

LICENSE AGREEMENT # _____

THIS AGREEMENT entered into this ____ day of _____, 2017 between THE MARYLAND AND DELAWARE RAILROAD COMPANY, 106 Railroad Avenue, Federalsburg, Maryland 21632 (hereinafter called "Railroad Company") and the County Commissioners of Worcester County, a political subdivision of the State of Maryland (hereinafter called "Licensee").

WITNESSETH:

WHEREAS, the Railroad Company is the owner of a railroad right of way upon which a rail transportation system is operated (hereinafter sometimes referred to as the "Right of Way"); and

WHEREAS, the Licensee wishes to acquire the license or privilege, as hereinafter described, defined and limited, in, on, upon, over, under, across, along and through said Right of Way from and to certain points and places hereinafter described to permit the Licensee to construct, install, operate, maintain, repair, reinstall, replace, relocate, and remove therein a System (as herein defined).

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein, the parties hereby agree as follows:

1. DEFINITIONS:

1.1 "Acceptance of construction" shall mean written notification from the Vice President of Engineering (as herein defined), or other designee, that work has been performed in accordance with the terms of this Agreement; but, "acceptance of construction" shall not constitute a warranty or guarantee of workmanship or freedom from defect and shall not constitute a waiver of any claim for subsequently discovered misfeasance, malfeasance or nonfeasance which could not previously have been discovered in the exercise of reasonable care and diligence.

1.2 "Approved plans," shall mean plans which have been reviewed and approved by the Railroad Company but shall not mean or imply any warranty or guarantee by the Railroad Company of the quality of plans or designs, except as to any elements of such plans as were required by the Railroad Company as a condition of approval; nor shall such term include acceptance of performance thereof or construction thereunder.

1.3 "License" shall mean a license in gross or such lesser right of occupancy or use provided to Licensee by Railroad Company pursuant to this Agreement. It shall be the Railroad Company's obligation hereunder to provide to Licensee a license in gross or the highest lesser right permitted by the nature of the Railroad Company's interest in the Right of Way.

1.4 “Facilities,” when applied to property of or installed by the Licensee, shall mean conduit, carrier pipe, cables, fibers, junctions, repeaters, terminals, power sources, attachments, structures or shelters, and all other necessary and appurtenant articles of personal property connected with, necessary for or useful to the construction, installation, operation, maintenance, repair, reinstallation, replacement, relocation and removal of the System (as herein defined). Any and all such property constructed and/or installed and subsequently operated, maintained, reinstalled, replaced, relocated and/or removed by the Licensee, or at the direction of the Licensee, shall be and remain at all times the personal property of the Licensee, and shall at no time be deemed to be the property of the Railroad Company, regardless of the manner or method of attachment to or installation in, on, upon, over, under, across, along and through the Right of Way.

1.5 “Fouling of tracks” shall mean existence, movement or placement of equipment and/or personnel on a railroad track or within fifteen feet (15’) of the centerline of any track within Railroad Company’s Right of Way.

1.6 “Operated Right(s)-of-Way” shall mean that area of any Railroad Company Right of Way utilized for track structures, drainage, signal and communications poles, maintenance roads, etc.

1.7 “Relocation” when related to alteration or removal of Railroad Company’s track from Right of Way, shall mean change in track grade or location in order to avoid or eliminate curvature problems, creation or deletion of double or multiple tracks; installation of additional passing tracks, spur tracks, or storage sidings; and track movement for operating needs or plans. The term, however, shall not include abandonment or complete removal of any particular tracks in conjunction with termination or abandonment of a service route, branch or main line.

1.8 “Right(s)-of-Way” shall mean the area of property owned, operated, leased or controlled by the Railroad Company.

1.9 “Subsidiaries” shall mean any railroad or other corporation owned, controlled or operated by the Railroad Company.

1.10 “System” shall mean:

(1) buried wastewater plant effluent discharge pipeline, ____ “ in diameter.

1.11 “System Right of Way” shall mean that portion of the Railroad Company Right of Way or any other land on which the System (as herein defined) is located.

1.12 “Temporary” shall mean, with respect to any use or occupation of land or property for construction (but not use or occupation of any track or Operated Right of Way), for a term not to exceed eighteen (18) months.

