

December 19, 1944

THIS AGREEMENT made and entered into on this 19th day of December, 1944, by and between TULSA COUNTY DRAINAGE DISTRICT No. 12, organized under the laws of the State of Oklahoma, acting through the Board of County Commissioners as ex-Officio Commissioners for said Drainage District, hereinafter called "District", as first party and

THE TEXAS COMPANY, a corporation of Delaware, hereinafter called "Owner", as second party, WITNESSETH:

WHEREAS, District, in conjunction with the War Department of the United States of America, is now constructing a levee in said Drainage District No. 12 for the protection of certain lands against flood waters of the Arkansas River, and

WHEREAS, in connection with the building of said levee, it is necessary for District to construct certain stoplog structures upon, over and across Owner's railroad service tracks where said levee crosses said tracks at points near the East and West center line of Section 23, Township 19 North, Range 12 East, one of said crossing points being approximately 501.67 feet East of the West property line of The Texas Company's West Tulsa Refinery site and the other crossing point being approximately 73.68 feet West of the Midland Valley Railroad Right-of-Way and which are further identified as being those shown, illustrated and detailed on U. S. Engineer Office, Tulsa, Oklahoma, March 11, 1944 drawings numbers C116-253, C116-254, C116-255 and C116-256 which were duly approved on behalf of The Texas Company by D. W. Carswell, (HBP), Chief Engineer, on March 28, 1944, a blueprint of each of which is on file with The Texas Company N. Y. Eng. Div. and,

WHEREAS, in the operation of said stoplog structures, it will be necessary for DISTRICT to place temporary obstructions across the said tracks of Owner which will interfere with traffic thereover, and

WHEREAS, it is the duty of District, upon completion of said levee project, to operate and maintain said levee and its appurtenances, including said stoplog structures;

NOW, THEREFORE, in consideration of the mutual benefits and of the covenants and agreements herein contained to be kept and performed by the parties hereto, it is agreed as follows:

1. The District shall at its sole cost and expense construct, maintain and operate said levee, including said stoplog structure, so as not to interfere with, endanger or delay the operation of the railroad and property of Owner, except only during flood times and when flood waters shall have reached an elevation of twelve (12") inches below the base of rails of Owner's tracks and District shall have notified Owner thereof. It is further understood and agreed that when said flood waters shall have reached an elevation of thirty-six (36) inches below the base of the rails of Owner's tracks, District shall notify owner, as aforesaid, of its intention to operate its closure structure when said waters reach an elevation of twelve (12") inches below the base of rails of said tracks, provided, however, that under no circumstances shall District begin the operation of its closure structure until District shall have first notified Owner, as aforesaid, and provided further, that operations of District's said stop-log structure may be started before said water reaches an elevation of 12" below the base of the rails of said track only upon consent of Owner being first had and obtained.

2. It is further agreed that if, in the maintenance of District's said levee and appurtenances, and trial operation of its said stoplot structure it is necessary to interfere with the operation of owner's tracks such operations by District shall be done only with the knowledge and consent of Owner.

3. District shall not erect or maintain or allow to be erected or maintained any building, structure or fixture or place or store or allow to be placed or stored, material of any kind in dangerous proximity to Owner's tracks, and in no case shall any building, structure, fixture or material be erected, maintained, placed or stored within six (6') feet of nearest rails of said tracks, or at a height of less than twenty-three (23') feet above tops of rails of said tracks, except only during period of flood waters and the operation by District of its said stoplog closure structures, as hereinbefore referred to.

4. District agrees to indemnify, protect and save harmless Owner against all loss, cost, damage and expense incurred or suffered by Owner in consequence of the construction, maintenance and operation by District of its said levee and appurtenances, including said stoplog structure, and District agrees to release, and does hereby release Owner from any and all such loss, damage, cost and expense.

5. No termination of this agreement shall release District from any liability which may have been incurred by District, or which may have accrued against District, during the term hereof prior to such termination.

6. This agreement shall inure to the benefit and be binding upon the respective successors and assigns of the parties hereto.