
EXHIBIT F163

LICENSE AGREEMENT BETWEEN NATIONAL RAILROAD
PASSENGER CORPORATION AND DELCORA

THIS AGREEMENT, made this day of 19 , between National Railroad Passenger Corporation, a corporation of the District of Columbia, with offices at 400 North Capitol St. NW, Washington, D.C. 20001, party of the first part (hereinafter called "Railroad") and Delaware County Regional Water Quality Control Authority, a municipal authority organized under the laws of Pennsylvania, with its principal office at 100 East Fifth Street, Chester, Pennsylvania 19013, as party of the second part (hereinafter called "Licensee").

WITNESSETH, that the said Railroad (which when used herein shall include any lessor, successor or assignee of or operator over its railroad) insofar as it has the legal right and its present title permits, and in consideration of the covenants and conditions hereinafter stated on the part of the Licensee to be kept and performed, hereby permits, as a temporary license, the Licensee to construct, maintain, repair, alter, renew, relocate and ultimately remove:

A. Description of Facility: One (1) thirty (30) inch relief sewer pipe at a length of 200 feet, one (1) manhole and one (1) inlet across and under the tracks and property of the Railroad.

B. Purpose: To release sewage from area.

C. Termination of Prior Agreement: Upon execution, this license shall terminate, cancel, and supersede a previous agreement between the Pennsylvania Railroad Company and the City of Chester dated the 3rd day of January 1967.

D. Location:

(1) Milepost: 15+2453'

(2) Valuation Station: 660+15

(3) Nearest Station: Chester

(4) Town: Delaware

(5) County: Delaware

(6) State: Pennsylvania

all as delineated and in strict accordance with plan dated October 12, 1966, submitted by Licensee to and approved by the Chief Engineer of the Railroad, marked "Exhibit A", attached hereto and made a part hereof, also in strict compliance with current issues of Railroad Specifications Nos. CE4 and/or CE8, and/or American Railway Engineering Association specifications all as applicable to the herein described work and incorporated herein by reference, all and any part thereof being hereafter referred to as the "FACILITIES"; said license, however, shall be under and subject to the following terms, covenants, and conditions as hereinafter recited, which are hereby accepted and agreed to, by the Licensee, to wit: (0.1)

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1. This License shall commence on the fifteenth day of July 1981 and terminate on the fourteenth day of July, 1986 or before as hereinafter provided according to the terms, conditions and covenants herein contained. (1)

2. The Licensee shall pay to the Railroad upon the execution hereof, the sum of Seven Hundred and One Dollars and Twenty-five cents (\$701.25) as lump sum compensation, for the rights granted in this License for the five years (5) year term, which sum shall be payable in advance, upon execution of this agreement. Notwithstanding the foregoing, payment of any additional charges and sums other than as compensation for Licensee's occupancy as hereinafter set forth shall be mailed to P. O. Box 18266F, Group No. 5, St. Louis, Missouri 63150 or at such other place as Railroad may from time to time designate. (2.5)

3. The FACILITIES shall be located, constructed and maintained in exact accordance with said construction plans and for the purpose as outlined on Page 1 hereof. No departure that would result in a modification, change, or amendment to this License shall be made at any time therefrom except upon permission in writing granted by the Assistant Vice President of Real Estate of Railroad, or his designee, provided, however, that if any commission or other regulatory body duly constituted and appointed in compliance with the laws of the State in which the crossing or occupancy herein provided is situate, and having jurisdiction over the property, has by final ruling or order determined and fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then said final ruling or order shall prevail for the crossing or occupancy herein mentioned. The work of constructing, maintaining, repairing, altering, renewing, relocating or removing the said FACILITIES shall be done under such general conditions as will be satisfactory to and approved by the Chief Engineer of Railroad, or his designee, and as will not interfere with the proper and safe use, operation and enjoyment of the property of the Railroad. Licensee, at its own cost and expense, shall, when performing any work in connection with the FACILITIES, furnish any necessary watchmen to see that men, equipment and materials are kept a safe distance away from the tracks of the Railroad. Any notification required or desired to be given to Railroad's Chief Engineer shall be sent to the address on first page here to the attention of the Chief Engineer. (3)