1.13 “Trackage Right” shall mean the rights, arising by agreement, of one railroad to use the tracks of another railroad for the carriage thereover of through rail traffic; it ordinarily imparts in the burdening carrier no ownership interest in the tract or Right of Way of the burdened carrier.

1.14 “Fuel” shall mean kerosene, diesel or propane gas.

2. LICENSE LOCATION:

2.1 Subject to the terms hereinafter described, Railroad Company does hereby permit the Licensee an occupancy license in, on, upon, over, under, across, along and through said Railroad Right of Way from a point at:

Milepost 50.10 of the MDDE Snow Hill Line, and continuing for approximately Four Thousand (4,000) feet north to Milepost _____ (as more fully set forth in Exhibit A attached hereto).

solely for the construction, installation, operation, maintenance, repair, reinstallation, replacement, relocation and removal therein of the System hereinabove described in Paragraph 1.10. It is intended herein that no enhancement improvement or increase in capacity of said System shall occur pursuant to this Agreement without written consent of Railroad Company.

2.2 NATURE OF LICENSE: Railroad Company owns a railroad Right of Way running from Frankford, Delaware to Snow Hill, Maryland a distance of approximately 26.7 miles acquired from The Snow Hill Shippers Association by two deeds dated March 23, 2000, that portion lying in Delaware being set forth in that deed recorded in the Sussex County land records at Deed Book 2470 at page 228, that portion lying in Maryland being set forth in that certain deed recorded in the Worcester County land records at Liber SVH 2828, Folio 527 and correspondingly Railroad Company herein authorizes Licensee to use that portion thereof as is hereinabove more specifically described and authorizes Licensee its use only to the extent of Railroad Company’s rights of ownership. Railroad Company offers no warranties as to quality of title.

2.3 LICENSE FEE: The Licensee shall pay the Railroad Company for the license or privileges herein permitted the sum of \$_____ payable on May 1st, 2017 and the 1st day of May each year thereafter until terminated as set forth herein. The aforesaid sum shall be increased yearly by an amount equal to the percent of increase in the Rent Component of the Consumer Price Index for All Urban Consumers, All Cities, All Items as published by the United States Department of Labor, Bureau of Labor Statistics or, if such index shall be discontinued, the successor index thereto or, if there shall be no successor index, a comparable index mutually agreed upon by the parties hereto. Any payments not received by Railroad Company within 15 days of the date due shall, in addition, be subject to a late payment charge of 1.5% per month, or any part thereof, during which payment is in arrears. Payment shall be made within 60 days of invoice.

2.4 EFFECTIVE DATE/TERMINATION DATE: This License Agreement shall take effect on May 1st, 2017 and unless earlier terminated pursuant to the provisions of this Agreement, this Agreement shall have an initial term of five (5) years, and thereafter from year to year unless otherwise terminated as provided for in Paragraph 3 hereof.

3. TERMINATION:

3.1 This Agreement shall terminate in whole or in part as to any portion or segment of Licensee's System upon the happening of any of the following events:

(1) By Licensee giving sixty (60) days prior written notice to Railroad of termination as to all or any part of its System or Facilities together with complete removal by the Licensee of all or that part of the Licensee's System or Facilities and restoration of the Railroad Company's Right of Way to the approval and satisfaction of the Railroad Company's Vice President-Operations, or designee; said termination not to be effective until removal, as aforesaid, has occurred;

(2) Subsequent written mutual agreement of the parties hereto.

(3) By Railroad Company giving six (6) months prior written notice to Licensee to remove all or any part of its System or Facilities and restoration of the Railroad Company's Right of Way to the approval and satisfaction of the Railroad Company's Vice President-Engineering, or designee, and absent removal within six (6) months such System and Facilities shall be deemed abandoned and Railroad Company may remove or cause to be removed the same and recover the cost thereof from Licensee together with any reasonable attorneys' fees Railroad Company may incur in so doing.

