

***CONSOLIDATED RAIL CORPORATION***  
***TEMPORARY LICENSE PERMITTING ENTRY ON PROPERTY***

THIS AGREEMENT, dated February 25, 1997, between hereinafter called "Licensee" and **CONSOLIDATED RAIL CORPORATION**, a corporation of the Commonwealth of Pennsylvania, hereinafter called "CONRAIL".

**WHEREAS**, Licensee through , its , has requested permission to enter upon the property of CONRAIL; and

**WHEREAS**, CONRAIL is willing to grant a temporary License for such entry; subject to the terms and conditions hereinafter set forth.

**NOW THEREFORE**, CONRAIL and Licensee, intending to be legally bound, agree as follows:

**1. PERMISSION, LOCATION AND ACCESS**

CONRAIL hereby grants to Licensee, insofar as it has the legal right and its present title permits, a temporary License to enter upon the property of CONRAIL for the purpose of , located at Mile Post , of the of CONRAIL, Line Code , located at a point in the of , County of , State of .

**2. LIABILITY**

Licensee hereby releases and will protect, defend, indemnify and save harmless CONRAIL and its subsidiaries, and their officers, agents and employees, against all claims, liabilities, demands, actions at law and equity, judgments, settlements, losses, damages and expenses of every character whatsoever (hereinafter collectively referred to as "Claims") for injury (including death) sustained by the officers, agents and employees of CONRAIL and its subsidiaries, Licensee and any officers, agents and employees of Licensee, and all other persons whomsoever, and for damage to or loss or destruction of property of any kind by whomsoever owned, caused by, resulting from, arising out of, or occurring in connection with the entry or presence of Licensee and its officers, agents and employees on CONRAIL property or incidental to or appertaining thereto, and whether or not such injury (including death) and such damage to or loss or destruction of property are due to or chargeable to, in whole or part, any alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation by CONRAIL or any subsidiary, including their officers, agents and employees. As a result of any such Claims, Licensee will assume at its own expense, on behalf of CONRAIL and its subsidiaries, and their officers, agents and employees, the defense of any such Claims which may be brought against said parties and pay on behalf of said parties the amount of any settlement agreed upon, judgment that may be entered, and any other amounts assessed in connection therewith, plus all costs and expenses involved as aforementioned.

### **3. CONSIDERATION**

Licensee will pay to CONRAIL, the sum of Four Hundred Fifty Dollars (\$450.00) as a compensation for the preparation of this License.

### **4. ENTRY UPON PROPERTY**

Licensee shall notify CONRAIL's Area Engineer, or his designee, at least fourteen (14) working days in advance before entering upon or starting any work upon CONRAIL property. No entry or use of CONRAIL property will be permitted until this License is signed, charges hereunder paid, evidence of any insurance coverage required under paragraph 10 hereof has been received and accepted by CONRAIL, and permission received from the designee of the Area Engineer who will be: .

### **5. CONRAIL OPERATIONS**

All operations of Licensee shall be carried on in such a manner so as not to interfere with CONRAIL property and operations or the use of any CONRAIL facilities. If in the opinion of the Area Engineer or his designee, conditions warrant at any time, CONRAIL will provide flag protection, signal/communication line protection and engineering inspection at the expense of Licensee and Licensee will pay to CONRAIL the full cost and expense therefor. All work done by Licensee will be in accordance with CONRAIL's CE-6 Specifications.

### **6. CROSSING OR FOULING TRACK**

In no event shall equipment or material be transported across CONRAIL's track or tracks without special permission and with advance notice of at least seven (7) days so that CONRAIL may arrange for the necessary flag protection at the expense of Licensee and Licensee will pay to CONRAIL the full cost and expense therefor. Such permission shall be obtained from CONRAIL's Area Engineer or his designee. Licensee agrees not to enter upon or foul track until given signal to do so by a flagman.

### **7. CLEARANCES**

All equipment working on or material in use upon the property of CONRAIL shall be kept at all times not less than twelve feet (12') from the nearest rail of any track, or as subsequently modified in writing by CONRAIL's Area Engineer or his designee. Licensee shall conduct its operations so that no part of its equipment shall foul an operating track, transmission, signal or communication line, or any other structure of CONRAIL.

