

Joint Buildings

technical bulletin

FINANCING ELECTRIC-MUNICIPAL BUILDINGS IN TENNESSEE

Victor C. Hobday

DEC 21 1970

MTAS LIBRARY

AUGUST 1953

NUMBER 20 *el*

MUNICIPAL TECHNICAL ADVISORY SERVICE

DIVISION OF UNIVERSITY EXTENSION
THE UNIVERSITY OF TENNESSEE

IN COOPERATION WITH THE TENNESSEE MUNICIPAL LEAGUE

TABLE OF CONTENTS

	Page
Introduction.	1
Plan 1 - Electric system pays all	3
TVA policy on non-diversion of electric revenues.	3
Temporary renting of extra space in electric building	5
Calculation of rentals.	8
Periodic review of rental charges	13
Pro-rata payment of debt principal by city.	14
Depreciation charges included in rentals.	14
City should acquire permanent possession.	16
Waiver of tax equivalents on buildings.	17
"Book value" as basis of tax equivalents.	18
Crowding of city departments?	20
Rent indefinitely or own?	20
TVA contract negotiations	21
Plan 2 - Electric system and city share costs	22
Permanent possession of relative share of space	22
Cities using this plan.	23
Agreements subject to approval by TVA	23
Temporary renting of extra space.	24
Common-use spaces	25
Plan 3 - City pays all.	26
The preferred plan?	26
Minimum review by TVA	26
Disadvantages of this plan.	27
City's control over arrangements.	28
Brief note on LaFollette and Sweetwater	29
Conclusion.	30
Author's preferences among plans.	30
TVA's preferences among plans	31

Appendices:

1	Summary of joint-use building arrangements, prepared by TVA	
	Division of Power Utilization.	32
2	Letter, TVA District Manager to Tullahoma.	35
3	Letter, Harriman to TVA Manager of Power	37
4	Letter, TVA Manager of Power to Lewisburg.	40
5	Sweetwater contract.	42
6	Sweetwater lease	45
7	Letter, Sweetwater to MTAS	47
8	Excerpts from TVA standard form power contract and accompanying schedule of terms and conditions	48
9	Minimum tax equivalent contract amendment for Jackson, Tennessee.	52
	Floor plans: Clinton, Harriman, LaFollette, Lewisburg, McMinnville, Springfield, Sweetwater, Tullahoma and Winchester.	55

TML

PREFACE

The purpose of this publication is to advise municipal officials with respect to the sharing of a joint building by the general municipal government and an electric distribution system. It is an expansion of an article on the same subject that appeared in the Technical Section of the November 1952 issue of Tennessee Town & City magazine.

The information contained herein is oriented particularly toward officials responsible for the general government of Tennessee's municipalities, but it may also be of some value to officials of electric distribution systems. MTAS also has available, in bound form, copies of ordinances, resolutions, bonds, and other documents from seven cities where joint buildings are in use. This compilation of documents was not given general distribution but will be furnished on request to any Tennessee town or city.

As in other matters of municipal concern, the MTAS staff is available to answer specific questions and to render assistance to municipal officials on their particular problems.

Victor C. Hobday
Executive Director

August 1953

INTRODUCTION

Several Tennessee cities¹ in recent years have constructed municipal buildings for joint occupancy by a municipally-owned electric distribution system and other agencies of the general city government. Municipal officials cite several advantages of such arrangements.

Bringing all agencies of the city government together in one building makes it more convenient for people who have utility bills, taxes and fees to pay or other business to transact with more than one agency of the city. Teamwork among all agencies is easier to achieve. The initial construction cost of a joint building is less than that of two or more buildings. Savings are accomplished by multiple use of building space, such as a single auditorium for meetings and demonstrations of the electric system, sessions of the city court, public hearings before the city council, and meetings of civic groups. Savings in maintenance, janitorial, utility and similar expenses also result.

People of the community point to the new building with pride. It is a symbol of progress and community spirit. City employees particularly feel a sense of pride and their morale and working efficiency is improved.

¹Clinton, McMinnville, Lewisburg, Loudon, Fayetteville, Harri-
man, Sweetwater, LaFollette, Winchester, Tullahoma and Springfield.

