

AN AGREEMENT, made and entered into this 4th day of June, 1940, 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 covenants of the Board upon its part to be kept and performed, as hereinafter expressed, hereby gives and grants unto the Board, in 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 lines of power wires of the Board, as now located and constructed, across the right of way and tracks of the Railway Company, at or near OAKDALE, in the County of Morgan and State of Tennessee, 810 feet south of Milepost 254, and 2786 feet south of said Milepost 254.

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

1. That when, at any time hereafter during the life of this agreement, it shall become necessary to make any repairs to or renewals of the said lines of power wires, or any of them, or the supports for same, the Board will make the said repairs or renewals in strict accord with the "RAILROAD SPECIFICATIONS FOR OVER-HEAD CROSSINGS OF ELECTRIC LIGHT, POWER SUPPLY AND TROLLEY LINES CROSSING RAILWAYS", of the American Railway Engineering Association (Committee on Electricity), adopted March 15, 1923, or as the same may be modified or amended from time to time hereafter; it being understood that the work of repairing, renewing and maintaining said lines of power wires, or any of them, 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.

2. That in the event 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 any of its said wire lines or the poles or other supports for 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 or locations of said poles, supports or wire lines of the Board, but at the cost and expense of the Board.

3. 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 lines of wires or any of them, upon and across the right of way, tracks or property of the Railway Company or across 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 lines of the Board, or any of them, 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.

4. That in the event the Board shall make default in the performance of any one or more of its covenants in this agreement contained, or in the event the said lines or power wires, or any of them, 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, then and in either 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 lines of power wires, or any of them, from the right of way of the Railway Company and restore said right of way to condition existing prior to the construction of said lines of power wires, or any of them, thereupon; or, in default thereof, the Railway Company may bring an action to require the removal of said lines of power wires, or any of them, 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:

5. That this agreement 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 the agreement, in writing, between the Railway Company and The Tennessee Electric Power Company, dated May 1, 1927, concerning the construction and maintenance of lines of power wires upon and across the right of way and tracks of the Railway Company at divers points, so far as the interest of the Board therein is concerned and so far as said agreement concerns the crossings hereinabove described; the Board being the assignee of the interest of said Power Company in and to said crossings and in and to said agreement of May 1, 1927, so far as the same concerns said crossings and the distribution system and territory heretofore assigned or conveyed by said Power Company to the Board.

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:

FTB *E. S. Newman*
.....
As to Railway Company.

THE CINCINNATI, NEW ORLEANS AND
TEXAS PACIFIC RAILWAY COMPANY,
By

[Signature]
.....
Vice-President.

In presence of:

J. A. Taylor
.....
As to Board.

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

J. H. Christmas
.....
Chairman.

L.S.

Attest:

J. T. Green
.....
Secretary.