

PERMIT AGREEMENT

THIS AGREEMENT is made and entered into as of the 16 day of December 2015, by and between **PORTLAND TERMINAL RAILROAD COMPANY** (hereinafter "Railroad") and **CITY OF PORTLAND** (hereinafter "Licensee").

RECITALS:

The Licensee is performing work associated with sewer construction in the area of NW 23rd Place and NW York Street that will involve running sewer pipe under track owned and operated by the Railroad, crossing under the tracks in NW 23rd Place in accordance with plans presented and discussed with the Railroad. Any changes that have occurred since these discussions shall be presented to the Railroad, or its designated representatives, prior to commencement of work on this project. This work will be performed in such a way as to not interfere with Railroad operations into Esco Company. The Licensee has requested the Railroad to permit it to perform the work lying within 25 feet of Railroad's track in this vicinity, and on the property of Portland Terminal Railroad in the area of this track, subject to the following terms and conditions.

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

- Article 1. Definition of Licensee. For purposes of this agreement, all references in this agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.
- Article 2. Permit Granted; Purpose. The Railroad hereby grants to the Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon Railroad's property and/or perform this work that lies within 25 feet of Railroad's track.
- Article 3. Terms and Conditions.
- a. Notice of Commencement of Work and/or Flagging: The Licensee agrees to notify the Railroad Representative at least 48 hours in advance of Licensee commencing its work and at least 24 hours in advance of proposed performance of any work by the Licensee in which any person or equipment will be within 25 feet of any Railroad track, or will be near enough to any Railroad track that any equipment extension, if applicable, will reach to within 25 feet of any Railroad track. If Licensee to perform work within 25 feet of any track, as described herein, then Railroad will determine if a "flagman" needs to be present and such service will be provided at Licensee's expense with the understanding that if the Railroad provides a flagman the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein.
 - b. Flagging Service.
 1. The rate of pay for each flagman will be \$1,500 per day for each calendar day or any portion thereof, including Saturday, Sunday and/or Holiday, that a flagman is furnished.
 2. If used, the Railroad shall submit a monthly invoice for flagging to Licensee's address shown in Article 7 and Licensee shall submit payment to address indicated on invoice within 30 days of invoice date.

3. If a "flagman" is required, the Licensee recognizes that Railroad has limited work force available to perform flagging work. Licensee and Railroad will use their best efforts to coordinate the scheduling of work to help ensure availability of flagmen to perform needed flagging services.
- c. Limitation and Subordination of Rights Granted.
1. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate Railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Railroad without liability to the Licensee or to any other party for compensation or damages.
 2. The foregoing grant is also subject to all outstanding superior rights (including those in favor of Licensees and Lessees of the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.
- d. No Interference With Railroad's Operation. No work performed by Licensee shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad, its lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept over 25 feet from the centerline of Railroad's nearest track, and there shall be no crossings of Railroad's tracks except at existing open public crossings.
- e. Permits. Prior to beginning any work, the Licensee, at its sole expense, shall obtain all necessary permits to perform any work contemplated by this agreement.
- f. Mechanic's Liens. The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against any property of the Railroad for any such work performed. The Licensee shall indemnify and hold harmless the Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- g. Compliance with Laws. In the prosecution of the work covered by this agreement, the Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property or within 25 feet of Railroad's

track. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

- h. Safety Instructions. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

1. The Licensee shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. The Licensee shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Licensee shall promptly notify the Railroad of any US Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable duty to control its employees, while they are on the job site or any property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work by any employee.
2. The employees of the Licensee shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. In addition, the Licensee shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations or Railroad officials overlooking the work at the job site. In particular, the protective equipment to be worn shall be:
 - (a) Protective headgear that meets American National Standard-Z89.1 – latest revision. It is suggested that all hardhats be affixed with Licensee's or subcontractor's company logo or name;
 - (b) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and
 - (c) Hearing protection that affords enough attenuation to give protection from noise levels that will be occurring on the job site.
3. All heavy equipment provided or leased by the Licensee shall be quipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its subcontractor's equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

- i. Waiver of Breach. The waiver by the Railroad of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Railroad to avail itself of any remedy for any subsequent breach thereof.
- j. Assignment – Subcontracting. The Licensee shall not assign, sublet or subcontract this agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Licensee permission to subcontract all or any portion of the work herein described, the Licensee is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this agreement.

Article 4. Expenses. The Licensee shall bear any and all costs or expenses incurred by the Railroad relating to this whole agreement, including flagging.

Article 5. Term & Termination.

- a. The grant of right herein made to Licensee shall commence at a date specified, and shall continue to a date specified by Licensee prior to commencement of said work. Such dates shall be communicated to the Railroad at least one week prior to commencement of such work, and the Railroad will acknowledge receiving the specified date range from the Licensee. This agreement will remain in place for the entire time that is finally specified, unless the work is completed at an earlier date, as communicated by the Licensee. If an extension of time for said project is determined to be necessary, the Licensee will communicate said change at the earliest possible date. Licensee agrees to notify the Railroad Representative in writing when it has completed the work, in order for Railroad Representative to inspect the condition of the Railroad right-of-way.
- b. Either party may terminate this agreement with a ten (10) day written notice.

Article 6. Insurance Requirements. Licensee is a self-insured entity and has insurance coverage for damages for bodily injury, including death, personal injury and property damage, and automobile public liability up to a combined single limit of \$1,000,000 per occurrence or a general aggregate limit of at least \$2,000,000.

The Licensee hereby waives its right to subrogation, as respects the above implied coverage with the exception of Workers Compensation and Professional Liability, against Railroad for payments made to or on behalf of employees of Licensee or its agents and for loss of its owned or leased property or property under its care, custody and control while on or near Railroad's right-of-way. Licensee, as a self-insured entity shall be primary with respect to any insurance carried by Railroad.

Licensee accepts full responsibility for ensuring that any contractors or sub-contractors they employ have insurance coverage at the same levels as specified above, or will provide for the same. The Licensee is solely responsible for ensuring any contractors they employ abide by all appropriate safety standards.

Article 7. Representatives.

- a. Licensee: Brandon Wilson
City of Portland
1120 SW Fifth Ave.
Room 1000
Portland, OR 97204
- b. Railroad: Val Shultz, Manager
Portland Terminal Railroad Company
3500 NW Yeon Avenue
Portland, OR 97210
Phone (503) 241-9898, Ex. 104
Cell (360) 771-9312
veshultz@up.com

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as the date first herein written.

PORTLAND TERMINAL RAILROAD COMPANYBy Title: Manager, Portland Terminal Railroad Company**CITY OF PORTLAND**By Title: Director, BES