The average city today, not only in Tennessee but throughout the United States, is beset with financial difficulties. Inflation during the war and post-war years, the growth of cities, citizen demands for improved or additional services, and the failure of municipal revenues to increase proportionately, have placed the average American city on the hard rocks of financial hardship. Thus a city's officials may say, "Yes, we need a new municipal building badly, but how can we pay for it?" In this bulletin, we will present information concerning financial arrangements that may be helpful to municipal officials who are considering such projects.²

The situation in Tennessee with respect to municipal electric utilities is different from that existing in most other states. The Tennessee Valley Authority, an agency of the Federal government, generates and supplies electricity to all municipally-owned distribution systems in Tennessee, except those in Covington and Dyersburg. All incorporated cities in Tennessee are served by publicly-owned systems, except four - Kingsport, Alcoa, South Fulton, and Cumberland Gap - are served by private utilities, and two - Bells and Franklin - are served by private companies that purchase power from TVA. This discussion is accordingly confined to a consideration of courses of action available to municipalities within the framework of agreements

²Officials of the Tennessee Valley Authority have furnished the information relative to their policies with respect to such buildings. They point out that these policies have evolved as specific situations have developed, and that agreements for buildings already constructed are not to be considered as precedents. For example, they say that an agreement such as that entered into with the city of Clinton would not again be approved.

with TVA for electric power supply.

Three financing plans have been used: (1) the electric system pays the total cost, by issuing electric revenue bonds, and rents space to other city agencies; (2) the city government pays a part of the cost, from general obligation bonds or other general fund monies, and the electric system pays a part, usually from electric revenue bonds, and each occupies space proportionate to its contribution, but one may rent additional space from the other; and (3) the city pays the total cost of construction, usually by issuing general obligation bonds, and rents space to the electric system.

PLAN 1 - ELECTRIC SYSTEM PAYS ALL³

TVA policy on non-diversion of electric revenues

A background note on the general policies of TVA will aid in understanding their stipulations with regard to this financing plan. TVA, from its inception, has required municipalities buying its electric power for distribution to agree that electric revenues will be used only for electric system purposes, except payments in lieu of taxes (also called "tax equivalents"). These are generally calculated by applying ad valorem tax rates against book values of electric system properties. Some cities also receive a return of 6% on general fund monies invested in their electric systems; this

³Buildings in Fayetteville, Clinton, McMinnville, Lewisburg and Loudon were financed by this method. A Federal PWA grant was made to the Fayetteville electric system to pay about 45% of the cost of its building.

is usually the result of an electric system being municipally-owned before TVA electricity became available. Such income is to be distinguished from taking profits out of a municipally-owned utility, as the city is simply treated as any other investor and is paid interest on its capital investment in the system.

TVA officials say it is their public duty to prevent diversions of electric revenues, and they cite the case of TVA v. City of Lenoir City (unreported case), in which a pledge of electric revenues against general purpose bonds was prevented by a Federal District Court (Eastern District of Tennessee, Northern Division). In the case of Memphis Power & Light Co. v. City of Memphis, 172 Tenn. 346, 112 S.W. (2d) 817, involving an attack by the Memphis Power & Light Co. on the contract between Memphis and TVA, the Supreme Court of Tennessee said, "The most salutary feature in the contract is that with respect to the disposition of revenue received. It not only makes the plant self-sustaining and provides for liquidating its indebtedness, but it prevents the city from diverting the revenue received for current to other purposes."

Under this policy a city cannot realize a profit from its electric system to be used for general municipal purposes. The announced purpose of this policy is to assure a lowering of rates when revenues exceed the needs for expansion, improvement and operation of a system. This policy is understandable when one recalls that cheap electricity was one of the original prime objectives of the founders

of TVA. TVA personnel have been zealous in protecting the interests of the "ratepayers" to avoid subsidizing the "taxpayers," and they have been especially on guard against any draining of electric revenues for general municipal purposes.

Temporary renting of extra space in electric building.

Acting under this policy, TVA officials say that an electric system may construct a building only for its own purposes. However, in anticipation of future expansion and consequent need of a larger building than presently required, TVA will permit the use of electric revenue bonds to construct a building up to double the size immediately needed. This excess space may be rented to the city government (or to any other party) until it is required for electric system purposes, at which time it may be withdrawn upon the giving of reasonable notice. This explains the provision found in several contracts that the electric system is to occupy space costing at least 51% of total cost. The total size of the building is left to local determination, but TVA officials will review and disapprove if the size seems excessively large.