4. FACILITIES conveying gas (natural or artificial), oil, gasoline or other flammable matter shall not be installed or relocated under bridges or culverts, except in cases especially provided for. No FACILITIES shall be installed or relocated under bridges or culverts where there is likelihood of restricting the area required for the purposes for which the bridges or culverts were built, or endangering foundations of structures. (4)

5. No attachment of wires, cables, pipe lines, and appurtenances shall be made to any bridge (or its supports) of the Railroad unless specifically provided for in this License, and then only in accordance with the Railroad's plans and specifications. No poles, towers, anchors or supports of any kind

for the wires, cables, and appurtenances shall be located on the right-of-way or property of the Railroad unless specifically provided for in this License.
(5)

6. In addition to, but not in limitation of any of the foregoing provisions, if at any time the Railroad should deem flagmen or watchmen desirable or necessary to protect its operations or property, or its employees, patrons or licensees during the work of construction, maintenance, repair, alteration, renewal, relocation or removal of said FACILITIES of Licensee, the Railroad shall have the right to place such flagmen or watchmen at the sole risk, cost and expense of Licensee, who covenants and agrees to bear the full risk, cost and expense thereof and to reimburse promptly the Railroad upon demand. The furnishing or failure to furnish flagmen or watchmen by the Railroad, however shall not release the Licensee from any and all other liabilities assumed by the Licensee under the terms of this License. (6)

7. The Licensee shall at all times be obligated promptly to maintain, repair and renew said FACILITIES; and shall, upon notice in writing from Railroad requiring it so to do, promptly make such repairs and renewals thereto as may be required by Railroad; or the Railroad, for the purpose of protecting and safeguarding its property, traffic, patrons or employees from damage or injury, may with or without notice to the Licensee at any time make such repairs and renewals thereto and furnish such material therefor as it deems adequate and necessary, all at the sole cost and expense of Licensee.
(7)

8. In the event of an emergency, Licensee will take immediate steps to perform any necessary repairs, and in the event Licensee fails so to do, Railroad will perform said necessary repairs at the sole cost and expense of Licensee. (8)

9. That in consideration of the rights granted hereunder to Licensee by Railroad, Licensee hereby agrees that as to any structure placed upon Railroad's property or any structure presently existing which structure is subject to renovation, repairs and subsequent use by Licensee, such structure shall be continuously maintained by Licensee from and after the effective date of this License. All costs of maintenance, repair and upkeep shall be borne by Licensee. Licensee shall be liable for and does indemnify and agree to hold Railroad harmless from any and all risks of liability for injuries to or death of persons or damage to or destruction of property resulting from said use, maintenance, repair and/or upkeep or lack thereof of said structure without regard to negligence. (9)

10. If the Licensee desires or is required, as herein provided, to revise, renew, add to or alter in any manner whatsoever the aforementioned FACILITIES, it shall submit plans and specifications to Railroad and obtain the written approval thereof by the Chief Engineer of Railroad before any work or alteration of the structure is performed and the terms and conditions of this License with respect to the original construction shall apply thereto.

Railroad reserves the right to make adjustments in the annual compensation or assess additional charges. (10)

11. The Railroad shall have the right to verify by inspection that the location of the work and the materials used in construction, maintenance, repair, alteration, renewal and removal of the aforesaid FACILITIES covered by this License are in compliance with the plans and specifications. The right to verify the location of the construction work and inspect the FACILITIES from time to time thereafter by the Railroad, shall extend for an appropriate distance on each side of the property of the Railroad as the method of construction and materials used may have an important bearing upon the strength and stability of the FACILITIES over, under, upon, or in the property of the Railroad. (11)

12. Licensee shall comply with all Federal, State, and municipal laws, orders, rules, regulations now or hereafter enacted and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of the Railroad. (12)

13. It is understood between the parties hereto that the operations of the Railroad at or near said FACILITIES involve some risk, and the Licensee as part of the consideration for this License hereby releases and waives any right to ask for or demand damages for or on account of loss of or injury to the FACILITIES (and contents thereof) of the Licensee and/or employees, agents, servants, contractors and invitees of the Licensee that are over, under, upon or in the property and facilities (of the Railroad) including the loss of or interference with service or use thereof and without respect to the fault, failure or negligence of the Railroad, its employees, agents, servants, contractors, invitees or otherwise. (13)