4. NON-EXCLUSIVITY OF LICENSE:

4.1 The license permitted to the Licensee by the Railroad Company pursuant to this Agreement shall be non-exclusive and occupations of the same Railroad Company right-of-way by one or more cable, wire, pipeline or other facilities owned and/or operated by any other person(s), company(ies) or other entity(ies) may be permitted at the sole discretion of Railroad Company.

4.2 Each crossing or occupation is granted subject to all matters of record at the time such crossing or occupation is created and existing licenses and rights of third parties, whether recorded or not. Licensee accepts the property "as is, where is" and without any warranties whatsoever.

5. RAILROAD COMPANY APPROVAL PROCESS:

5.1 Prior to any work of any character being performed at any locations which are the subject matter of this agreement, the Licensee shall submit to Railroad Company detailed plans indicating the scope and specifications of the work to be performed for review by Railroad Company's Vice President-Operations or designee. Upon review of the plans, Railroad Company

shall have the right, at its sole discretion, to approve, modify and/or reject the proposed construction. Upon completion of the proposed construction, Railroad Company shall have the right to inspect the work in order to determine “acceptance of construction” and compliance with “approved plans” as these terms are defined in Paragraph 1.

6. PERMITS:

6.1 The Licensee, at its sole cost and expense, shall secure and maintain in effect all federal, state and local permits and licenses required for the construction, installation, operation, maintenance, repair, reinstallation, replacement, relocation and/or removal of the System including, without limitation, zoning, building, health, environmental or communication permits or licenses, and shall indemnify the Railroad Company against payment of the costs therefor and against any fines or penalties that may be levied for failure to procure or to cure violations thereof. The Railroad Company shall take any and all actions or steps necessary to cooperate with and assist the Licensee in securing any such permits and licenses.

7. TRACK SUPPORT, CLEARANCES, RESTORATION AND REPAIR:

7.1 During any work of any character at locations of its System, the Licensee, at the sole cost and expense, shall maintain the track and roadbed in such manner as is necessary for the safe operation of railroad trains in the reasonable judgment of the Railroad Company’s Vice President-Operations, or designee. Upon the completion of said work, the Licensee shall restore said tracks, roadbed and other property to a condition as approved by the Railroad Company’s Vice President-Operations, or designee.

7.2 During any work of any character at locations of its System, and for two years thereafter, the Licensee shall be responsible for any shifting or settling of the track or roadbed resulting solely from the installation of the Licensee’s System. Upon written notification from the Railroad Company that shifting or settling has occurred, the Licensee, at its sole cost and expense, shall have (60) sixty days to correct the defect in the manner reasonably acceptable to the Railroad Company. In the event Licensee fails to perform the aforesaid restoration obligation, the Licensee shall reimburse the Railroad Company for any reasonable costs associated with correcting the defects.

7.3 During any work of any character at locations of its System near or around public grade crossing or other signal installations, the Licensee shall exercise due care not to disturb underground cables or wires associated with these installations. The Licensee shall reimburse the Railroad Company for any damage to these signal systems arising from the installation of the Licensee’s System.

7.4 During any work of any character at locations of its System where it becomes necessary to temporarily or permanently remove or relocate track, roadbed, switches, sidings, signals, or other property of the Railroad Company, the Licensee shall reimburse the Railroad Company for all reasonable costs incurred due to removals, relocation, or replacements of said property.

8. FOULING TRACK/SAFETY RULES:

8.1 The Licensee, its servants, employees, agents and/or contractors seeking to enter or foul tracks on Right of Way shall be trained or qualified in Railroad safety and operating rules, at Licensee's expense.

9. FLAGMEN/WATCHMEN:

9.1 If either the Licensee or the Railroad Company deem it advisable during any phase of construction, reconstruction or removal of the System, to place watchmen, flagmen, inspectors or supervisors for the protection of the railroad operations or property of the Railroad Company or others on the Railroad Company's Right of Way and property (including the Licensee), Licensee shall provide such at the sole expense and cost of the Licensee.

10. RELOCATIONS/ALTERATIONS:

10.1 If the Railroad Company determines that any of the Licensee's Facilities or the location thereof must be changed or altered because of relocations of the Railroad Company's trackage, or other reasons determined solely at Railroad Company discretion, the Railroad Company shall promptly notify the Licensee of such plans (and give at least 60 days written notice thereof). In such event, the Railroad Company agrees that the Licensee shall be allowed to move its Facilities to other available Right of Way or land of the Railroad Company, such relocation to be at the sole cost and expense of the Licensee.

