

United States  of America

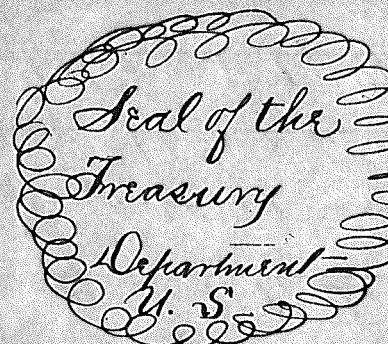
War Department

Washington City September 30<sup>th</sup> 1843

Pursuant to the Act of Congress of the 22<sup>nd</sup>. February 1849 I H. F. Crosby Chief Clerk of the war. Department in the absence of the Secretary of war. do hereby certify that the annexed document and chart have been truly copied from the originals on file in the Office of the Chief of Ordinance of

Exhibit "E"

This department



In witness whereof I have hereunto set my hand and caused the seal of the War Department to be affixed on the day and year first above written

(signed) H. F. Crosby  
Chief Clerk

In the absence of the Secretary of War

## Agreement:

The following agreement contains the terms and conditions upon which the Baltimore and Ohio Railroad Company shall be, and they are hereby, permitted to construct that part of the main stem of the Baltimore and Ohio Railroad which is proposed to be constructed westward from the present viaduct at Harpers Ferry along and through the property of the United States at that place.

They have laid down two routes for the said main stem which are designated in the drawing and plan annexed hereto as a part thereof and lettered A. and B. respectively. the description of which is as follows:-

The route A. leaves the Railroad viaduct at or near second pier from the Virginia shore and turns to the right up the Potomac until it acquires a direction parallel or nearly so to the new river wall now being erected by the United States on the river side of the northern row of work shops belonging to the musket Armory.

The outside of this wall is about forty feet from the river front of said work shops and its top will when finished, be about

fourteen or fifteen feet above low water in the river the space between the wall and the shops being filled up and graded as a street. The route for the Railroad having reached the United States property at the lower or eastern end of the wall just mentioned, passes up the river on the outside of that wall with a view to the construction of an additional wall in the river parallel to the United States wall and about twenty feet therefrom; this additional wall to be built by the company of such a height as may be deemed necessary to guard against danger from high water to be superstructure that may be placed upon the wall; the United States wall being also raised by the company to such a height as may be deemed necessary for the same purpose; the part so raised not extending inward from the outer face of the wall at its top more than five feet; the space between the two walls to be left open throughout for the passage of the water of the river; the road to be so constructed opposite the Tilt hammer shop as to leave a clear space of twenty feet between the road and the river front of the shop. Should the construction of the road be found to make the tilt hammer shop

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inconveniently dark. the railroad company shall make such changes in the manner of lighting the building as the Secretary of War may require so as to put it into as good a condition in this respect as it is in at present. The entrance of the water of the river into the space between the walls, above mentioned and its exit therefrom to be provided for by proper openings in the outer wall. The route after passing the tilt hammer shop ascends the river along the outer bank of the United States canal by a solid embankment and wall; the embankment of the railroad to be supported on the river side by a new wall to be founded on the bed of the river. the said embankment covering the present bank of the canal so as to have the benefit of it: if desired. in diminishing the quantity of earth and other materials to be supplied for the formation of the road bed. When the route reaches the head gates of the canal it crosses the canal upon an oblique line by a bridge with a wooden superstructure of two spans of about one hundred feet each, the pier of the bridge being in a line with the pier of the head gates

and consisting of an extension of the same eastwardly. and the abutments of the bridge being so far apart as to embrace the entire present width of the canal and also a sufficient space on the southern side of the channel by which the river enters the canal just above the head gates to allow of the passage of the proposed county road under the railroad along the inner margin of the channel and near the level of the water: the elevation of the said road being made sufficient at this point to give it a clear height of at least twelve feet above the county road. The route passes along the two precipitous points of rock immediately above the head gates and subsequently, pursues the Virginia shore of the Potomac towards Elk Branch without interference with the intended location of the county road.

5 Route B. is identical with route A. to a point west of the tilt hammer shop. and east of the present cross wall where it diverges from the route A. into the river for the purpose of obtaining a suitable curvature to cross the United States canal at or near the said cross wall as represented in the drawing and there

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returning) southwardly crosses the route  
A. and the said canal at or near the  
said cross wall to the hill side on the  
southern margin of the canal; the  
grade of the road being so elevated as to  
give a clear height of at least twelve  
feet above the present of the water in  
the canal and over the county road as it  
shall be located along the inner margin  
of the canal. The railroad after so crossing  
the canal and county road pursues the  
hill side up wards to the head gates and  
thier falls into route A. -

The superstructions for the support of  
the railway upon the parallel walls  
above described on route A. to consist  
of wooden tressels or pillars of brick,  
stone, or iron, as the company may  
prefer; the posts or pillars to be placed  
at least fifteen apart from centre to  
centre lengthwise of the road, and to  
be not more than eighteen inches in  
diameter; the supports to stand in two  
parallel lines one upon the Government  
wall raised as above mentioned and the  
other upon the parallel wall built by  
the railroad Company.

