

INFORMATION ITEM – P

DATE: March 11, 2021
RE: Harbor Sanitary District Agreement
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- Harbor Sanitary District Board approved the Hold Harmless Agreement in their last meeting. The Port will need to approve this agreement prior to HSD plumbing permit approval for the RV Park Restroom Restoration Project. Curry County Building & Safety will not review the plumbing permit until HSD signs off.
- Port legal counsel review the document and did not have any issues with the agreement. The agreement is basically saying that since the Port built “permanent” structures within the easement area (concrete pads, etc), that it will be the Port’s financial responsibility to repair those structures if HSD needs to disturb them to perform maintenance, repairs, etc. of the sewer line. Generally speaking, the owner of the property is not to make any improvements that interfere with the use of the easement. The original easement agreement only referred to HSD’s ability to remove bushes and trees.

DOCUMENTS

- Harbor Sanitary District and Port of Brookings Harbor Wavier of Liability, Hold Harmless and Release Agreement, 8 pages

Harbor Sanitary District



P.O. Box 2457
Brookings, OR 97415
(541) 469-5225
(541) 469-5646

March 9, 2021

Port of Brookings Harbor
Gary Dehlinger, Port Manager
P.O. Box 848
Brookings, OR 97415

Dear Gary,

Enclosed is a copy of the Harbor Sanitary District and Port of Brookings Harbor Waiver of Liability, Hold Harmless and Release Agreement including a copy of the original easement for the Port RV Park parcel. Please review the document and provide a copy to the Port Commissioners for their review and approval.

If you have any questions, please feel free to call me at 541-469-5225.

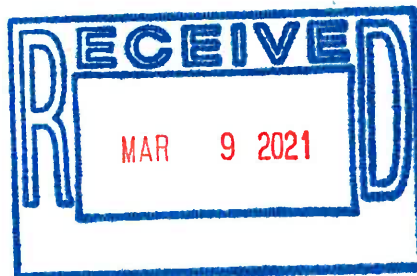
Thank you,

Kelly Beebe
District Manager
Harbor Sanitary District

Cc: HSD Board
James Coffey, Attorney

Harbor Sanitary District

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March 9, 2021

Port of Brookings Harbor
Gary Dehlinger, Port Manager
P.O. Box 848
Brookings, OR 97415

Dear Gary,

Enclosed is an updated copy of the Harbor Sanitary District and Port of Brookings Harbor Waiver of Liability, Hold Harmless and Release Agreement. The first printing left out item 8 page 3.

I apologize for the confusion.



Kelly Beebe
District Manager
Harbor Sanitary District

Cc: HSD Board
James Coffey, Attorney

**Harbor Sanitary District and Port of Brookings Harbor
Waiver of Liability, Hold Harmless and Release Agreement**

Recitals:

1. The Port of Brookings Harbor ("Port") is the owner of real property located at 16035 Boat Basin Road, Brookings, Oregon, more particularly described as Curry County Assessor Map 4113-08A Tax lot 1500.
2. The Harbor Sanitary District ("District") is a sanitary sewer district, organized and operated pursuant to ORS Chapter 450.
3. The District has an easement for a sewer line on a portion of the above-described Port real property pursuant to a Right of Way and Easement, dated October 5, 1976 and recorded in Curry County book of records 49, page 413 on January 20, 1977, identified as Exhibit "A" to this Agreement and incorporated herein by this reference.
4. The Port has constructed a recreational vehicle park and a public restroom facility on a portion of the Boat Basin Road real property. The public restroom facility, and a portion of the recreational vehicle park constructed by Port, was constructed on the the District's easement identified in Exhibit "A".
5. As part of the recreational vehicle park, and in addition to the public restroom, Port has constructed cement pads and utility lines, all of which are located in the District's easement (hereinafter the "encroachments"). The District has notified Port of the encroachments constructed on the District's easement.
6. Port has requested that the District permit the public restroom facility, cement pads and utility lines to remain in their current location in the easement area.
7. Port has advised District that it intends to perform some remodeling of the public restroom located on District's easement. Port has requested that District sign a permit issued by Curry County and or authorize reconnection to the District sewer system to allow Port to perform the remodeling work.
8. District is willing to permit the Port to keep the encroachments as currently located in the District's easement, in lieu of District taking any legal action related to the encroachments and, further, to authorize District's Manager sign the Curry County permit and or authorize reconnection to the District sewer system, conditioned on Port agreeing to enter into this Hold Harmless, Waiver of Liability and Release Agreement.
9. This Agreement shall supplement and modify the Right-of-Way and Easement recorded in Curry County deed records as BR 49 Page 413, recorded January 20, 1977, and the parties hereto agree that this Agreement shall be recorded in Curry County deed records.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The above Recitals are true and accurate and are hereby incorporated in this Agreement by this reference.