TVA officials make it clear that under this policy occupancy by the city government is temporary, because the justification for using electric system funds is that the additional space will be needed sometime in the future by the electric system. They point out that the alternative may be undesirable crowding of an expanded

electric system within its original allocation of building space, as TVA would not approve the use of electric revenues for another building until all of such space has been utilized, unless very exceptional circumstances exist - for example, the growth of a city requiring a warehouse or service building at a different location as a matter of operating economy. Presumably, if the electric system does not expand as anticipated, the city government would be allowed to remain as a tenant.

TVA controls such arrangements through its power contracts with municipalities. An amendment to an existing power contract is required before electric revenue bonds may be issued to construct such a building, and TVA makes these stipulations in the amendment. (An amendment would not be required for a building solely for the electric system.) As an example, the Lewisburg agreement contains a provision that the "City agrees to relinquish such space to the electric system upon reasonable notice"

The implications of this policy should be carefully considered by city officials. If an existing city hall is abandoned, perhaps demolished or sold, and the electric system later withdraws the space rented to the city government, city officials will be faced with the problem of finding space elsewhere. This in many instances would require the construction of another building, which would be an additional expense and a backward step from the joint building and its advantages. Enlargement of the building might be possible,

but in any event disruption of municipal activities and the financial burden of building costs would occur. Since any new building for the general city government most likely would be financed by general obligation bonds, under such circumstances the use of a joint building would simply defer construction of a building financed by this method.

There seems to be a lack of complete understanding between municipal and TVA officials with respect to this temporary occupancy feature. In talking with officials in those cities where buildings have been constructed under this plan, we get an impression that they are not aware that their occupancy may be only temporary. They show the building with great pride as their city hall and electric system building. They seem to think that the general city government will stay indefinitely, as long as the rent is paid. It is submitted that such attitudes must be recognized. We can foresee a time of troubles if and when an electric system, probably on a piecemeal basis, room by room, begins to evict the general city government from its quarters.

At this point one might ask the question: Why shouldn't the city retain the space as long as the rent is paid? If the electric system charges a rental to cover all of its costs to furnish the space, including principal and interest on bonds, on the surface it would appear that no diversion of electric system funds would be

involved. However, TVA officials point out these reasons for their disagreement with this viewpoint: (1) although an actual diversion of money might not occur, it would mean use of the electric system's credit, which is something of value, to support bonds for a general municipal purpose, and this was the issue decided in the case of TVA v. Lenoir City; (2) there are upper limits to the amounts of electric revenue bonds that may be issued, and the issuance of such bonds for an office building for the general city government could involve the use of credit needed for the electric plant; and (3) if the city failed to pay the rent at any time, the electric system would still be liable on the bonds as well as for maintenance of the building, in which event actual diversion of electric revenues would occur.

If the temporary occupancy feature cannot be eliminated by agreement with TVA, a city may desire to have a lease on its space for a definite period of time. This is standard procedure when an electric system rents space from a city. A long-term lease would seem to be preferable, such as 10 to 20 years. Although this would assure occupancy for a definite period, it would also emphasize still further that it is only temporary, and may therefore be undesirable.

Calculation of rentals

Rental payments by the general city government to the electric system vary according to the space occupied, costs of construction, and services rendered. Each case is handled on an individual basis,

and TVA officials say that it is their policy to establish the rental as nearly as possible at the actual cost of providing the space, including a proportionate share of depreciation, interest, insurance, tax equivalents, utilities, maintenance and other operating expenses. The total of such yearly expenses is the annual rental to be charged until a change in the cost data occurs.

The cost of constructing the rented space, plus a pro rata share of the cost of land if paid from electric system funds, is then determined. The initial rental figure is expressed as a percentage of this cost. For example, if, for the rented space, the annual expense figure is \$15,000 and the construction and land cost was \$100,000 the annual rental is stated as 15 per cent of the value of the space.

The rental percentage figure thus established is applied to determine the annual rental payment if more or less space is occupied. Again using the foregoing example, if one room valued at \$20,000 is withdrawn by the electric system, the annual rental would be 15 per cent of \$80,000, or \$12,000. (It should be noted that "value" as used by TVA for this purpose means original cost of construction.)

This method simplifies the recalculation of rents, but a question may be raised as to whether it will always correctly reflect actual costs. It seems possible that a room or other space withdrawn might not require a proportionate share of utility, maintenance or

other expenses. A redetermination of rent as originally calculated would dispel any doubt on this score, but perhaps the difference, if any, would be so small as to be inconsequential.

