

**CONSOLIDATED RAIL CORPORATION  
AGREEMENT FOR UNDERGRADE SANITARY SEWER FORCEMAIN  
OCCUPATION**

**THIS AGREEMENT**, made this August 25, 1998, between **CONSOLIDATED RAIL CORPORATION**, a Pennsylvania Corporation, ("Conrail") and **VALLEY TOWNSHIP**, a political subdivision of the Commonwealth of Pennsylvania ("Licensee").

**WITNESSETH:**

**WHEREAS**, Licensee has requested occupation of Conrail's property as set forth in this Agreement; and

**WHEREAS**, the parties have reached accord concerning the terms and conditions for Licensee's occupation of Conrail's property and desire to reduce them to writing.

**NOW, THEREFORE**, the parties hereto, intending to be legally bound, agree as follows:

**1. FACILITIES**

(a) Conrail 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 Licensee to be kept and performed, hereby permits Licensee to construct, maintain, repair, alter, renew, relocate and ultimately remove one (1) undergrade twenty inch (20") ductile iron sanitary sewer forcemain encased in a thirty inch (30") steel pipe, under, over or across the roadway and track of the Wall Track off of Amtrak's Mainline Philadelphia to Harrisburg of Conrail, Line Code 10-1102, Located at a point 106' south of the crossing of T-230 (Wagontown Road), located at a point in the Township of Valley, County of Chester, Commonwealth of Pennsylvania, in accordance with construction plan number PO-1 and PO-2, dated June 15, 1998, submitted by Licensee to and approved by Conrail ("Construction Plan"), attached hereto and made a part of this Agreement; also in accordance with current issues of Conrail's Specifications CE-4 and/or CE 8 (all and any part thereof being hereafter referred to as the "Facilities").

(b) This Agreement shall not be deemed or construed as transferring to Licensee any interest in the land of Conrail or any right in the nature of an interest in land, irrespective of any expenditure by Licensee for the Facilities.

**2. PAYMENT AND CONSIDERATION FEE**

(a) Licensee shall pay Conrail, upon execution of this License, the sum of One Thousand Twenty-five Dollars (\$1,025) as reimbursement for the costs and expenses of preparing this License.

(b) Licensee shall pay to Conrail upon the execution hereof, the sum of Six Hundred Fifty Dollars (\$650) as reimbursement for the rights granted in this Agreement.

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### 3. CONSTRUCTION

(a) Licensee may not enter upon Conrail's property until the method of installation and all related matters have been approved by the Area Engineer of Conrail or his duly designated representative.

(b) The Facilities shall be located, constructed and maintained in exact accordance with said Construction Plans and for the purpose as outlined in Section 1(a) hereof. No departure shall be made at any time therefrom except upon permission in writing granted by the Area Engineer of Conrail, 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 in the premises, has by ruling or other general order determined and fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then said ruling or general order shall prevail for the crossing or occupancy herein mentioned.

(c) 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 Area Engineer of Conrail, or his designee, and as will not interfere with the proper and safe use, operation and enjoyment of the property of Conrail. Licensee, at its own cost and expense, shall, when performing any work in connection with the Facilities, furnish any necessary inspectors, flagmen or watchmen to see that men, equipment and materials are kept a safe distance away from the tracks of Conrail.

(d) In addition to, but not in limitation of any of the foregoing provisions, if at any time Conrail should deem inspectors, 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 the Facilities, Conrail shall have the right to place such inspectors, flagmen or watchmen at the sole risk, cost and expense of Licensee, which covenants and agrees to bear the full cost and expense thereof and to promptly reimburse Conrail upon demand. The furnishing or failure to furnish inspectors, flagmen or watchmen by Conrail, however, shall not release Licensee from any and all other liabilities assumed by Licensee under the terms of this Agreement.

(e) In the event the 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 Conrail arising from or as a result of the installation of the said FACILITIES for a period of one (1) year subsequent to the date of completion of the installation, and Licensee agrees to pay to Conrail on demand the full cost and expense therefor.