2. In consideration of the mutual promises contained herein, Port hereby RELEASES, COVENANTS NOT TO SUE, WAIVES, DISCHARGES AND HOLDS HARMLESS DISTRICT from any and all liability, claims, demands, actions, and causes of action whatsoever arising out of or relating in any way to any loss, damage, repair or replacement costs or injury to the restroom facility, cement pads and utility lines constructed in the District's easement, in the event that District, in the sole discretion of District, needs to remove a portion or all of the encroachments to access the District's sewer main located in the sewer easement described in the recorded document referenced in Recital 2, above, for purposes of repairs(s) to the sewer main or to replace the sewer main.

3. This RELEASE, COVENANT NOT TO SUE, WAIVER AND HOLD HARMLESS Agreement shall be effective and apply to any future removal of a portion, or all, of the encroachments, including all or a portion of the public restroom, notwithstanding the District's signing the Curry County permit and or authorize reconnection to the District sewer system to allow Port to do remodeling work on the public restroom. By signing the permit and or authorize reconnection to the District sewer system as requested by Port, District is not and does not consent to any encroachment by Port onto District's easement.

4. District agrees that if any repair work needs to be performed on the sewer main located in the District's easement area, or if the sewer main needs to be replaced, that District shall first determine if such work can be performed using trenchless technology, to avoid removing all or a portion of the encroachments located in the District's easement. If the District uses trenchless technology to perform any repair work on the sewer main, Port agrees to pay to District any additional cost to the District for the use of trenchless technology to make the repairs. District will submit an invoice to Port for the cost of using trenchless technology and Port agrees to pay the invoice.

5. District further agrees that if any repair work needs to be performed on the sewer main located in the District's easement area, and the encroachments need to be moved to allow the work to be performed, District will first notify, or attempt to notify, Port to remove the encroachments, if possible, under the circumstances. Port agrees to remove the encroachments within, and not later than, two weeks (14 days) of the District giving Port the notice referenced herein.

6. The District agrees, to the extent reasonable, when performing any work in the easement area to make reasonable efforts to do such work without causing damage to the Port public restroom facility, cement pads and/or utility lines. Port acknowledges and agrees that if it is necessary for the District to access the easement area with a truck that this agreement shall apply to any damage caused to the cement pads and utility lines or to Port's public restroom facility.

7. It is the express intent of Port that this Waiver of Liability, Hold Harmless and Release Agreement shall bind the current owners of Port RV Park or its successors and assigns and be deemed as a RELEASE, WAIVER, DISCHARGE, AND COVENANT NOT TO SUE the District for any loss, damage, repair or replacement costs or injury to Port's public restroom facility, cement pads and/or utility lines constructed on the District's easement, caused by District to repair or replace the sewer line in the District's easement.

8. Port hereby further agrees that this Waiver of Liability, Hold Harmless and Release Agreement shall be construed in accordance with the laws of the State of Oregon. Any portion of this document deemed unlawful or unenforceable is stricken and severable and shall be stricken without any effect on the enforceability of the remaining provisions.

9. This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, contracts, or representations, oral or written, not specified herein regarding this contract. Port by their signature below, hereby acknowledges that they have read this Agreement and agrees to its terms.

10. In the event any action, suit, arbitration, or other proceeding shall be instituted by either party to this Agreement to enforce any provision of this Agreement or any matter arising therefrom, or to interpret any provision of this Agreement, including any proceeding to compel arbitration, the prevailing party shall be entitled to recover from the other a reasonable attorney fee to be determined by the court or arbitrator(s). In addition to recovery of a reasonable attorney fee, the prevailing party shall be entitled to recover from the other, costs and disbursements, including all costs of arbitration and the arbitrator(s) fees, and expert witness fees, as fixed by the court or tribunal in which the case is heard.

In the event any such action, suit, arbitration or other proceeding is appealed to any higher court or courts, the prevailing party shall recover from the other a reasonable attorney fee for prosecuting or defending such appeal or appeals, in addition to the reasonable attorney fees in the lower court or courts or arbitration proceeding, such fee to be determined by the appellate court or lower court or arbitrator, as the appellate court may determine. In addition to recovery of a reasonable attorney fee on appeal, the prevailing party shall be entitled to recovery from the other costs and disbursements and expert witness fees as fixed by the appellate court. All costs and disbursements which may be awarded pursuant to this paragraph shall bear interest at the maximum legal rate from the date they are incurred until the date they are paid by the losing party.

11. Any controversy or claim arising out of or relating to this Agreement including, without limitation, the making, performance, or interpretation of this Agreement, shall be settled by arbitration in Curry County, Oregon, and any Judgment on the arbitration award may be entered in any court having Jurisdiction over the subject matter of the controversy.

