

Review of Agreements with Coos Bay Rail Line

1. District's principal rights

Underground water lines

The utility agreement authorizes the District to maintain its existing underground water lines at approximately:

- MP 702.99 — 8-inch line
- MP 703.5 — 3-inch line
- MP 703.7 — 3-inch line
- MP 703.8 — 8-inch line
- MP 704.61 — 3-inch line
- MP 705.2 — 12-inch line
- MP 705.55 — 3-inch line
- MP 705.6 — 3-inch line
- MP 706.1 — 3-inch line

The District receives these benefits:

- The license continues indefinitely unless terminated.
- The annual license fee is \$0.
- The Port waived the \$1,200 application fee and \$1,000 expedited-processing fee for each crossing.
- Material changes may be approved by the Port, and approval is stated not to be “unreasonably withheld.”
- Assignments may be approved by the Port, also subject to a stated reasonableness standard.
- The agreement acknowledges that the District asserts prescriptive-easement rights and says the license supplements whatever prescriptive rights the District may already possess.

Private road crossing

The road agreement authorizes the District to construct, maintain, and use a private roadway across the railroad at:

- MP 703.01
- Crossing ID 756463M
- 11419 Highway 36
- Access to the District's water treatment plant

The District receives:

- A right to use the crossing for private access.
- A \$0 annual fee.
- Waiver of the \$1,200 application and \$1,000 expedited-processing fees.
- The ability to use contractors, provided they comply with the agreement.
- A stated right to seek assignment approval, which the Port says will not be "arbitrarily withheld."
- Recognition that the District asserts a prescriptive easement over the roadway.

The road right is nonexclusive. The Port, its employees, agents, and other licensees may also use the roadway.

Prescriptive-easement position

Both agreements attempt to preserve the District's position that it already has prescriptive-easement rights. The Port expressly does not concede that such easements exist.

2. District's responsibilities for the water lines

The District must:

- Install and maintain all water-line facilities to the satisfaction of the Port's engineer.
- Obtain written Port approval before materially changing the physical or operational characteristics of a crossing.
- Obtain a separate Right of Entry Agreement before entering railroad property for installation, maintenance, renewal, modification, or removal work.
- Obtain another Right of Entry Agreement for renewals, changes, or additional construction.

- Provide an as-built survey if the Port requires one.
- Reimburse the Port within 30 days for engineering, technical, consulting, planning, negotiation, construction, inspection, relocation, operation, renewal, and related expenses.
- Bear all costs and risks of modifications.
- Prevent unauthorized third parties from using the licensed occupancy.
- Obtain Port approval before assigning or transferring the license and pay any transfer fees then in effect.
- Restore the railroad property after termination.
- Fund environmental studies, reports, cleanup, and mitigation if required by the Port.
- Use a Port-approved environmental consultant if an environmental review is required.

The Port is not responsible for damage to the District's water lines. It reserves the right to use the subsurface area and to enter the area occupied by the District's facilities for railroad construction and maintenance.

3. District's responsibilities for the roadway

The road agreement imposes substantial continuing maintenance obligations. At the District's expense, it must:

- Keep the roadway in a good and safe condition satisfactory to the Port in its sole discretion.
- Keep the roadway and rail flangeways free of rubbish, debris, and other material.
- Install and maintain roadway, whistle, and stop signs designated by the Port.
- Trim vegetation to preserve visibility for trains and vehicles.
- Install and maintain warning devices required by public authorities.
- Make roadway changes required by public authorities.
- Install and maintain drainage, barricades, gates, and fencing designated by the Port.
- Keep barricades and gates locked except while the roadway is actually being used.
- Ensure every vehicle stops before entering the crossing and determines that crossing is safe.

- Prevent District personnel, guests, contractors, tenants, and invitees from obstructing or interfering with trains.
- Reimburse the Port for expenses associated with these obligations, even if the Port elects to perform the work.
- Remove the roadway and restore the railroad property following termination.

The crossing is private and cannot be opened for general public use.

4. Work on railroad property

Before performing nonemergency work on or adjacent to railroad property, the District must generally:

- Give the Port five days' advance notice.
- Obtain written Port approval.
- Submit detailed plans and specifications acceptable to the Port.
- Obtain all governmental and third-party permits and approvals.
- Ensure contractors sign the railroad requirements and provide required insurance.
- Arrange and pay for railroad flagging and protective services.
- Notify the Port's general manager in writing when work is complete.
- Remove all equipment and materials.
- Restore disturbed property to its prior condition.

For emergency repairs, the District must make all reasonable efforts to notify the Port before beginning repairs.

Contractors and District personnel must comply with numerous railroad safety rules, including:

- Flagging when equipment crosses or works within 25 feet of a live track.
- Using only approved track-crossing locations and track-protection materials.
- Keeping materials and unattended equipment outside prescribed track clearances.
- Obtaining approval for dewatering and drainage work.
- Keeping bore pits at least 25 feet from the nearest track.

- Meeting minimum burial, casing, and construction specifications.
- Immediately stopping work for at least 48 hours if railroad operations are interfered with or property is damaged, if the Port demands it.

Flagging is billed at actual cost. Other specialized services are billed at the contractor's rate plus a 20% Port administrative fee.

5. Insurance responsibilities

For the utility license, the District must maintain:

- Commercial general liability insurance of at least \$2 million per occurrence and \$6 million aggregate.
- The Port and its officers, directors, and employees as additional insureds.
- Property insurance on District equipment and materials at full replacement value, with waiver of subrogation against the Port.
- Railroad protective liability insurance of \$2 million per occurrence and \$6 million aggregate before construction projects.
- At least ten days' advance notice to the Port of cancellation.
- Coverage from an Oregon-admitted insurer rated at least A, financial class 10, unless the Port accepts authorized self-insurance.

The Port may require higher liability limits comparable to its own coverage.

The roadway agreement has similar requirements for work. Contractors must also supply workers' compensation coverage and, where applicable, Federal Employers' Liability Act coverage.

6. Indemnity and liability exposure

The agreements require the District, to the extent legally permitted and subject to the Oregon Tort Claims Act, to defend, indemnify, and hold the Port harmless from claims arising from:

- District and contractor activities.
- Use of the water-line crossings or roadway.
- Injury, death, or property damage.
- Damage to railroad facilities.

- Interruption or delay of train service.
- Environmental releases.
- Breach of the agreements or applicable laws.

The roadway agreement requires the District to pay the Port's reasonable attorney fees if the Port retains counsel to enforce the agreement—even if no lawsuit is filed.

7. Termination risks

Utility license

The Port can terminate for an uncured default. The District generally receives:

- Written notice of default.
- Thirty days to cure.
- If the problem cannot reasonably be cured in 30 days, the opportunity to begin the cure within 30 days and diligently complete it.

The utility license automatically terminates if:

- The permitted use is materially changed without approval.
- The use ends.
- The facilities are permanently removed.

After termination, the District must remove its facilities and restore the property at its own expense. Environmental obligations survive termination.

Roadway license

The road agreement also contains a 30-day cure process. However, it separately says the Port may cancel by written notice whenever it determines, in its sole discretion, that the District is not complying.