

PRIVATE TRACK AGREEMENT

FD 6473

THIS AGREEMENT, Made and entered into this 15th day of August, 1960

by and between the Fort Worth and Denver Railway

Company, a corporation, hereinafter referred to as the "Railway Company," party of the first part, and

Attebury Elevators, Inc.

hereinafter referred to as the party of the second part.

WITNESSETH

ARTICLE I

Railway Company hereby agrees, for the term and subject to the conditions below stated, to construct and operate a
two track^s approximately 2833 feet long to serve the grain storage
warehouse of second
party ~~inc~~ at M.P. 329.58 near Pullman, Potter County, Texas

the same to be located as shown in green on blue print marked Exhibit A, attached hereto and hereby made a part hereof, and to

ARTICLE II

THE PARTY OF THE SECOND PART AGREES, as follows:

(a) Forthwith upon the signing of this contract, to pay to the Railway Company in advance of the construction thereof the total estimated cost of said spur track from _____ to _____ to-wit:

~~§ 1. XXXXXXXXX provided, however, that if such estimated cost of said spur track shall prove less than the actual cost, then to pay to the Railway Company the difference between such estimated cost and the actual cost thereof; and if such estimated cost of said spur track shall prove more than the actual cost, then the Railway Company shall reimburse the Second Party the difference between such estimated cost and the actual cost of said spur track.~~

(b) Before the said track is constructed, Second Party shall provide a right-of-way for that part of the track, if any, located off of the Railway Company's property, not less than eighteen (18) feet in width, and if the track crosses or occupies a public street, alley, public road or any public thoroughfare in a city, town, village or county, procure from the proper authority the necessary franchise or ordinance, or other permission for the construction, maintenance and operation thereof, and furnish the Railway Company, without cost to said Railway Company, one certified copy of each of such franchises, ordinances or other permission, and do or pay for such paving or other work as may at any time be required by such city, town, village or county or any other public authority, in connection therewith. Second Party is further obligated to procure the valid

to consent in writing of any abutting property owners for the construction, maintenance and operation of such track, and to protect, indemnify and save harmless Railway Company from any and all damages of any and all kinds that may be claimed or sustained by any abutting property owner or any other person.

(c) Party of the Second Part further agrees, that the Railway Company shall have the right, without cost, to use all of said track, whether owned by it or the Party of the Second Part, in its general railroad business, and to extend said track or to construct other spurs therefrom for the purpose of serving other industries, provided such use shall not unreasonably interfere with the business of the Party of the Second Part, and provided that if this is done then there shall be such fair and reasonable adjustment with the Party of the Second Part as to expenditures made by said party on account of said track as shall be determined by said Railway Company.

(d) Party of the Second Part further agrees to keep a space of six and one-half (6½) feet from the nearest rail of the track entirely clear of structures, material and obstructions of every sort, and not erect or permit the erection of any beam, pipe, wire, structure or obstruction of any kind over the track at a height of less than twenty-two (22) feet six (6) inches above the top of the rail thereof; and should the Second Party cause or permit to be erected, constructed or located any such beam, pipe, wire, structure or obstruction as aforesaid, whether negligent or otherwise, all liability for damage or injury to persons or property occasioned thereby shall thereupon be wholly borne by the Second Party.

(e) Party of the Second Part further agrees to adopt and enforce on the employees and servants of the Second Party necessary and proper rules, precautions and regulations for their conduct and guidance, and for the protection of such employees while engaged in or about the business of the Second Party against injuries from engines, trains or cars, or any kind of equipment operated or run on said track or upon tracks used in connection therewith, or while such employees are engaged in the use of cars which may be placed upon said track, or upon tracks used in connection therewith, for the use or benefit of the Second Party, and to require such employees to use proper signals and flags to notify the employees of the Railway Company that employees of the Second Party are using or working upon any car or upon the railroad track, and to require the employees of the Second Party not to use any cars without examination thereof to see that they are in safe condition for use or handling; and in the event the Second Party, its servants or employees, shall move any car or cars set on said track by the Railway Company, said Second Party shall be solely liable for and shall defend and save harmless the Railway Company free from and against all damage to property and injuries to and deaths of person or persons in any manner howsoever occasioned, whether negligent or otherwise, by or arising out of such movement or movements of cars by said Second Party, whether caused directly by such movement or movements, or resulting therefrom by reason of failure of such car or cars after having been so moved by said Second Party, to properly clear adjoining tracks or trains, engines and cars on such adjoining tracks or persons riding on such trains, engines and cars, or otherwise howsoever. Second Party will indemnify, protect and save harmless Railway Company against all damages either to property or persons, including death injuries, resulting from any failure on the part of the Second Party to in any way carry out and perform the obligations imposed by this paragraph of this Article on said Second Party.

(f) It is understood that the movement of railroad locomotives involves some risk of fire, and the Second Party assumes all responsibility for and agrees to indemnify the Railway Company against loss or damage to property of the Second Party or to property upon its premises, regardless of negligence of the Railway Company, arising from fire caused by locomotives operated by the Railway Company on said track, or in its vicinity for the purpose of serving said Second Party, except to the premises of the Railway Company and to rolling stock belonging to the Railway Company or to others, and to shipments in the course of transportation.

The Second Party also agrees to indemnify and hold harmless the Railway Company for loss, damage, or injury from any act or omission of the Second Party, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation while on or about said track, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

ARTICLE III

The Railway Company shall be the owner of that portion of said track between connecting to
and Second Party's tracks, as shown in red on Exhibit A attached hereto, includ-
ing the grading, bridging, ballast and all other improvements. The Second Party shall be the owner of that portion of said
track, if any, between upon its own and property, as shown in
green on Exhibit A attached hereto, including the grading, bridging, ballast and all other improvements.