Agreement as to utilities, janitorial services, etc., may vary according to local preferences. The Clinton agreement vests in the electric system "exclusive possession, management, and control of the municipal building. . . and responsibility for management, control, operation, maintenance, and repair of the municipal building." The Lewisburg city government, occupying 48 per cent of the building, agreed to pay a fixed rent plus 48 per cent of the monthly cost of water and electric service to the building, and the Board of Public Utilities pays all janitorial and maintenance expenses.

At this point it may be helpful to cite an example of rental on this basis, using specific figures. This will be done for Lewisburg, where the rent on 48 per cent of the space in a building constructed by the electric system was calculated as follows:

- (1) TVA established 10 per cent of the project investment to represent annual costs other than tax equivalent payments, such as interest, depreciation, and operation and maintenance, including insurance, janitor service, repair and painting, etc.
- (2) $10\% \times 48\% \times \$1000$ \$48.00
- (3) Less tax equivalent waiver per \$1000 of initial total cost, on 52% of building occupied by electric system: City and county tax rate of \$5.16 per \$100 multiplied by 10 (there are 10 \$100 in \$1000) multiplied by 52% (rounded to nearest dollar). \$27.00

- (4) Net rent per year per \$1000
of total cost. \$ 21.00
- (5) Monthly rent per \$1000 of
total cost is \$21.00 divided
by 12. \$ 1.75
- (6) Total cost of building and site. . . . \$166,542.82
- (7) 166.542 thousandths x \$1.75 pro-
duces monthly rent of. \$ 291.45
- (8) \$291.45 x 12 produces net annual ren-
tal payable to electric system of. . . \$ 3,497.40
- (9) Add yearly tax equivalent waived
(See (3) above) 166.542 thousandths
x \$27.00 \$ 4,496.63
- (10) Total yearly gross cost to city for
space occupied (8) plus (9). \$ 7,994.03
- (11) City occupies space costing 48
per cent of \$166,542.82, or. \$ 79,940.55
- (12) Percentage that annual rent of
\$7,994.03 is of \$79,940.55, the cost
of space occupied by the city, is. . . . 10%

It appears that the initial factor of 10 per cent, representing interest, depreciation and operating and maintenance expenses, was arbitrarily established by TVA until a more precise determination of costs could be made. TVA's Director of Power Utilization says, "In this particular case, the method appears to result in an equitable solution, especially since the arrangements are subject to review after the actual costs can be more accurately determined." This is no doubt necessary at the beginning, but to be sure that a city is not paying more than actual costs city officials should insist

on a review of the rental as soon as exact costs can be established.

No calculation of a tax equivalent on the 48% rented to the city of Lewisburg appears in the foregoing example, although theoretically it would be due the city because the entire building is owned by the electric system. It would be immaterial whether this is done - if included as an amount due the city the tax equivalent would be charged back to the city in the rental amount as a part of the cost of furnishing the space.

Another aspect of the Lewisburg rental determination is whether the tax equivalent waived on the 52% portion occupied by the electric system should be based in a five-year average of book value, as TVA personnel say this is the usual basis of calculating such tax equivalents, instead of on the original cost. The results that would be obtained are set forth below (compare with items (3) through (10) in the foregoing calculation for Lewisburg):

(1) and (2) same as in foregoing calculation	\$	48.00
(3) Less tax equivalent waiver <u>per \$1,000</u> <u>of initial total cost</u> , on 52% of building occupied by electric system: 5 year average of book value, with initial cost of \$1000, at 2% annual depreciation, is \$950; city and county tax rate of \$5.16 per \$100 multiplied by 9.5 (there are 9.5 \$100 in \$1000) multiplied by 52%.	\$	25.48
(4) Net rent per year per \$1000 of <u>total</u> cost.	\$	22.52
(5) Monthly rent per \$1000 of <u>total</u> cost is \$22.52 divided by 12	\$	1.877
(6) Total cost of building and site	\$	166,542.82

- (7) 166.542 thousandths x 1.877 produces
monthly rent of. \$ 312.60
- (8) \$312.60 x 12 produces net annual rental
payable to electric system of. \$3,751.20
- (9) Add yearly tax equivalent waived (see (3)
above), 166.542 thousandths x \$25.48 . . \$4,243.49
- (10) Total yearly gross cost to city for
space occupied (8) plus (9). \$7,994.69

It would appear that this method would be less advantageous to the city of Lewisburg, because it would be paying a monthly rental of \$312.60 instead of \$291.45 in the first five years, and progressively more if successive five-year averages were used in recalculating the rent. This also illustrates that it may be more advantageous to a city to waive a fixed tax equivalent based on original cost instead of paying the full amount of rent and collecting a tax equivalent based on declining book value. If the original tax equivalent is waived the question would arise as to whether adjustments should be made as tax rates change, either upward or downward.

