous negotiations, lease drafts, letters, statements, brochures, estimates, and understandings by or between the parties. This Lease may be amended only by a written instrument setting forth the amendment that is executed and delivered by both parties.

15.6 Successors and Assigns. Except as otherwise expressly provided in this Lease, and without diminishing the provisions of Section 9 above, the provisions of this Lease bind and benefit the parties hereto and their respective successors and assigns.

15.7 Waivers. No provision of this Lease shall be deemed to have been waived by either Party unless such waiver is in writing signed by such Party. No custom or practice which may develop between the parties during the Lease Term shall waive or diminish either Party's right to enforce strict performance by the other Party of any terms of the Lease. No waiver by either Party of a failure or a default by the other Party of any term, covenant or condition of this Lease will be deemed a waiver of any other term, covenant or condition of this Lease, or of any subsequent failure or default by the other Party of the same or any other term, covenant or condition of this Lease. No delay or omission by either Party to seek a remedy for any default of this Lease by the other Party shall be deemed a waiver of such default or of the non-defaulting Party's remedies or rights with respect to such default.

15.8 Definitions; Rules of Construction.

(a) The captions and headings used throughout this Lease are for convenience of reference only and shall not affect the interpretation of this Lease.

(b) The singular includes the plural and the plural includes the singular.

(c) The rights and obligations of the parties under this Lease shall survive the expiration of this Lease and the termination of this Lease and/or of Coos Rail's right of possession.

(d) The duties and warranties of the Port are limited to those expressly stated in this Lease and do not and shall not include any implied duties or implied warranties, now or in the future. No representations or warranties have been made by the Port other than those contained in this Lease.

15.9 Surrender and Coos Rail Holdover. On the Expiration Date or other termination of this Lease or of Coos Rail's right of possession, Coos Rail shall quit and surrender the Line in good condition and repair, reasonable wear and tear excepted, with all of its repair obligations fulfilled. If Coos Rail fails to surrender the Line in accordance with this Lease on the Expiration Date or the date of any earlier termination, Coos Rail shall be liable to the Port for any and all damages caused by such failure, including damages related to any agreement by the Port to lease or sell the Line. The Port may terminate the holdover tenancy at any time upon written notice regardless of whether the Port has accepted rent with respect to any portion of the holdover period; Coos Rail waives any other notice that law may require with respect to such holdover tenancy.

15.10 Third Parties. There are no third party beneficiaries of any covenant contained in this Lease. Coos Rail agrees to cause its employees, invitees, agents and contractors to comply with all provisions of this Lease.

15.11 Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original. The counterparts shall constitute one and the same instrument.

15.12 Incorporation of Exhibits. All Exhibits referred to herein are attached to this Lease and by this reference made part hereof.

THE PORT:

Oregon International Port of Coos Bay,
an instrumentality of the State of Oregon

COOS RAIL:

Coos Bay Rail Line, Inc.,
an Oregon nonprofit corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT A
FEE SCHEDULE

(To be added.)

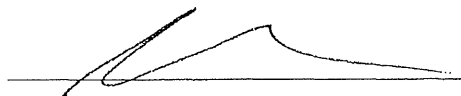
EXHIBIT B

INSURANCE REQUIREMENTS

(To be added.)

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, John Burns, declare under the penalty of perjury that I am authorized to make this verification on behalf of Coos Bay Rail Line, Inc., as a Director, and Oregon International Port of Coos Bay, as the Chief Executive Officer. I have read the foregoing intra-corporate family transaction notice of exemption, know the contents thereof, and attest that the same are true and correct to the best of my knowledge, information, and belief.



Date May 24, 2018