ARTICLE IV

The Second Party agrees to maintain that portion of said track ~~between~~ upon its own ~~and~~ property, as shown in green on Exhibit A attached hereto; provided, however, that Railway Company may maintain that part of the track which the Second Party agrees to maintain, but if the Railway Company shall undertake such maintenance it shall from time to time render bills against Second Party for the expense thereof, which bills Second Party agrees to pay within twenty (20) days after receipt thereof.

The Railway Company reserves the right to disconnect the track or refuse to operate it if Second Party fails to maintain that part thereof to be maintained by Second Party in safe condition.

ARTICLE V

Second Party further agrees that if by reason of the enactment of any Federal or State law or the passage or adoption of any ordinance or regulation by any city, town, village, county or municipality, it becomes necessary to make any changes in said track, that Second Party will make such changes as may be required by said law, ordinance and/or regulation at its sole expense and without cost to the Railway Company; and said Second Party further agrees to adopt and enforce such rules and regulations covering the construction and/or maintenance of buildings, structures or other improvements of any kind adjacent to said track and governing the conduct of its employees while engaged on or about said track as may be required by the laws, ordinances and/or regulations of the state, town or municipality in effect on the date of the execution of this agreement or which may hereafter become effective.

ARTICLE VI

In case of a breach of any of Second Party's obligations contained in Article II hereof, or any other Article, Second Party will indemnify and save harmless Railway Company from and against all liability for loss, damage, injury or death caused or contributed to thereby, whether by negligence or otherwise; and Second Party assumes the risk of and will indemnify and hold harmless Railway Company from and against all loss and damage to all buildings, structures and improvements located upon any land adjacent to the track, owned, leased or controlled by Second Party, and all property of every sort belonging to Second Party or others temporarily or permanently in said buildings and structures or on said land, resulting from the operation of the track, whether caused by the negligence of the Railway Company or the officers or employees of the Railway Company or otherwise.

ARTICLE VII

(a) If the Second Party shall fail for a period of twelve (12) months in any period of twelve (12) months to operate and to carry on the said business to accommodate which the said track is to be constructed, or if the Second Party shall fail or refuse for thirty (30) days after demand made therefor to comply with and carry out any of the covenants or agreements of the Second Party herein, or if the Second Party shall dispose of said business or assign this contract or any right or interest therein or thereunder without the written consent of the President or Vice-President of the Railway Company, the said Railway Company may, at its option, expressed in writing, terminate its obligation herein further to operate or maintain said track, and at its option may take up and remove that portion of said track belonging to said Railway Company as more clearly specified on the attached Exhibit A, and any notice of such option shall be sufficiently given and expressed if mailed in an envelope addressed to the Second Party at the aforesaid point of business of the Second Party or left thereat with any person in charge of said business; but no termination shall release the Second Party from any liability which may have attached or accrued previous to or at the time of such termination, nor from any obligation of indemnity herein contained or covenant to hold the Railway Company harmless or to pay damages or judgments.

(b) The words "Second Party" wherever used herein shall be held to include each person or corporation mentioned in the title hereof as a party of the Second Part hereto.

ARTICLE VIII

This agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns, or heirs, executors and administrators; but Second Party shall not assign or sublet the same without the written consent of the Railway Company as set forth in Section (a) of Article VII.

In addition to the cancellation provisions contained in Article VII, it is further agreed that the Railway Company may terminate this agreement upon ten days' written notice if Second Party fails to keep any of Second Party's covenants herein contained.

This agreement shall take effect the date hereof and unless terminated, as above provided, shall continue in full force and effect for a period of one year and thereafter until terminated by either party giving the other party 30 days' notice in writing of an intention to terminate the same, the agreement to terminate upon the expiration of such notice.

If there be a Receiver for the Railway Company herein mentioned, the acceptance provided in this Article may be made by the Receiver or by him and the Railway Company jointly; and shall become a contract between the Receiver or the Railway Company, or between the Receiver and the Railway Company, and the Second Party, as the case may be.

No termination or expiration hereof shall affect the rights and liabilities, if any, of the parties hereunder then existing.

ARTICLE IX

It is expressly agreed and understood that if any article or provision of this agreement shall be held void or illegal, that the same shall not be held to invalidate, in any manner or way, any other provision, or provisions, or article or articles, or parts thereof of this said agreement.

ARTICLE X

This agreement cancels and supersedes private track agreements Nos. DC-5042 and 5410 dated November 24, 1953 and October 19, 1955.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year first herein written.

Attest:

Fort Worth and Denver RAILWAY COMPANY

A. B. Williams
Assistant Secretary.

By *M. A. Monaghan*
Its General Manager

Witness

Attest:

Attebury Elevator, Inc.

[Signature]

By *A. G. Attebury*
President

Approved as to form and execution:

[Signature] Date _____, 19____
Asst. General Attorney

Recommended:

E. G. Graham Date _____, 19____
Asst. Chief Engineer

[Signature] Date _____, 19____
Freight Traffic Manager

[Signature] Date _____, 19____
Superintendent

_____ Date _____, 19____

ATTORNEY PROPERTY

744.7746

504572.75

504572.75

504572.75

504572.75

504572.75

EXHIBIT A
F.W.D. AYCO
POLYMER TERS

Station in accordance with the original
1944 Attorney's Survey
of the 1/4 Section 1, T.1N, R.1E, S.1E
April 15, 1960

504572.75

504572.75

504572.75

504572.75