14. The Licensee covenants and agrees to and shall at all times indemnify, protect, defend, and save harmless the Railroad from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges which the said Railroad may directly or indirectly suffer, sustain or be subjected to by reason of or on account of the construction, placement, attachment, presence, use, maintenance, repair, alteration, renewal, relocation, or removal of said FACILITIES in, on, about or from the property of Railroad whether such losses and damages be suffered or sustained by the Railroad directly or by its employees, agents, servants, contractors, officers, or licensees, or be suffered or sustained by other persons or corporations, including the Licensee, its employees, servants, contractors, officers, patrons, agents, or others who may seek to hold the Railroad liable therefor, and whether attributable to the fault, failure or negligence of the Railroad or otherwise. It is further agreed that in the event the Railroad shall, at its option, make any expenditures or incur any obligations for the payment of money in connection with this provision "14" including, but not limited to attorneys' fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred with interest at the rate of twelve percent (12%) per annum or the highest interest allowable by law, whichever is the greater, and all such costs shall

be deemed to be additional compensation hereunder and shall be paid by the Licensee to Railroad within five (5) days of the rendering of any bill or statement to Licensee therefor. The provisions of this paragraph shall survive the expiration or other termination of this License. (14)

15. If a claim or action is made or brought against either party, such party shall notify and permit the other party to participate in the handling or defense of such matter, if such other party may be responsible hereunder, in whole or in part. (15)

16. Prior to any entry for any purpose provided for in this License, Licensee shall provide to Railroad the name or names of the agents or employees to be present physically at the FACILITIES and responsible for any work in process or liability therefor. Said notice shall be in writing, to the Chief Engineer of Railroad, delivered at least 48 hours prior to entry. (16)

17. All costs and expenses in connection with the construction, maintenance, repair, alteration, renewal, relocation, and removal of said FACILITIES shall be borne by the Licensee, and in the event of work being performed or materials furnished by Railroad under the stipulated right to perform such work of construction, maintenance, repair, alteration, renewal, relocation, or removal under any section hereof, Licensee agrees to pay to the Railroad the actual cost of materials plus the current applicable overhead percentages for storage, handling, transportation, purchasing and other related material, management expenses and the actual cost of labor plus the current applicable overhead percentages as developed and published by the accounting department of Railroad for fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers' liability insurance, public liability insurance, and other insurance, taxes and all other direct expenses. It is to be understood that the aforementioned material and labor overhead charges are to be applied at the rates which are effective at the time of the performance of any work by employees of the Railroad on the said FACILITIES. Licensee agrees to pay such bills within thirty (30) days of the rendition thereof by Railroad. (17)

18. The Licensee shall, at its sole cost and expense, upon request in writing from the Railroad, promptly change the location of said FACILITIES covered by this License, where located over, upon or in the property and facilities of the Railroad, to another location, to permit and accommodate changes of grade or alignment and improvement in or additions to the facilities of the Railroad upon land now or hereafter owned or used by the Railroad with the intent that said construction shall at all times comply with the terms and conditions of this License with respect to the original construction; or in the event of the lease, sale or disposal of the property or any part thereof encumbered by this License, then the said Licensee shall make such adjustments or relocations in its FACILITIES as are over, upon or in the property and facilities of the Railroad as may be required by the said Railroad or its grantee; and if the Licensee shall fail or refuse to comply therewith, then the duly authorized agents of the Railroad may make such

repairs or adjustments or changes in location and provide necessary materials therefor, at the sole cost and expense of the Licensee. (18)

19. In the event that FACILITIES consist of an underground occupation, Licensee will be responsible for any settlement caused to the roadbed, right-of-way and/or tracks, facilities, and appurtenances of the Railroad arising from or as a result of the installation of the said FACILITIES and Railroad shall have the right to repair, replace, restore or correct any such damage caused by said occupation at the sole cost and expense of the Licensee. The provisions of this clause shall survive the expiration or other termination of this License. (19)

