

AN AGREEMENT, made and entered into this 28th day of August, 1942, by and between

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, hereinafter for convenience styled the Railway Company, party of the first part; and

CITY OF HARRIMAN, a municipal corporation organized and existing under and by virtue of the laws of the State of Tennessee, acting by and through "The Harriman Power Board", a duly authorized instrumentality of said City, organized and existing under and by virtue of a resolution heretofore adopted by the governing body of the City of Harriman, hereinafter for convenience styled the Board, party of the second part;

W I T N E S S E T H:

THAT the RAILWAY COMPANY, for and in consideration of the rentals herein agreed to be paid to it by the Board, and of the covenants of the Board upon its part to be kept and performed, as hereinafter expressed, hereby gives and grants unto the Board, so far as the Railway Company's present title to its right of way permits or enables it so to do, the right or license, determinable as hereinafter expressed, to maintain the existing line of power wires of the Board, with poles and other supports for same, upon and along the northeasterly side of the right of way of the Railway Company for its main tracks, at OAKDALE, in the County of Morgan and State of Tennessee, as shown colored red upon the blue-print map of Drawing No. 18168, dated May 19, 1941, last revised December 26, 1941, hereunto annexed and made a part of this agreement.

AND the BOARD hereby covenants and agrees in consideration of said license:

1. That it will yield and pay unto the Railway Company the rent or sum of SIX DOLLARS (\$6.00) per annum, payable in advance, on the sixteenth day of September in each year during the life of this agreement.
2. That when, at any time hereafter during the life of this agreement, it shall become necessary to make any repairs or renewals of said line of power wires, or the supports for same, the Board will make the said repairs or renewals, at its own cost and expense, and in strict accord with the "SPECIFICATIONS, RULES AND REGULATIONS OF THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE", now in effect; it being understood that the work of repairing, renewing and maintaining said line of power wires shall, at all times during its progress, be subject to the inspection and supervision, and upon its completion, to the approval, of the proper officer of the Railway Company.
3. That in the event that the proper use, maintenance and control of the right of way and property of the Railway Company, or the proper construction, maintenance or use of the telegraph, telephone or signal wires located thereon, shall hereafter make necessary any change of location of any of the wire lines of the Board, or the supports thereof located on such right of way or property of the Railway Company, then and in such event, the Board agrees that it will, at its own cost and expense, within twenty (20) days after notice, in writing, given to the Board by the Railway Company so to do, make such change in the location of its said wires, or the poles or other supports for the same, as may be required by the Railway Company, for the purposes aforesaid; or, in default thereof, the Railway Company may itself make such changes in the location of said poles, supports or wires of the Board, but at the cost and expense of the Board.
4. That the Board shall be responsible for any and all loss of or injury or damage to person or property, which may accrue from or be attributable to the construction or maintenance of its said line of wires upon and along the right of way or property of the Railway Company, or across or parallel with any lines of telegraph, signal or other wire lines located upon said right of way or property of the Railway Company, whether said loss, injury or damage shall

result from the negligence of the Board, its agents or employees, in or about the construction or maintenance of the said line of the Board, and the supports thereof, or otherwise; and the Board shall indemnify and save harmless the Railway Company or the owners or users of such structures or wire lines on said right of way and property of the Railway Company against any and all such loss, injury or damage.

5. That in the event that the Board shall make default in the performance of any one or more of its covenants in this agreement contained, or in the event that the said line of power wires shall by reason of improper maintenance or otherwise become a source of danger to, or be likely to interfere with the operations of the Railway Company on its said line of railroad, or in the event that the Railway Company shall at any time require for railroad purposes the right of way occupied by said line of power wires, or any part or parcel thereof, then and in any of such events, the License hereby granted may, at the option of the Railway Company, be deemed to be forfeited, and the Board shall, at its own cost and expense, upon being notified by the Railway Company, in writing, so to do, forthwith remove its said line of power wires, and the supports thereof, from the right of way of the Railway Company, and restore said right of way to condition existing prior to the construction of said line of power wires thereupon; or, in default thereof, the Railway Company may bring an action to require the removal of said line of power wires by the Board or may itself remove the same and restore the condition of said right of way, at the expense of the Board.

AND IT IS MUTUALLY COVENANTED AND AGREED:

6. That this agreement shall take effect as of the 16th day of September, Nineteen Hundred and Thirty-Nine (1939); shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto as well as upon the parties themselves, and is intended to and does supersede and cancel that certain other agreement, in writing, heretofore made and entered into by and between the Railway Company and The Tennessee Electric Power Company, bearing date of the 15th day of September, 1926, concerning the construction and maintenance of the said line of power wires hereinbefore described upon and along the right of way of the Railway Company; the Board herein having acquired the right, title and interest of the said The Tennessee Electric Power Company in and to said line of power wires.

IN WITNESS WHEREOF, the parties hereto have executed these presents, in duplicate, each part being an original, as of the day and year first above written.

In presence of:

John B. Cornell
As to Railway Company.

In presence of:

J. D. Garland
B. L. Yeary
As to Board.

THE CINCINNATI, NEW ORLEANS AND
TEXAS PACIFIC RAILWAY COMPANY,

By

John B. Hyde
Vice-President.

CITY OF HARRIMAN, by "The Harriman
Power Board",

By

J. L. Sawatec
Chairman.

L. S.

ATTEST:

J. W. Love
Secretary.