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

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## 4. MAINTENANCE

(a) Licensee shall at all times be obligated to promptly maintain, repair and renew said Facilities; and shall, upon notice in writing from Conrail and requiring it so to do, promptly make such repairs and renewals thereto as may be required by Conrail; or Conrail, for the purpose of protecting and safeguarding its property, traffic, patrons or employees from damage or injury, may with or without notice to 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, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof.

(b) If Licensee desires or is required, as herein provided, to revise, renew, add to or alter in any manner whatsoever the Facilities, Licensee shall submit plans to Conrail and obtain the written approval of the Area Engineer of Conrail thereto before any work or alteration of the Facilities is performed and the terms and conditions of this Agreement with respect to the original construction shall apply thereto. In that event, Conrail reserves the right to assess additional charges.

(c) In the event of an emergency, Licensee will take immediate steps to perform any necessary repairs to the Facilities, and in the event Licensee fails so to do, Conrail will perform said necessary repairs at the sole cost and expense of Licensee, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof.

(d) The supervision over the location of the construction work and inspection of the Facilities and the approval of the material used in construction, maintenance, repair, alteration, renewal, relocation and removal of the Facilities covered by this Agreement shall be within the jurisdictional rights of Conrail.

(e) The right of supervision over the location of the construction work and inspection of the Facilities from time to time thereafter by Conrail, shall extend for an appropriate distance on each side of the property of Conrail 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 Conrail.

## 5. MAINTENANCE OF CONRAIL RIGHT-OF-WAY

Licensee shall, at its sole cost and expense, upon request in writing of Conrail, promptly change the location of the Facilities covered by this Agreement, where located over, upon or in the property and Facilities of Conrail, to another location, to permit and accommodate changes of grade or alignment and improvement in or additions to the Facilities of Conrail upon land now or hereafter owned or used by Conrail to the extent that said construction shall at all times comply with the terms and conditions of this Agreement with respect to the original construction; or in the event of the lease, sale or disposal of the premises or any part thereof encumbered by this license, then said Licensee shall make such adjustments or relocations in its Facilities as are over, upon or in the property and Facilities of Conrail as may be required by said Conrail or its grantee; and if Licensee shall fail or refuse to comply therewith, then the duly authorized agents of Conrail may make such repairs or adjustments or changes in location and provide necessary material therefor at the sole cost and expense of Licensee, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof.

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### 6. BILLING

(a) All cost and expenses in connection with the construction, maintenance, repair, alteration, renewal, relocation and removal of the Facilities shall be borne by Licensee, and in the event of work being performed or material furnished by Conrail 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 Conrail the actual cost of material 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 Conrail 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 indirect 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 Conrail on the said Facilities. Licensee agrees to pay such bills within thirty (30) days of the presentation thereof by Conrail.

(b) Automobile mileage charges incurred by aforementioned Conrail inspectors, flagmen or watchmen in connection with the installation, maintenance, etc., of the Facilities will be based on allowances approved by the United States Government in effect at the time the expenses are incurred.

### 7. TAXES

As part of the consideration of this Agreement, Licensee covenants and agrees that no assessments, taxes or charges of any kind shall be made against Conrail or its property by reason of the construction of the Facilities, and Licensee further covenants and agrees to pay to Conrail promptly upon bills rendered therefor the full amount of any assessments, taxes or charges of any kind which may be levied, charged, assessed or imposed against Conrail or its property by reason of the construction and maintenance of the Facilities.

### 8. LIABILITY

(a) It is understood between the parties hereto that the operations of Conrail at or near said Facilities involve some risk, and 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 Licensee that are over, under, upon or in the property and Facilities of Conrail including the loss of or interference with service or use thereof and whether attributable to the fault, failure or negligence of Conrail or otherwise.