Periodic review of rental charges

Provision is made to review such rentals periodically, and TVA officials contemplate that this will be done every five years or so. As indebtedness is retired interest charges will be progressively less and eventually will be eliminated altogether. Other expense items may also change. Accordingly, it would seem desirable that

city officials periodically check the costs involved and request a review of the rent when a change of any consequence has taken place.

Pro-rata payment of debt principal by city

If a part of the annual principal of bonds being retired is included in the rental charge, the city is actually buying part of the building on the installment plan. The Clinton agreement provides for inclusion of "an equitable allocation of . . . retirement of indebtedness" in the rental calculation. This should entitle the city to permanent possession the same as if it had originally supplied the funds to construct its portion of the building. However, TVA officials say that the Clinton agreement in several respects is not to be regarded as a precedent, and that current TVA policy is not to include any portion of the principal retirement in the rental charge. If some such arrangement could be made whereby the city gradually pays for a portion of the building and thereby acquires permanent possession, temporary occupancy - a major objection to the financing of the building entirely by the electric system - would be eliminated; but here again TVA officials object on the grounds that this would be a use of the electric system's credit for general municipal purposes.

Depreciation charges included in rentals

The item of depreciation deserves careful attention. The annual depreciation charge is based on an estimate of the expected service life of a building. Normally this would not exceed 2 per cent for

a high-type brick building. The base for calculating depreciation is original cost of construction. Such charges would be included in the rental calculation until the depreciated value is reduced to "salvage value," when they would cease and presumably the rental would be reduced accordingly. This has not yet occurred in any instance because all buildings are relatively new. Of course, the higher the annual depreciation charge the sooner salvage value will be reached. However, TVA officials cannot see any benefits by way of earlier rental reductions on this account because it would be expected that the electric system would be using all space by that time.

This question may be raised: If the city pays its pro rata share of interest on indebtedness and depreciation charges, as part of its rental payments, should it acquire an ownership equity in the building and therefore be entitled to indefinite retention of its pro rata share of the building space? This question is best illustrated by an example. Assuming that a city rents 50 per cent of the total space value in a building that cost \$200,000, which is depreciated at the rate of 2 per cent per year, in 50 years the electric system will have collected from the city, as part of the rent, one-half of the total interest and \$100,000 as the city's 50 per cent share of depreciation charges (over-looking salvage value for the moment, to simplify the example).

The TVA position on this point is that such rental arrangements should be regarded in the same light as though the space were being rented to a private company. TVA officials say that interest and depreciation charges are customarily included when any owner calculates his costs for purposes of determining a rental charge, and certainly in no case does a tenant acquire part ownership of a building on this basis. They further state that the original agreement providing that rental shall be on a temporary basis precludes the city from acquiring an equity in this manner.

City should acquire permanent possession

It seems, however, that there is justification for distinguishing these arrangements from standard practice in the private business world. The fact is that the electric system, out of its revenues, bears only one-half of the cost, again referring to the above example, and that the general city government pays one-half of the construction costs on an installment basis. In the private business world it is customary that property owners charge rentals amounting to more than their costs, including interest and depreciation. But in the cases under discussion, it seems that the principle of actual sharing of costs should be applied to the benefit of the general city government.

The TVA rebuttal is that the electric system will not have regained its investment for the city's part until the building is no longer useful, assuming that the service life has been correctly

estimated, but it is conceded that sometimes the depreciation schedule is based on a period of time shorter than the actual service life of a building and that this results in a depreciation rate that is too high. In almost any city one may observe old buildings, far more than 50 years old, still producing substantial rental incomes, and assessed for taxes on a basis of estimated market value (albeit usually a fraction) instead of depreciated book values. Another possible rejoinder is that there should be no objection to the city having a permanent equity in its portion, if the building is actually to be of no value!

If TVA objection to temporary use of the electric system's credit could be overcome, a middle ground on the depreciation question would be to eliminate depreciation charges but provide that the city would pay its share of principal retirement, with an understanding that it will thereby acquire permanent possession of its part of the building. Assuming a ~~20~~-year bond issue as contrasted with a 50-year depreciation schedule, the electric system would recover the cost of constructing the rented portion in 20 instead of 50 years. This would involve stepping up the annual rent that the city pays, but the amount should not be too consequential.