Any party asserting a claim arising out of or relating to this Agreement, may make a written demand for arbitration. In this event, the parties shall agree to submit their controversy to binding arbitration before a single arbitrator. The arbitrator shall be an attorney licensed to practice law in the State of Oregon. If the parties cannot agree within 30 days to the selection of a single arbitrator after the election to arbitrate, either party may request that the selection of an arbitrator be made by a Judge of the Circuit Court of the State of Oregon for Curry County. The dispute shall be heard by the arbitrator selected within 90 days thereafter, unless the parties agree otherwise.

The parties will pay their own costs of arbitration, and each will be obligated for one-half of the arbitrator's fee. The provisions of paragraph 7 above shall also apply to arbitration, and in the event

of arbitration under the provisions of this Contract, the prevailing party shall be awarded reasonable attorney fees and related costs.

If arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedure both in advance of, and during recess of, the arbitration hearings. ORS 183.450(1) through (4), where applicable, shall control the admission of evidence at the hearing in any arbitration conducted hereunder, provided however no error by the arbitrator in application of the statute shall be grounds as such for vacating the arbitrator's award. Each party shall be entitled to present evidence and argument to the arbitrator. The arbitrator shall give written notice to the parties stating the arbitration determination and shall furnish to each party a signed copy of such determination and Judgment so the award may be entered in any court having Jurisdiction over the parties. The parties agree that all facts and other information relating to any arbitration arising under this contract shall be kept confidential to the fullest extent permitted by law.

The parties agree that the arbitrator shall have no Jurisdiction to render an award and/or Judgment for punitive damages. The parties agree that the decision of the arbitrator shall be final and binding on the parties and a Judgment may be entered on the arbitrator's award. Unless otherwise inconsistent herewith, the provisions of ORS Chapter 36 shall apply to any arbitration hereunder. The duty to arbitrate shall survive the cancellation or termination of this Agreement.

Service of process in connection therewith shall be made by certified mail. In any judicial proceeding to enforce this agreement to arbitrate, the only issues to be determined shall be the existence of the agreement to arbitrate and the failure of one Party to comply with that agreement, and those issues shall be determined summarily by the court without a jury. All other issues shall be decided by the arbitrator, whose decision thereon shall be final and binding. There may be no appeal of an order compelling arbitration except as part of an appeal concerning confirmation of the decision of the arbitrator.

Neither Party shall institute any legal proceeding against the other to enforce any right hereunder or for breach hereof, except that either Party may institute litigation (i) to enforce its rights of arbitration hereunder (ii) to confirm and have judgment entered upon any arbitration award issued hereunder, and (iii) to stay the running of any statute of limitation or prevent any other occurrence (including, without limitation, the passage of time) which would constitute laches, estoppel, waiver or any other such legal consequence that suit is necessary to avoid, provided, however, that neither Party shall pursue litigation under item (iii) beyond such action as is necessary to prevent prejudice to its cause of action pending ultimate resolution by arbitration under this Section.

If any dispute between the Parties arises from or in connection with any claim of litigation initiated by any third party (either as claimant, plaintiff, counterclaimant, or defendant/third Party plaintiff), then, unless the Parties agree otherwise, the resolution of that dispute under the arbitration provisions of this Section may at the option of either Party be deferred until the resolution of that third-party claim or litigation, provided, however that in the event of any such dispute in connection with a claim or litigation so initiated by a third party, either Party may at any time initiate arbitration under this section to determine prospective liability between the Parties upon facts which are stipulated, admitted solely for the purpose of arbitrating prospective liability, or not reasonably in dispute. The issue of whether any fact is "reasonably in dispute" under the preceding sentence shall be subject to

mandatory arbitration hereunder upon the demand of either Party. In the event either party is made a party to such claim or litigation so initiated by a third party, either party shall select its own counsel and have complete control over all claim or litigation decisions concerning its participation in that claim or litigation, regardless of whether either party is required to, or in fact does, initiate a crossclaim, counterclaim, or third-party claim under Sub-clause (iii) of the paragraph above.

IN SIGNING THIS AGREEMENT, PORT ACKNOWLEDGES AND REPRESENTS THAT Port has read the foregoing Waiver of Liability, Hold Harmless Agreement and Release Agreement, understands it and signs it voluntarily as the Port's own free act and deed; that no oral representations, statements, or inducements, apart from those contained in the foregoing written agreement have been made; and the Port Commission and District Board of Directors has approved the execution of this this Agreement by the Managers of the Port and District fully intending to be bound by the same.

IN WITNESS WHEREOF, I have signed this Agreement on the ___ day of March 2021.