11. CONDEMNATION:

11.1 Should any portion of the Railroad Company's Right of Way, or other land designated and/or used by the Licensee for its System, be appropriated and/or acquired by any governmental agency or other party with the power of eminent domain for public purpose or use, then improvements and/or Facilities of the Licensee not condemned, appropriated and/or acquired by such agency or authority shall be removed from the condemned or appropriated portion by the Licensee at the Licensee's cost unless the Licensee makes other arrangements with the appropriate agency or authority.

11.2 In the event that any portion of the Right of Way or other of the Railroad Company's land which includes the Licensee's System constructed thereon becomes the subject of a condemnation proceeding, it is agreed that the Licensee's interest (both in improvements or Facilities and in occupation of the Right of Way of other land) shall be severed from the Railroad Company's interest in such proceeding and the parties agree to have any such condemnation awards specifically allocated between the Licensee's interest (both physical and occupational) and the Railroad Company's interest (both physical and ownership rights).

11.3 The Railroad Company shall notify the Licensee immediately of any condemnation filed against Railroad Right of Way or other Licensee Facility site, which affects the System Right of Way. The Railroad Company shall also notify the Licensee of any similar threatened condemnation.

11.4 In the event of any sale of Right of Way or other Licensee Facility to another entity, such sale shall be subject to this Agreement.

12. NON-DISTURBANCE/THIRD PARTY USERS:

12.1 Except as otherwise permitted in this Agreement, the Railroad Company shall not, nor shall it license, permit or authorize its agents, employees or contractors to, disturb or interfere with Licensee's Facilities or the use and operation of the Licensee's System or the Licensee's right hereunder, nor shall the Railroad Company deny the Licensee access to the Licensee's Facilities. It is expressly understood however, that the Railroad Company has no control over unauthorized third party users who are, or may be, occupying portions of the Railroad Company's Right of Way. Under no circumstances, shall the Railroad Company be liable to the Licensee for unauthorized occupations. The Railroad Company will cooperate with the Licensee, at the latter's expense, in any actions, suits, or proceedings undertaken by the Licensee to effect removal of such occupations from the Railroad Company's Right of Way. All such activities by the Licensee shall be governed by and subject to the Licensee's indemnification of the Railroad Company pursuant to this Agreement.

13. LIABILITY/INDEMNITY:

13.1 The Licensee hereby assumes, releases and agrees to indemnify, defend, protect and save the Railroad Company harmless from and against any loss of and/or damage to the property of the Railroad Company, third parties or the Licensee's Facilities, and all loss and/or damage on account of injury to or death of any persons whomsoever (including employees and invitees of the parties hereto and all other persons), arising during the Planning and Design Phase, Maintenance and Operating Phase and/or the Installation and Construction Phase and throughout the term hereof, caused by or growing out of the plan, design, construction and installation, or subsequent operation, maintenance, repair, reinstallation, replacement, relocation or removal of the Licensee's facilities, or any part thereof, unless such loss and/or damage arises as a direct result of the sole negligence or willful misconduct of the Railroad Company.

13.2 Railroad Company shall not be liable to Licensee for consequential damages including, but not limited to any claim from any client, customer or patron for loss of revenue or services arising from any act or omission of Railroad Company.

13.3 Railroad Company shall not be responsible for any damages to the System maintained hereunder at any time while this in Agreement is in effect, unless such damage results from the gross negligence or willful misconduct of Railroad Company or its agents or servants. In no event shall Railroad have any liability for damages due to natural disasters or acts of third parties (including but not limited to trespassers). Licensee acknowledges that there are risks and inconveniences associated with maintenance of crossings, occupations and/or facilities on Railroad property and Licensee accepts such risks.