Waiver of tax equivalents on buildings

Another variable is whether tax equivalents on the building will be waived. To compare two cities, no tax equivalents are paid on the building in Lewisburg but they are paid in Clinton. TVA officials

say that either method may be used, but they prefer payment of tax equivalents on the building to the city government in the regular manner, and a calculation of the rental charge on a strict cost basis. The two examples already cited with respect to the Lewisburg building indicate a possible advantage of the waiver basis, from the city's viewpoint.

"Book value" as basis of tax equivalents

It should be noted that "book value" is used for calculating tax equivalent payments, and that this value will decrease from year to year as depreciation accrues. Replacements and capital additions add to the book value and may in some cases postpone the time when "salvage value" will be reached, but eventually - the time depending on the annual rate of depreciation and offsetting replacements and capital additions - this level will be reached, and tax equivalent payments will decline accordingly. TVA officials say that salvage value in the average case is little more than no value. Therefore it may be expected that this source of municipal revenue, which would partially offset rental expenses, would eventually be negligible.

It may be observed that this practice of using the book value as the taxable value is not comparable with the assessment of other property on a basis of market value. Property assessments are usually far below actual market value, and TVA book values in the early years would probably without exception exceed assessments that a tax assessor would make. At some time, however, book value is likely to drop below

a comparative assessment figure. The difference in this respect would vary according to the level of local property assessments. Although TVA officials say that replacements of poles, lines and other electrical equipment will normally maintain electric plant book values at 60 to 65 per cent of original cost, this seems to be less likely in the case of a building.

A possible solution to this problem of declining book value may be found in the type of power contract amendment negotiated by Jackson, Tennessee, with TVA in 1942. That amendment established as the minimum annual tax equivalent the amount payable based on book value as of June 30, 1942. It was requested by the city of Jackson to prevent the decline of tax equivalents on account of the wartime scarcity of electrical equipment, which curtailed replacements and improvements in the electric system and thereby caused an abnormal reduction in book values. TVA reports that similar amendments have been negotiated with Chattanooga, Dickson, Murfreesboro, and Sevierville, Tennessee, and with five cities in Alabama. It is suggested by TVA's Director of Power Utilization that any such arrangement should result in the average book value of the building during its expected service life being the same as the average under the present method.

The main principle would seem to be that the building be valued each year on the same basis as used for similar private property, in order that it will bear its fair share of the tax burden. We find

expression of such a policy in the Municipal Electric Plant Act of 1935, under which some Tennessee cities are operating their electric systems and which authorizes "payments to the municipality in lieu of ad valorem taxes. . . not to exceed the amount of taxes payable on privately owned property of similar nature." (Williams Tennessee Code, sec. 3708.17). In the long run this would seem to be the best policy.

Crowding of city departments?

A distinct disadvantage may be undesirable crowding of the general city government into space valued at not more than 50 per cent of the total value, the maximum that the electric system may rent when it finances construction of the entire building. Such space may be wholly inadequate for all other departments of the city, necessitating crowding into poorly planned space or separate buildings for some departments. The building should be functionally planned for the present and future needs of all city departments, including the electric system, without arbitrary restrictions.

Rent indefinitely or own?

Another possible disadvantage to the city government is the payment of rent indefinitely, assuming that the temporary occupancy feature is removed. It may be more expensive to rent the space than it would be to own its city hall. However, if the rental is fixed at actual costs, with periodic and timely adjustments to keep pace

with changes, and the city by ownership could not reduce these costs, then renting would seem to be equally acceptable - providing permanent possession is assured.

TVA contract negotiations

TVA has followed a standard form contract in negotiating contracts with cities, but frequently has varied the provisions of the standard form contract to meet the desires of particular cities. Since circumstances will vary in different cities, TVA has not insisted on rigid application of the standard form contract, but has negotiated the contracts with individual cities, trying to meet the desires of municipal officials so long as the interests of the electric consumer are protected. Municipal officials would do well to keep this in mind and to bring out in such negotiations the conditions in their respective cities and the contract terms that they desire.