PORT OF BROOKINGS HARBOR

By: Gary Dehlinger - Manager

HARBOR SANITARY DISTRICT

By: Kelly Beebe - Manager

41-13-8

RIGHT OF WAY and EASEMENT

INDEX BR 49

PAGE 413

THIS AGREEMENT made this 5th day of October, 1976, by and between Port of Brookings, a municipal and XXX corporation, ~~husband and wife~~, ~~XXXXXXX~~ ~~and~~ ~~XXXXXXX~~ ~~husband and wife~~, of Curry County, Oregon, PARTY OF THE FIRST PART, and Harbor Sanitary District, an Oregon Corporation of the State of Oregon, PARTY OF THE SECOND PART, witnesseth:

PARTY of the first part, in consideration of the sum of One Dollar and other good and valuable consideration to GRANTOR in hand paid, receipt whereof being hereby acknowledged (does) by these presents, bargain, sell, grant and convey to party of the second part, its successors and assigns, a right of way over and across an easement in the following described real property situated and being in Curry County, Oregon, to-wit:

A strip of land for sanitary sewer purposes, being 15 feet in width, 7.5 feet on each side of the centerline described below and as said strip of land occupies land in that property conveyed to Port of Brookings in Deed Volume 56, Page 470, Book of Records Volume 40, Page 895, and Book of Records Volume 32, Page 535 as of record in Curry County, Oregon. Said centerline lying within Section 8, Township 41 South, Range 13 West, Willamette Meridian is described as follows:

Beginning at a point lying on the West Line of the Harbor Sanitary Sewer Pump Station Site No. 2, as described in Book of Records 39, Page 49, being a Lease Agreement wherein the Port of Brookings is the Lessor and the Harbor Sanitary District is the Lessee, said point being North 31.13 feet and East 379.96 feet from a Brass Cap Iron Pipe marking the Southwest Corner of Donation Land Claim No. 39, said Section 8, T. 41 S., R. 13 W., W.M.; thence

- South 89°44'00" West, leaving the West Line of said Pump Station Lease Site, a distance of 274.97 feet; thence
- North 81°20'40" West a distance of 306.67 feet; thence
- North 35°01'30" West a distance of 299.23 feet; thence
- North 48°25'30" West a distance of 348.17 feet; thence
- North 48°21'50" West a distance of 411.00 feet, this being the terminal point of said easement, all lying and being within Curry County, Oregon.

for the purpose of constructing, reconstructing, maintaining, using and operating thereon pipe lines and other facilities thereof of the sanitary sewer system of the Harbor Sanitary District, with the right to remove trees and brush on such right of way, erect structures and make excavations therein as party of the second part may require or deem convenient for such purposes, also and together with the right of ingress and egress to and from such right of way for it, its agents and employees and its and their tools, vehicles, implements, materials, supplies and equipment.

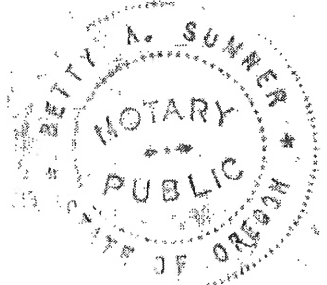
TO HAVE AND TO HOLD the right of way and easement hereby granted to said party of the second part, its successors and assigns forever.

Part.y.. of the first part reserves and shall have the right to such use of said right of way as shall not interfere with the unrestricted use thereof by party of the second part for the purposes thereof.

Part.y.. of the first part covenants and agrees to and with party of the second part that It (is) ~~XXXX~~ the owner... in fee simple of said premises and that It will not construct or erect upon said right of way any building or structures that shall interfere with the unrestricted use thereof by party of the second part for said purposes and that It will not do or permit to be done any blasting upon said right of way without the written consent thereto of party of the second part.

IN WITNESS WHEREOF (I) (we) have hereunto set (my) (our) hand... and seal... this the day and year first above written.

Fred W. Stutzman (SEAL)
Glenn A. Rogers (SEAL)
Arthur J. Anderson (SEAL)
 _____ (SEAL)



COUNTY OF CURRY }
STATE OF OREGON } ss.

This 5th day of October, 1976, personally appeared the above named Fred W. Stutzman, Glenn A. Rogers, and Arthur J. Anderson, Husband and Wife, who are known to me to be the identical individuals who executed the above instrument, and acknowledged the foregoing instrument to be their voluntary act.

INFORMATION ITEM – Q

DATE: March 11, 2021
RE: Pacific Seafood
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- Pacific Seafood sublease on the plant ended but is close to purchasing the plant. When the purchase is completed, BC Fisheries lease will need to be amended.
- Pacific Seafood is also working with a new nitrogen vender and plans to switch out the current 11,000-gallon tank with a 13,000-gallon tank in the near future.

DOCUMENTS

- None