## 8. RESTORATION OF PREMISES

Upon completion of the work, CONRAIL's property shall be left in a condition satisfactory to CONRAIL's Area Engineer or his designee. This includes, without limitation, immediate restoration of any fences removed.

## 9. TERM OF LICENSE

CONRAIL reserves the right to revoke this License at any time. Unless modified or terminated, this license shall extend until , at which time it shall expire automatically. Licensee will notify CONRAIL's Area Engineer or his designee when use of the property or work is completed. Under no circumstances shall this License be construed as granting Licensee any right, title or interest of any kind or character in or about the land or premises of CONRAIL.

## 10. INSURANCE

In addition to any other forms of insurance or bonds required under this License and except to the extent that any of the requirements of this section are expressly waived or revised in writing by Conrail, Licensee, prior to the commencement of any work pursuant to this License and throughout the term of this License, shall, at its own cost and expense, maintain insurance of the following kinds and amounts and deliver to Conrail's Manager-Insurance and (specify other Conrail personnel), satisfactory evidence of such insurance as indicated herein.

(a) Public Liability insurance, including contractual liability insurance, with a limit of not less than \$5,000,000 combined single limit for bodily injury and/or property damage for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Conrail shall be named as an additional insured under this insurance.

(b) Workers' Compensation insurance in Statutory Amounts. Employers' Liability and Occupational Disease Insurance with limits of \$1,000,000 each accident, \$1,000,000 policy limit and \$1,000,000 each employee. Such policy shall include a waiver of subrogation in favor of Conrail.

(c) Automobile Liability insurance with a limit of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence. Conrail shall be named as an additional insured under this insurance.

(d) Licensee, with respect to the operations performed by it or any of its' subcontractors, shall provide Railroad Protective Liability Insurance (ISO-RIMA FORM) in the name of Consolidated Rail Corporation, with a limit of not less than \$2,000,000 per occurrence, combined single limit for bodily injury and/or property damage, for damages arising out of bodily injuries to or death of all persons and for damage to or destruction of property, including the loss of use thereof. Such insurance shall also contain an aggregate of not less than \$6,000,000 for damages arising out of more than one occurrence. Conrail shall be the "Named Insured" on this policy.

(e) General Contractor's Pollution Liability coverage, with limits of not less than \$5,000,000 per occurrence/\$5,000,000 aggregate bodily injury, property damage and cleanup expenses resulting from pollution conditions. Also provides coverage for contractor's liability for subcontracted activities, such as lead paint removal and asbestos abatement. Conrail shall be named as an Additional Named Insured under this insurance.

(f) The insurance specified above shall be carried until the Project is satisfactorily completed and formally accepted by Conrail. Failure to procure and maintain such insurance shall constitute a Breach of this License.

(g) The above indicated insurance coverages shall be effected under standard form policies issued by insurers of financial responsibility that are rated "A" or better by Best's Insurance Reports, "AA" or better by Standard & Poor's Insurance Rating Service and "Aa" or better by Moody's Investors Service. Conrail reserves the right to reject as inadequate any insurance coverage provided by an insurance company that is rated less than the ratings above by any of the aforementioned rating services.

(h) The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this License or any attachment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the period of time when the License was in effect and the insurance was in force.

(i) Licensee shall furnish Conrail with certificates of insurance evidencing the insurance coverages required in subsections (a), (b), (c), etc., above, and shall also furnish the original Railroad Protective Liability insurance policy referred to in subsection (d) above, at least thirty (30) days prior to the commencement of this License. Conrail shall be named as an additional insured under the insurance coverages outlined in subsections (a), (b), (c) etc. above. Certificates of insurance and/or policies should be sent to Consolidated Rail Corporation, Manager-Insurance, 2001 Market St., 6-A, Philadelphia, PA 19191-1406.

(j) All insurance policies shall be endorsed to provide that the insurance company shall give thirty (30) days prior written notice to Consolidated Rail Corporation, Manager-Insurance, 2001 Market St., 6-A, Philadelphia, PA 19191-1406., if the policies are to be terminated or if any changes are to be made which will in any way affect the insurance requirements of this License.

**IN WITNESS WHEREOF**, the parties hereto have caused this License to be executed as of the date first above written.

**WITNESS:**

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**BY:** \_\_\_\_\_

**WITNESS:**

**CONSOLIDATED RAIL CORPORATION**

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**BY:** \_\_\_\_\_