(b) Licensee also covenants and agrees to and shall at all times indemnify, protect and save harmless Conrail from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges which Conrail may directly or indirectly suffer, sustain or be subjected to by reason or on account of the construction, placement, attachment, presence, use, maintenance, repair, alteration, renewal, relocation or removal of the Facilities in, on, about or from the premises of Conrail whether such losses and damages be suffered or sustained by Conrail directly or by its employees, patrons or licensees, or be suffered or sustained by other persons or

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corporations, including Licensee, its employees and agents who may seek to hold Conrail liable therefor, and whether attributable to the fault, failure or negligence of Conrail or otherwise, except when proved by Licensee to be due directly to the sole negligence of Conrail.

(c) Notwithstanding anything contained in Section 8(b) hereof, and irrespective of any negligence of Conrail, Licensee assumes sole responsibility for, and agrees to indemnify, -save harmless and defend Conrail from and against all claims, actions, or legal proceedings arising, in whole or in part, from; (i) the failure of Licensee to comply with any obligations imposed on it by this License, or (ii) any claims, actions, or legal proceedings under the Federal Employer's Liability Act and any amendments to such Act now or hereafter in effect, alleging or claiming, in legal effect, that Conrail in respect to that portion of its land which lies under or near the FACILITIES, failed to correct or guard against an unsafe condition or failed to furnish a safe place to work. Failure by Conrail to make verbal or written complaints to Licensee with respect to unsafe working conditions or with respect to Licensee's failure to carry out its obligations under this License or knowledge on the part of Conrail of such unsafe working conditions or place to work and of such failures by Licensee to carry out its obligations under this License shall not be deemed to constitute acquiescence therein by Conrail or actionable negligence on the part of Conrail.

(d) If a claim or action is brought against either party and for which the other party may be responsible hereunder in whole or in part, such other party shall be notified and permitted to participate in the handling or defense of such matter.

### 9. INSURANCE

(a) 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.

(i) Public Liability insurance, including contractual liability insurance, covering all liabilities assumed by Licensee under Section 8 of this License, without exception or restriction of any kind. Said insurance shall be in limits of not less than Five Million Dollars (\$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 must be named as an additional insured under said insurance. 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.

(ii) 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.

(iii) 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.



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(b) 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.

(c) 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.

(d) 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.

(e) Licensee shall furnish Conrail with certificates of insurance evidencing the insurance coverages required in subsections (a)(i), (a)(ii), (a)(iii), 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(i), (a)(ii), (a)(iii), above. Certificates of insurance and/or policies should be sent to Conrail's Insurance Department.

(f) All insurance policies shall be endorsed to provide that the insurance company shall give thirty (30) days prior written notice to Conrail's Insurance Department, 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.

### 10. EFFECTIVE DATE AND TERMINATION

(a) This Agreement shall become effective as of the expiration of thirty days (30) from the date when a copy thereof shall be filed in the office of the Secretary of the Pennsylvania Public Utility Commission ("PA PUC"), provided that; if the PA PUC shall, prior to the expiration of such period institute a proceeding affecting its validity under the provisions of Section 507 of the Public Utility Law, this Agreement shall only become effective upon its approval by the PA PUC.

(b) This Agreement shall be terminable upon not less than ninety (90) days' notice served or given by either party hereto to the other; provided however, that this Agreement may be terminated by Conrail upon violation of any of the terms hereof by Licensee, if Licensee fails to cure such violation within thirty (30) days of notice by Conrail of such violation.

(c) In the event of termination of this Agreement by Conrail pursuant to the first clause of Section 10(b) hereof, within ten (10) years of the date of execution of this Agreement, Conrail shall refund to Licensee on a pro-rata basis, without interest, any consideration fee prepaid beyond the date of termination, determined as though this Agreement had been granted for a ten (10) year term.