13.4 The Licensee further assumes, releases and agrees to indemnify, defend, protect and save the Railroad Company harmless from and against any loss and/or damage to any property or facilities of any party (including the Railroad Company or the Licensee or any persons operating or using such facilities) arising from any slide or soil disturbance, or from a fire, caused by or growing out of the presence, construction, maintenance, use, operation, repair, change relocation or subsequent removal of the Licensee's Facilities or any part thereof; loss and/or damage being deemed to include cost and expense thereof (including reasonable legal fees and court costs).

13.5 Railroad Company shall give Licensee prompt notice of any claims or actions against them for which Licensee may be required to indemnify Railroad Company under this Agreement. In addition to Licensee's liability for any loss that could be sustained by Railroad Company, Licensee shall be responsible for all litigation expense incurred by Railroad Company, if any, including but not limited to all attorney's fees payable on a current basis.

13.6 Except as may otherwise be provided in this Agreement, whenever any liability, cost or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever defend, indemnify and save harmless the other party(ies) to this Agreement and their parent corporation, subsidiaries and affiliates, and all of their respective directors, members, officers, agents, employees, successors and assigns from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnitee or its directors, members, officers, agents or employees.

14. INSURANCE:

14.1 Prior to the effective date of this License Agreement, and at all times during its term, Licensee, at its sole cost and expense, shall procure and shall maintain, and shall require its contractors and subcontractors (of any tier) performing activities hereunder to procure and maintain, insurance which shall protect Railroad Company, its officers, agents, employees, invitees, successors, and assigns, from claims which may arise out of or as a result of Licensee's activities under this Agreement, whether such activities be by Licensee, by any contractor or subcontractor, by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. In furtherance of this obligation, Licensee shall procure and maintain at least the minimum levels of insurance coverage as set forth below:

(1) Licensee shall maintain **Commercial General Liability** insurance (or in the case of a municipality, Municipal General Liability Insurance) and, if necessary commercial or municipal umbrella insurance ("CGL") **with a limit of not less than Two Million Dollars (\$2,000,000) each occurrence / Six Million Dollars (\$6,000,000) aggregate.** If such CGL insurance contains a general aggregate limit, it shall apply separately to the System. CGL insurance shall be written on ISO occurrence form CG 00 01 10 93 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract, including the tort liability of another assumed in a business contract. **CGL insurance shall be amended by attachment of ISO form CF 20 26**

(or a substitute form providing coverage acceptable to Railroad Company) to include The Maryland and Delaware Railroad as an Additional Insured. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or employment-related practices. **Said insurance shall further be amended to remove any exclusion for coverage within 50 feet of the railroad right of way.** Licensee waives all rights against Railroad Company and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the required CGL.

(2) Licensee shall provide, with respect to activities it or any of its agents perform within 50 feet vertically or horizontally of railroad tracks, **Railroad Protective Liability Insurance** (ISO/RIMA Form G 00 35 or equivalent), in the name of Railroad Company. **The policy shall have limits of liability of not less than Four Million Dollars (\$4,000,000) per occurrence,** combined single limits, for coverage A & B, for losses arising out of injury to or death of any person, and for physical loss or damage to or destruction of property, including the loss of use thereof. A \$10 Million annual aggregate may apply. If equivalent, or better, wording is not contained in the policy form, the following endorsement shall be included:

“It is agreed that in this policy of insurance ‘Physical Damage to Property’ means direct and accidental loss of or damage to rolling stock and their contents, mechanical constructions equipment or motive power equipment, railroad tracks, roadbed, signals, bridges or buildings.”

14.2 If at any time the above required insurance policies should be canceled, terminated or modified so that the insurance is not in full force and effect as required herein, Railroad Company may terminate this Agreement for default or, at its sole option, obtain insurance coverage equal to that required herein, the full cost of which shall be charged to and paid by Licensee.

14.3 Each policy referenced hereinabove, by endorsement, shall include the following required clauses:

“(1) This insurance coverage shall not be canceled by this Insurance Company, nor shall any changes be made which alter, restrict or reduce the insurance coverage so provided or change the name of the Insured(s), without first having given forty-five (45) days written notice to Licensee at their last known address, and (2) Railroad Company: Maryland & Delaware Railroad, 106 Railroad Avenue, Federalsburg, Maryland 21632, all evidenced by receipt of registered letter.