Although a joint building was not involved, what happened in one city may be cited to illustrate this negotiating process. The city was about to rent a building to the electric system. At a Council meeting a representative of the electric system board recommended a monthly rental of \$750 and an initial expenditure not to exceed \$2500 to improve the building, a TVA representative countered with a proposal of \$250 per month, and the amount finally agreed upon was \$600. Both sides apparently recognized that it was a matter

of negotiating and expected to reach a figure somewhere between the two initial extremes. Two points in this case should catch the attention of the city official: (1) that a proposal by TVA or the electric system should not be regarded as the "last word," and (2) that a cooperative local electric board can be very helpful. Of course there is nothing unusual about such negotiations - they occur daily in nearly every field of business activity.

The foregoing discussion should indicate that deciding whether Plan 1 is the best financing plan and assuring protection of the city's interests continuously is a fairly complex undertaking, requiring careful analysis and study. Municipal officials should utilize all available information and technical assistance that will be helpful for this purpose.

PLAN 2 - ELECTRIC SYSTEM AND CITY SHARE COSTS

Permanent possession of relative share of space

Some cities have constructed joint buildings with money provided in part by the general city government and in part by the electric system. The relative contributions have varied, and TVA leaves this decision to local determination. Under the TVA policy of electric system participation in financing, this is the only means of assuring permanent use of space. For example, if the general city government pays for 50 per cent of the construction cost, it will be entitled to indefinite possession of space valued at 50 per cent of the total.

Cities using this plan

Harriman furnished the land for the building site, valued at \$40,000, and has an equity equal to the proportion of this amount to the total cost of the building and site value. Pulaski is planning to finance a building by issuing equal amounts of general obligation and electric revenue bonds. The city of Tullahoma will contribute about \$16,000 in general fund monies toward paying for its new building estimated to cost \$200,000; it will occupy the 8% that it is financing and will rent an additional 46% from the electric system, making a total of 54% of the building (by value) that the city will use.

Agreements subject to approval by TVA

The agreements on buildings financed by funds from both sources are substantially the same as those in effect where the financing has been entirely by the electric system, except that the temporary occupancy provision is not included or is modified. An exception appears to be Harriman, which contributed about 13 per cent of the total cost of the building and site, but has an agreement providing that "should the board in its sole judgment determine that any or all of the rental space is required for electric system purposes, said space will be relinquished to the electric system on reasonable notice. . . but if the total value of the space occupied by the city should be reduced by reason of the board's increased space needs to a proportion of the total space value less than the proportion of

its equity to the total cost of the building and site, board shall make appropriate rental payments to city." In other words, the electric system could take all the space by paying rent on that part representing the city's equity. Under the general TVA policies discussed above, it would appear that Harriman would be justified in seeking revision of its agreement with the Power Board so as to eliminate the Board's option to dispossess the city government of its space.

Temporary renting of extra space

TVA officials further state that excess space constructed with electric revenues may be rented in cases of joint financing, subject to the provision of temporary occupancy. For example, if construction and site costs are shared 50-50, the electric system may rent up to one-half of its 50 per cent of the building, which would permit the general city government to occupy space valued at 75 per cent of the total. This might eliminate an undesirable feature that sometimes accompanies financing entirely by electric revenue bonds, namely, that the general city government must crowd into space valued at not over 50 per cent of the total or find space elsewhere. However, the extra rented space would be subject to withdrawal by the electric system at any time.

When a city shares in the financing it pays rent only on space occupied in excess of what it paid for, plus payment for services

and utilities that may be provided by the electric system. If it occupies space valued at 50 per cent of the total and contributes 50 per cent of the original construction cost, no rent is paid, but agreement would be necessary as to sharing maintenance and operating expenses. One means of dividing expenses of utility services would be installation of separate meters.

Common-use spaces

Another problem is that of sharing the expenses of an auditorium, parking space, service yard, or other space used in common. The Harriman agreement provides for an allocation of such expenses "on the basis of a division thereof proportionate to the division between the electric system and the city of the non-common-used space in the building, plus one-half of the total cost incurred in providing the auditorium, ninety per cent [to electric system] and ten per cent [to city], respectively, of the total cost incurred in providing the service yard and a proportionate allocation of the cost of providing a site based upon the relationship of the sum of the other allocations to the total cost of the building." Precision in sharing such expenses is probably impossible, and the best that can be attained is an approximation that seems reasonable to the parties concerned.

The main advantage of this plan is that the city will be entitled to permanent possession of the space that it finances. If the city can secure the necessary funds to pay for constructing all building

space that it will need, this plan seems to be better than plan 1.