(d) Upon termination of this Agreement or upon the removal or abandonment of the Facilities covered hereby, all the rights, title and interest of Licensee hereunder shall cease and determine, and this instrument shall thereupon become and be null and void, without any liability on

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the part of either party to the other party except only as to any liability accrued prior thereto, and Licensee shall remove its Facilities and appurtenances from Conrail property, and right of way and all property of Conrail shall be restored in good condition and to the satisfaction of Conrail. If Licensee fails or refuses to remove its Facilities and appurtenances under the foregoing conditions, Conrail shall be privileged to do so at the cost and expense of Licensee, and thereafter, bill Licensee in accordance with the terms of Section 6 hereof, and Conrail shall not be liable in any manner to Licensee for said removal.

(e) Anything herein contained to the contrary notwithstanding, there shall be no obligation on the part of Conrail to continue operation of the line of Conrail in the vicinity of the Facilities to prevent the termination of Licensee's occupation rights at any crossing or occupation covered hereunder on account of an abandonment of line or service by Conrail; nor shall there be any obligation upon Conrail to perfect its title in order to continue in existence the said occupation rights after such abandonment of line or service.

### 11. PERMITS AND APPROVALS

(a) Licensee, at its sole risk, cost and expense, shall obtain all permits and approvals which may be necessary or appropriate and Licensee shall comply with all federal, state and local laws, and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of Conrail. Licensee hereby agrees to indemnify, defend and hold harmless Conrail therefrom.

(b) This License is authorized by Licensee to be entered into by Resolution / Ordinance Number 98-7 \_\_\_\_\_, adopted 10/20/98 by VALLEY TOWNSHIP BOARD OF SUPERVISORS, a certified copy of which is attached hereto and made a part hereof.

### 12. SUCCESSORS

(a) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, successors and assigns, subject, however, to the terms of Section 12(b) hereof.

(b) The rights hereby afforded shall be the personal privilege of Licensee, and no assignment or transfer thereof by operation of law or voluntary act of Licensee shall be made, or other use of the Facilities be permitted than as herein provided, without the prior consent and agreement in writing of Conrail being first had and obtained.

### 13. WAIVER

The waiver by Conrail of any breach of any term, covenant, obligation or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or a waiver of any other term, covenant, obligation or condition herein contained.

### 14. NOTICES

(a) Every notice, approval, consent, or other communication desired or required under this License shall be effective only if the same shall be in writing and sent postage prepaid by overnight mail or United States registered or certified mail (or a similar mail service available at the time),

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directed to the other party at its address as follows (or such other address as either party may designate by notice given from time to time in accordance with this Section):

If to Conrail:

Consolidated Rail Corporation  
P.O. Box 41412  
Two Commerce Square 12B  
Philadelphia, PA 19101-1412  
Attn: General Manager-Contracts

If to Conrail's Insurance Department

Consolidated Rail Corporation  
P.O. Box 41406  
Two Commerce Square 6B  
Philadelphia, PA 19101-1406  
Attn.: Manager-Insurance

If to Licensee:

Valley Township  
890 Lincoln Highway  
P.O. Box 467  
Coatesville, Pennsylvania 19320

Attn: Chairman, Board of Supervisors

## 15. ENTIRE AGREEMENT

The entire agreement between Conrail and Licensee is set forth in this Agreement and there are no understandings, agreements, or representations of any kind between the parties, verbal or otherwise, other than as set forth in this Agreement. No change or modification of any of the terms, obligations or provisions hereof shall be valid unless in writing and signed by the parties hereto.

## 16. PARTIAL INVALIDITY

If any term, obligation or condition of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent by a final judgment or award which shall not be subject to change by appeal, then the remainder of this Agreement or the application of such term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant and condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law. Furthermore, each agreement, obligation and other provision of this Agreement is and shall be deemed and construed as a separate and independent obligation of the party bound by, undertaking or making the same, and not dependent on any other provision of this Agreement unless expressly so provided.

## 17. THIRD PARTY BENEFICIARY

Nothing contained in this Agreement shall be construed as to confer upon any other party the rights of a third party beneficiary.

## 18. GOVERNING LAW

This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.