(2) Such insurance as afforded by this policy for the benefit of Railroad Company shall be primary and any insurance carried by Railroad Company shall be excess and noncontributing with insurance afforded by this policy.

(3) This Insurance Company releases Railroad Company from any liability arising from or through the operation of any subrogation clause in this policy of insurance, and in the event of any occurrence, accident or claim made under this policy,

this Insurance Company shall not claim or contend that any of those entities is liable as the result of subrogation.”

14.4 As evidence of the above insurance, Licensee shall, prior to the effective date of this Agreement, file with Railroad Company, and require any contractors and subcontractors performing activities under this Agreement to so file, duly executed Certificates of Insurance issued by the insurer(s) of all insurance required herein, including special endorsements. Each such Certificate shall be in a form satisfactory to Railroad Company; shall list the various coverage types and limits; shall name Railroad Company as an additional insured; and shall indicate that the Commercial General Liability policy has been endorsed as described above. All insurance shall be placed and maintained with insurers licensed and authorized to do business in the State of Maryland and who have an A.M. Best rating of “A” or better, unless otherwise approved by Railroad Company. Railroad Company’s approval or failure to disapprove insurance furnished by Licensees shall not diminish or release Licensee from full responsibility for liability as set forth herein. Upon Railroad Company’s request, Licensee shall furnish Railroad Company with a certified copy of each insurance policy.

14.5 Whenever either party becomes aware of any claim, injury, death, damage, or loss of any kind to persons or property arising out of or connected with this License Agreement, that party shall have the right to fully investigate the claim. Each party shall cooperate with the other in any such investigation. All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement, including pro rated salaries or wages of full-time agent or employees of either party, including full-time attorneys, engaged directly or indirectly in such work, shall be included as costs and expenses in applying the liability provisions set forth in this Agreement.

15. LIENS:

15.1 Each party shall keep the other’s facilities free of all liens which arise in any way from or as a result of its activities, and cause any which may arise to be discharged or released of record as provided in this article, and shall indemnify and hold the other harmless from any and all loss, costs, damages and expenses which the other may incur or suffer if such a lien is filed.

15.2 Nothing herein shall preclude the contest of the lien or contract or action upon which the same arose. Each party agrees to cooperate with the other in such contest.

15.3 Nothing in this Agreement shall be deemed to give, and the Railroad Company hereby expressly waives, any claims of ownership in and to any part or the whole of the Licensee’s System and/or Facilities unless otherwise elsewhere provided to the contrary. Furthermore, nothing herein shall be deemed to give, and the Licensee hereby expressly waives, any claims of ownership in and to any part or the whole of Railroad Company’s real or personal property.

16. BREACH, REMEDIES:

16.1 The Licensee and the Railroad Company each agree that neither shall proceed against the other by litigation before the offending party has had written notice of and reasonable time to respond and cure such breach or defect; provided, however, neither party shall be required to give the other time to respond and cure if any such delay will cause irreparable harm.

16.2 Remedies available to each party shall include: (1) litigation for specific performance; (2) litigation for injunction relief; (3) litigation for damages and costs (Railroad Company will not be responsible for consequential damages)

16.3 Any waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any right or covenant herein or of any other matter subsequently occurring.

17. COVENANTS AND WARRANTIES:

17.1 Licensee and Railroad Company covenants and warrants each has full right and authority to enter into this Agreement in accordance with the terms hereof, and that by entering into and performing this Agreement, it is not in violation of its charter or by-laws, or any law, regulation or agreement by which it is bound or to which it is subject.

17.2 Licensee and Railroad Company covenants and warrants that each, to the best of its knowledge, has no litigation or proceeding pending or threatened against it or its facilities that would threaten this Agreement, nor has it violated, to its knowledge, any rule, order or regulation issued by any applicable governmental authority which might adversely affect the other party's interest thereunder or right to make the agreements hereunder, or execute or perform this Agreement, and that the execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action, that the signatories hereto are authorized to sign this Agreement.