20. In the event the said FACILITIES consist of electrical power or communication wires and/or appurtenances, the Licensee shall at all times be obligated promptly to remedy any inductive interferences growing out of or resulting from the presence of its FACILITIES; and if the Licensee should fail so to do, then Railroad has the right to do so, and the Licensee agrees to pay to Railroad on demand the full cost and expense therefor. (20)

21. As part of the consideration for granting this License, Licensee covenants and agrees that no assessments, taxes or charges of any kind, general, special or otherwise shall be made against Railroad or its property by reason of the construction and use of said FACILITIES by Licensee, and Licensee further covenants and agrees to pay to Railroad promptly upon bills rendered therefor the full amount of any assessments, taxes and/or charges of any kind or nature which may be levied, charged, assessed or imposed against the Railroad or its property by reason of the construction, existence, use, and maintenance of said FACILITIES of Licensee. (21)

22. Licensee hereby designates, Executive Director, its agent(s) for the service of any notice desired or required by this License, and/or of process in any action growing out of, connected with, or based upon this License, or the activities undertaken hereunder, and agrees that service upon one of the above named person(s) shall constitute due and proper service of any such notice or any such process. Any notification or service required or desired to be given to the Railroad under this Article "22" shall be sent, postage prepaid, by certified or registered mail to the address on page first hereof to the attention of the Assistant Vice President of Real Estate. (22)

23. The rights conferred hereby shall be the privilege of the Licensee only, and no assignment or transfer hereof shall be made, or other use be permitted than for the purpose stated on page first hereof without the consent and agreement in writing of the Railroad being first had and obtained. (23)

24. This License with the rights granted may be terminated at any time by either party upon giving not less than sixty (60) days' prior written notice to the other; and upon the expiration of the said sixty (60) days from date of mailing by certified or registered U.S. Mail, this License and the permission and privilege hereby granted shall absolutely cease and determine. (24)

Railroad shall not terminate this agreement unless required to do so for its corporate purposes, in which instance it shall use its best efforts to provide a mutually acceptable alternative location for Licensee's facilities. (24.1)

If railroad should terminate this license prior to the expiration of the term specified in Article "1", it shall use its best efforts to provide a mutually acceptable alternative location for Licensee's facilities. If no such alternative location can be provided, then Railroad shall refund a prorated portion of the lump-sum payment as would be applicable to the unexpired period. Licensee shall not be entitled to any refund if Licensee should terminate this License. (24.2)

25. Upon termination of this License or upon the removal or abandonment of the FACILITIES covered hereby, all the rights, title and interest of the Licensee hereunder shall cease, and this instrument shall thereupon become and be null and void, without any liability on the part of either party to the other party except where expressly provided to the contrary and any liability accrued prior thereto, and the Licensee shall, with the prior written approval of the Railroad, remove or cause to be removed its said FACILITIES and appurtenances from Railroad property and right-of-way, and all property of the Railroad shall be restored in good condition and to the satisfaction of the Railroad. If the Licensee fails or refuses to remove its FACILITIES and appurtenances under the foregoing conditions, the Railroad shall have the right to do so at the sole cost and expense of the Licensee, and the Railroad shall not be liable in any manner to the Licensee for said removal. The provisions for this paragraph shall survive the expiration or other termination of this License. (25)

26. Before this License shall be effective, the Licensee shall at its sole cost and expense procure, provide, and deliver to the Railroad and thereafter maintain in effect during the term of this License, public liability insurance, as well as contractual liability insurance covering all liabilities assumed by the Licensee under Article "14" of this License, without exception or restriction of any kind. Said insurance shall be in limits of not less than Two Million Dollars (\$2,000,000.00) single limit, bodily injury, death and/or property damage whether of the Licensee, the Railroad, or others, and shall contain a waiver of subrogation against Railroad, and said insurance shall be with such companies and in such form as shall be acceptable to the Railroad. Said insurance shall be endorsed to provide that the Railroad will be notified in writing by the insurance carrier at least thirty (30) days in advance of any cancellation or changes which modify the coverage provided thereunder. The providing of such insurance shall not be deemed a limitation on the liability of Licensee as provided in this License, but shall be additional security therefor. (26)

27. The covenants, conditions and agreements contained in this License shall bind and inure to the benefit of Licensee and Railroad and their respective heirs, distributors, executors, administrators, successors, and, except as otherwise provided in this License, their assigns. (27)

28. The obligations of the Railroad hereunder shall be subject to Force Majeure which shall include, but not be limited to labor, troubles. (28)

29. No change or modification of any of the covenants, terms or provisions hereof shall be valid unless in writing and signed by the parties hereto.