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## 19. EXHIBITS AND ADDENDA

Any exhibit or addendum to this Agreement shall be deemed a part hereof.

## 20. HEADINGS

Section headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

## 21. TERMINOLOGY

As used in this Agreement, the terms "Conrail," "Licensee" and "party" shall include the respective subsidiaries and affiliates of Conrail and Licensee and the directors, officers, agents and employees of Conrail and Licensee and such subsidiaries and affiliates.

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

WITNESS:

CONSOLIDATED RAIL CORPORATION

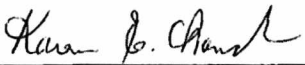
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BY: \_\_\_\_\_

Charles F. Myers  
Manager - Occupancy Agreements

WITNESS:

VALLEY TOWNSHIP

  
\_\_\_\_\_

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

Title:

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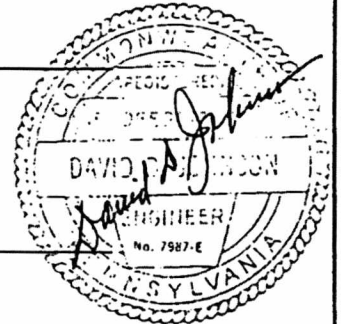
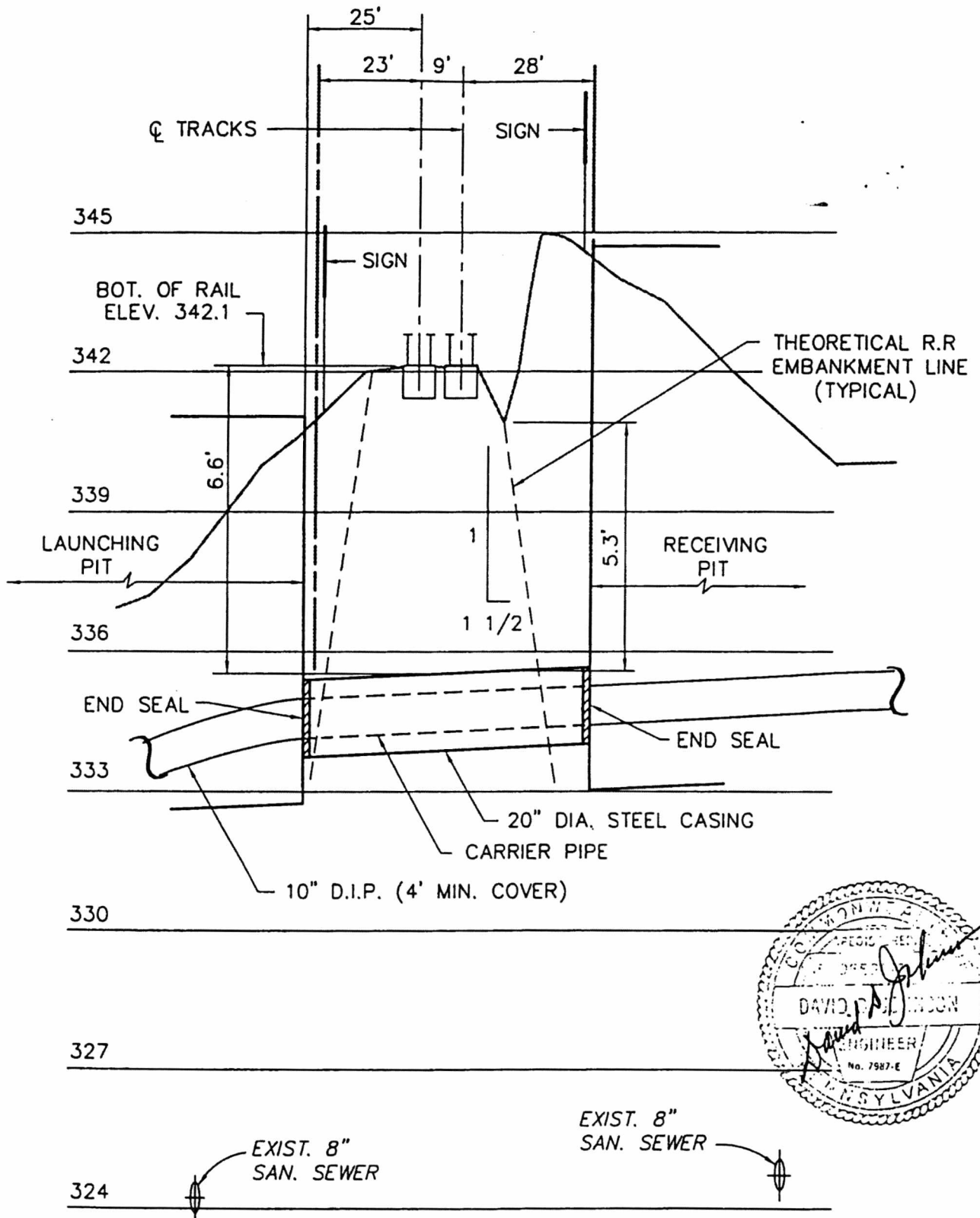
PLATE I