The option is given to the said

company to take either of the routes above indicated, provided, however, that should the United States pay to the said company the difference between the cost of constructing the route "A." and the route "B." to be ascertained by a careful survey before commencing the construction of the road, then the said company shall take the route "A." and construct their road thereon. And in case the Secretary of War should require it the wall to be built by the said company above the tilt hammer shop shall be solid and sufficiently puddled to prevent breakage from the canal, so as to make it serve not only as the support of the said railroad but as the river wall of the embankment of said canal, the said company in this event having the privilege of using the materials of the present wall as far as may be done without endangering the canal.

1 In the construction of the river wall below or east of the tilt hammer shop by the said company, there shall be left sufficient openings opposite each tail race from the water wheels of the mill,

to facilitate the discharge of the water therefrom and as auxiliary to the vent between the two parallel walls aforesaid.

The water power privilege of the United States shall not be injured or obstructed, but a free passage shall be left for the water from the channel or the river near Striders warehouse above the public dam and at all other places and points specified and reserved between such warehouse and the falls immediately below the viaduct.

Should the said company desire to take materials from the ground belonging to the "United States", they shall be permitted to do so free of expense at such places as may be designated by the superintendent of the Armory or permitted by the Secretary of war.

The road through the United States property shall be constructed at the minimum elevation not exceeding the height of the present viaduct as far as the tilt hammer shop, and the parapet wall designated on the drawing shall be constructed of good mortar masonry.

The said company shall allow the

United States) to construct and keep up forever a depot with suitable tracks switches and turnabouts to be connected with the said road, and the second story of a warehouse proposed to be erected by the United States.

Should the said company be required by the Secretary of War so to do, they shall remove at their own expense two wooden buildings marked "X" and "V" on the drawing, from their present position to such place as the Secretary of War may direct.

The tressel work of the said road shall be terminated west of the tilt hammer shop at the point marked "B." on the drawings, and the said company shall, if required by the Secretary of War construct, opposite the waste way, a culvert to facilitate the escape of surplus water and the drainage of the canal.

9 There shall be left at the cross wall aforesaid a sufficient space for the site of a saw mill in reference to the future erection of which the said company shall construct a culvert suitable for a waste way and tail race for the accommodation of said mill.

In the event of the selection of the

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line) B. "the said company shall fill up the space between that line and the canal wall from the point where the line diverges from the wall to that where it again intersects the wall so as to render the reconstruction or repairing of the wall unnecessary."

The said company shall locate and execute all the parts of thier work in such manner as shall cause the least danger or injury to the United States property and any practicable alternations consistent with the proper and judicious location and construction of the said road, that may enhance the value of the property of the United States and that shall be required by the Secretary of War, shall be made by the said Company the additional expense thereof being paid by the United States.

In locating and constructing the said road particularly the walls, abutments and piers, at and near the present viaduct, and the eastern boundary of the property of the United States, the said company shall locate and construct the same so as to produce the least possible diminution in the width of the

river consistant with the security of the said walls, abutments, and piers.

In the construction of those portions of the said road between the points indicated on the drawings as "K" and "L" the superintendent of the Armory may exercise such supervision and control as may be necessary to prevent the filling up or obstruction of the canal bed of the river, and site for the county road.

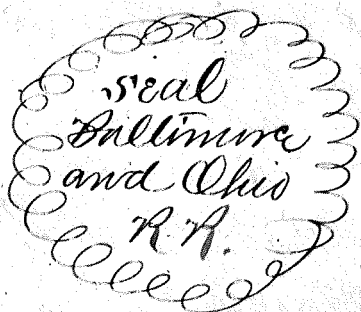
In the use of the road authority to construct which along and over the property of the United States is hereby conceded on the terms herein set forth, it is expressly stipulated that the care of the said company shall <sup>not</sup> be left standing on the track in front of the work shops of the Armory so as to obstruct the light and air.

11 It is further stipulated that should the said company deem it thier interest to use wood instead of stone coal as the fuel of thier engines, and damage should be done thereby to the property of the United States, the said company will become the insurers, and will be answerable and responsible for the same.

In testimony whereof and for the

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purpose of granting to the said company  
the privileges aforesaid upon the terms a-  
foresaid. Joel. R. Poinsett. Secretary of the  
War of the United States hath hereto  
set his hand and for the purpose of  
signifying the assent of the said Co-  
mpany to the said terms and binding  
them to the fulfillment thereof Louis  
McLane the president of the said  
company hath hereto set his hand and  
caused the corporate seal of the said  
company to be affixed hereunto

Dated this fifth day of November  
in the year eighteen hundred and  
thirty-eight.



J. R. Poinsett

Louis McLane

Witness to signature of Louis McLane  
Jno. W. B. Latrobe

Witness to signature of J. R. Poinsett  
Jno. L. Cochrane

United States of America  
District of West Virginia } S.S.

I, Jasper G. Moore, Clerk of the District Court of the United States for the District of West Virginia, do certify that the foregoing is a true copy of the record in the case of the United States of America & others against the Baltimore & Ohio Rail Road Company, lately depending in said Court at Wheeling in said District, Except the Evidence in said Cause, and the Photographic Maps used at the sale of the said Harpers Ferry property.

In testimony whereof I hereto set my hand and the Seal of said District Court at Wheeling in said District this 8th day of May A.D. 1876 and in the 100th year of the Independence of the United States of America.

Jasper G. Moore, Clerk  
W.C. U.S.D.M.