There are no understandings or agreements of any kind between the parties hereto, verbal or otherwise, other than as set forth in this License.

All additions, changes or deletions herein were made prior to execution by either party, except that additions, changes or deletions made after execution by one party and before execution by the other shall be marginally initialed by both parties. (29)

30. This License shall be construed according to the laws of the District of Columbia. (30)

31. The provisions of this License are severable and it is the intention of the parties hereto that if this License cannot take effect in its entirety because of the final judgment of any court of competent jurisdiction holding invalid any part or parts thereof, the remaining provisions of the License shall be given full force and effect as completely as if the part or parts held invalid had not been included therein. (31)

32. It is understood and agreed between the parties hereto that execution of this agreement by Licensee, and negotiation of any check or other negotiable instrument by Railroad, prior to the date of execution of this agreement by Railroad, shall in no way be deemed or construed by Licensee to be acceptance of this agreement by Railroad. In the event that this agreement is not executed by Railroad for any reason whatsoever, then and in that event the amount set forth in any such check or other negotiable instrument shall be refunded to Licensee within a reasonable period of time after written notification that this agreement will not be executed by Railroad; provided, however, that the payment by Licensee of a preparation fee, if any, to Railroad shall be nonrefundable and made as full payment for the Railroad's preparation of this document without regard to whether or not same is ever executed. (32)

33. The Licensee shall, in connection with the construction of its FACILITIES, require contractors and subcontractors to carry insurance as follows:

- (a) Contractor's Public Liability and Property damage Liability Insurance;
- (b) Contractor's Protective Public Liability and Property Damage Insurance;

- (c) Railroad Protective Liability and Property Damage Liability Insurance, in accordance with the Federal-Aid Highway Program Manual Volume 6, Chapter 6, Sec. 2, Sub-section 2 Form.

Each of said policies shall provide for a limit of not less than \$2,000,000 for damages arising out of bodily injuries to, or death of, all persons in any one occurrence and providing for a limit of not less than \$2,000,000 for damage to, or destruction of, property, including the loss of use thereof, in any one occurrence, and not less than \$2,000,000 in aggregate. Policies shall name National Railroad Passenger Corporation as insured and, in addition when applicable, Consolidated Rail Corporation.

Licensee will include within its Special Requirements a clause providing as follows with respect to each of the policies mentioned in paragraphs (a) and (b)

"This insurance policy shall contain an endorsement evidencing that any damages resulting from an act or omission of watchmen, flagmen, inspectors, or other similar employees, furnished by Railroad and for whose wages, etc., Railroad is to be reimbursed, by reason of the operations of the contractors or subcontractors shall be deemed a part of the operations of the contractors or subcontractors and covered by insurance under this policy."

It is further understood and agreed that the Railroad Protective Liability Insurance policies shall be endorsed to protect the Railroad from damages to which it might be exposed by virtue of this License and for which Licensee is liable under Paragraph 14.

The contractor shall furnish to the Railroad a signed copy of the policy for Contractor's Public Liability and Property Damage Liability Insurance, prior to entry upon railroad property. If any work is subcontracted, the contractor shall furnish a signed copy of the policy for Contractor's Protective Liability and Property Damage Liability Insurance.

Each Insurance Policy and Certificates of Insurance shall be endorsed to provide that the Insurance Company shall notify the Real Estate Department of the Railroad by certified mail at least thirty (30) days in advance of termination or any change in the policy. (33)

IN WITNESS WHEREOF, the said parties hereto have caused this License to be duly executed and delivered as of the day and year first above written.

WITNESS:

Paul Mathis

NATIONAL RAILROAD PASSENGER CORPORATION

By *Kurt W. Washburne JR Hagler*
Assist. Vice President - Real Estate

WITNESS:

Francis M. Bender

DELAWARE COUNTY REGIONAL WATER
QUALITY CONTROL AUTHORITY

By *William R. Ross*
William R. Ross, Executive Director

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