## PIPE DATA SHEET (For crossings and longitudinal occupancy)

	PIPE DATA	
	CARRIER PIPE	CASING PIPE
CONTENTS TO BE HANDLED	Sanitary Sewage	
NORMAL OPERATING PRESSURE	30 PSI	
NOMINAL SIZE OF PIPE	10"	20"
OUTSIDE DIAMETER	11.10"	20"
INSIDE DIAMETER	10.40"	19.250"
WALL THICKNESS	0.35"	0.375"
WEIGHT PER FOOT	37.8 lb/ft	78.60 lb/ft
MATERIAL	Ductile Iron	Steel
PROCESS OF MANUFACTURE		Electric- Fusion
SPECIFICATION	AWWA C151	ASTM A139
GRADE OR CLASS	Class 52	Grade B
TEST PRESSURE		
TYPE OF JOINT	Push-on or Mechanical	Field Welded
TYPE OF COATING	Bituminous	Uncoated
DETAILS OF CATHODIC PROTECTION	N/A	N/A
DETAILS OF SEALS OR PROTECTION AT ENDS OF CASING	N/A	12" thick grout plug
METHOD OF INSTALLATION	N/A	Bore and Jack
CHARACTER OF SUBSURFACE MATERIAL AT THE CROSSING LOCATION	N/A	
APPROXIMATE GROUND WATER LEVEL	N/A	
SOURCE OF INFORMATION ON SUBSURFACE CONDITIONS (BORINGS, TEST PITS OR OTHER)	To be provided prior to railroad crossing	

**NOTE:** Any soil investigation made on railroad property or adjacent to tracks shall be carried on under the supervision of Conrail's Chief Engineer. (See Section 1.4)

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**Pennoni Associates Inc.**  
One Drexel Plaza  
3001 Market Street  
Philadelphia, PA 19104