18. RECORDINGS, TAXES AND OTHER CHARGES:

18.1 If Licensee chooses to record this Agreement the Licensee shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of this Agreement. The Licensee further agrees that if it is determined by any state or local governmental authority that the sale, acquisition, license, grant, transfer or disposition of any part or portion of the property or rights herein described requires the payment of any tax (including sales or use tax) under any statute, regulation or rule, the Licensee shall pay the same, plus any penalty or interest hereon, directly to said taxing authority and shall hold the Railroad Company harmless therefrom. The Licensee shall pay all annual or periodic taxes levied or assessed upon the Licensee's Facilities, or on account of their existence or use, and shall indemnify the Railroad Company against the payment thereof. The Licensee shall have the right to make claim, and the Railroad Company shall cooperate with the Licensee in the prosecution of any such claim, for refund, rebate, reduction or abatement of said taxes.

19. INDEPENDENT CONTRACTOR STATUS:

19.1 The Railroad Company exercises no control whatsoever over the employment, discharge, compensation of or services rendered by the Licensee's employees or contractors, and it is the intention of the parties that the Licensee shall be and remain an independent contractor and nothing herein shall be construed as inconsistent with that status or as creating or implying any partnership or joint venture between the Licensee and the Railroad Company.

20. SUCCESSION/ASSIGNABILITY:

20.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns. This Agreement is assignable by Railroad Company without the consent of Licensee. This Agreement is assignably by Licensee only with consent of Railroad Consent, provided that such consent shall not be unreasonably withheld.

21. NOTICES:

21.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be addressed to:

The Licensee at: (one copy to each)

Worcester County Sanitation
Department of Waste & Water
Worcester County
P O Box 349
Snow Hill, MD 21863

The Railroad Company at: (one copy to each)

Cathrin B. O'Donnell
Vice President and General Counsel
The Maryland and Delaware Railroad Company
106 Railroad Avenue
Federalsburg, Maryland 21632

or at such other addresses as may be designated in writing to the other party.

21.2 Unless otherwise provided herein, notices shall be sent by registered or certified U.S. mail, postage prepaid, and shall be deemed served or delivered to addressee, or its office, upon the date of return receipt acknowledgment or, if postal claim notice is given, on the date of its return marked "unclaimed", provided, however, that upon receipt of a returned notice

marked “unclaimed”, the sending party shall make reasonable effort to contact and notify the other party by telephone.

21.3 The Licensee shall give Railroad Company at least forty-eight (48) hours written notice before initial entry upon any portion of the Railroad Company Right of Way. Thereafter, and until completion of construction, the Licensee shall give daily telephone notice of entry.

22. RAILROAD’S EXPENSES/EMPLOYEE COSTS:

22.1 The Railroad Company’s expenses for any work performed for or at the expense of the Licensee pursuant to the terms hereof or any cost or expenses incurred by the Railroad Company in connection herewith for which reimbursement is due from the Licensee shall be paid by the Licensee within sixty (60) days of the Licensee’s receipt of itemized bill(s) therefor.

22.2 Such expenses shall be only those expenses directly attributable to the work performed or cost or expense incurred and shall include: cost of labor (whether of Railroad Company or contracted by Railroad Company) and supervision, necessary travel or transportation expenses, materials, and any freight and handling charges on materials used. Railroad Company’s bills for labor or supervision shall include date, number of hours, expenses and total charge.

23. MISCELLANEOUS:

23.1 The Railroad Company and the Licensee represent and warrant to each other that neither has dealt with any broker or agent in connection with the transaction contemplated by this Agreement and each indemnifies and agrees to hold harmless the other from and against any commission or fee claimed by any broker or agent in connection with this transaction.

23.2 Each party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement.

24. LEGAL FORUM:

24.1 This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Maryland.

24.2 This Agreement shall not be interpreted against either party for the reason that the final Agreement was prepared by them.

ATTEST:

THE MARYLAND & DELAWARE RAILROAD
COMPANY

By: _____
John C. Paredes, President

WITNESS/WITNESS

LICENSEE

By: _____
Its: _____

The undersigned hereby certifies this License Agreement was prepared by The Maryland and Delaware Railroad Company, one of the parties hereto named in the instrument.

The Maryland and Delaware Railroad Company

John C. Paredes, President