DRAWN BY: R.R.W

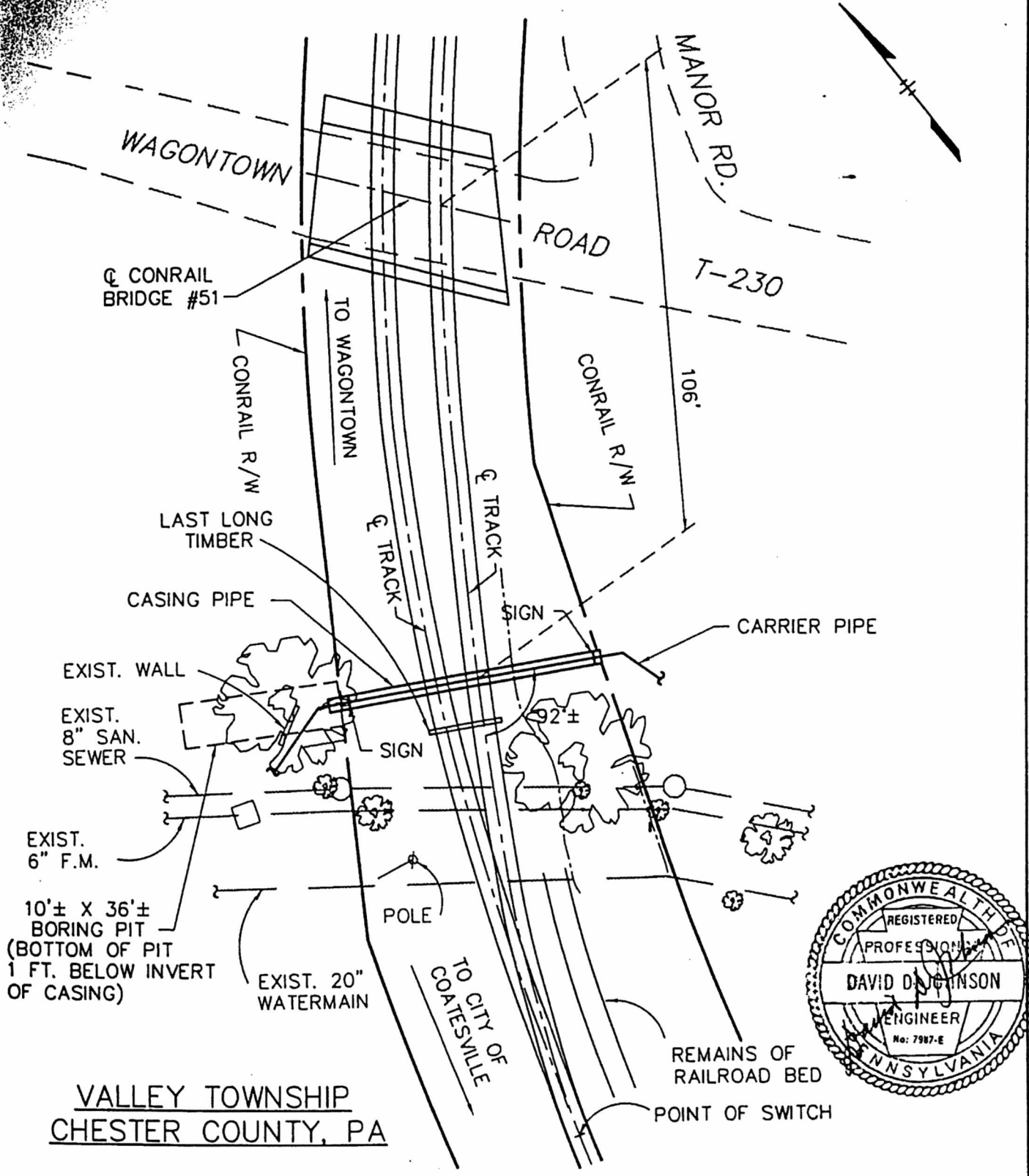
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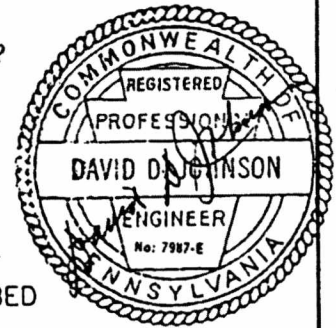
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VERT. 1" = 3' DATE: 6/15/98

DWG. No. PO-2

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VALLEY TOWNSHIP  
CHESTER COUNTY, PA



Pennoni Associates Inc.  
One Drexel Plaza  
3001 Market Street  
Philadelphia, PA 19104

DRAWN BY: R.R.W.  
CHECKED BY: C.L.  
JOB No. 7740-024.17.001

SCALE: 1" = 30'  
DATE: 6/15/98  
DWG. No. PO-1

CONRAIL PIPELINE OCCUPANCY - PLAN

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