PLAN 3 - CITY PAYS ALL

The preferred plan?

A city may issue general obligation bonds to finance the new building and may rent space to the electric system.⁴ If such bonds can be issued under charter limitations and with public approval, this may be the most desirable financing plan, from the viewpoint of the city official. Additional security may be given to the bonds by pledging rentals from the electric system, as was done in Sweetwater and LaFollette.

The city has complete assurance of permanent occupancy. The expense of rent is avoided as well as complex rental calculations. Functional planning to meet space needs of departments is possible without restrictions to any limited portion of the building. If general obligation bonds will command a lower interest rate than electric revenue bonds, which is likely in cities with good credit standings, there will be some savings in interest costs.

Minimum review by TVA

When the city alone finances the building, an amendment to the TVA power contract is not required, nor is approval of the rental agreement by TVA necessary. Only an understanding with the local electric system board, if one exists, is required. However, TVA officials say that an electric system board usually clears such matters with them before entering into a final agreement.

⁴ Sweetwater, LaFollette, Springfield, and Winchester used this method.

Conceivably an agreement between a city council and local electric system board could provide for excessively high rental payments by the latter into the city's general fund. TVA officials say that this would be prevented, by suit if necessary as was done in the Lenoir City case, under the provision in the standard power contract which prohibits diversion of electric revenues.

TVA officials say that they offer no objections to a provision that space rented to an electric system shall be vacated on reasonable notice, nor will they specify any proportion of the building that must be allocated to the electric system. They prefer a rental contract of five to ten years in duration, but they approved the 25-year contract in LaFollette. It is likely that they will approve a local determination on this point. In fact, except to prevent improper diversion of electric revenues, TVA will leave such rental agreements almost entirely to local determination, which would seem to be an advantage of this method of financing.

Disadvantages of this plan

The city will be dependent on rental payments from the electric system to pay a large share of the debt service requirements and expenses of maintaining the building. If the electric system should decide to move to other quarters the general city government would be deprived of this rental income. This would particularly be a hazard in those cities with separate electric boards. LaFollette protected itself for at least the 25-year term of the building bonds

by a 25-year lease agreement with the electric system. However, this might occur at any time after a lease agreement expires, unless new leases are promptly executed as old ones are about to terminate. If this possibility is considered likely, Plan 2, which would call for the electric system to pay for constructing its space, would seem to be the most preferable of the three plans. However, in this connection the next section should be considered.

Another possible disadvantage is that a city might use its borrowing power that is needed for other purposes, such as street improvements. If the building is financed by electric revenue bonds, the city's borrowing power by general obligation bonds, under normal circumstances, would not be affected.

City's control over arrangements

Some cities may have the authority to prescribe such housing arrangements and could conceivably require the electric system to occupy space in the joint building on a rental basis. This would probably not be possible in those cities where the electric system boards have autonomous status under legislative acts, without the passage of new legislation.

However, in those cities where the local electric system board has been created by ordinance, control by the council would seem to follow from these facts: The electric system is municipally-owned, the title thereto is the same as the title to the city hall,

the electric system board is an agency created by the council, comparable to any other city department, and has only those powers and duties granted by ordinance, and changes not inconsistent with contractual obligations (such as to bondholders) may be made by ordinance.

Of course, this should be no problem in those cities where the council acts also as the electric board.

Brief note on LaFollette and Sweetwater

LaFollette has an agreement with its local electric system board, approved by TVA, under which the annual rental of \$21,000 by the electric system is more than sufficient to pay all interest and principal requirements on the general obligation bonds. The period of this agreement is the same as the period for retirement of the bonds (25 years). The city in this period will collect as rent \$525,000 and will pay out \$365,000 for principal and interest. High property taxes (county rate is \$5.41 and city rate is \$2.65) as cost items partially explain this high rental, according to TVA personnel. Another factor is that the electric system is supposed to rent space valued at about 95 per cent of the building's total value. Actual floor space allocation is as follows: city offices, 14%; electric system offices, 23%; electric system warehouse and loading platform, 44% (electric system total, 67%); common-use space (lobby, corridors, toilets, auditorium, heating plant), 19%. It may be noted that, although the electric system occupies 67% of the total space, 44% is in the warehouse and loading platform, for which the construction costs per unit of area

were less than for the remainder of the building.

Detailed rental calculations for the Sweetwater and LaFollette buildings are not available in the records of these cities or of TVA. (Appendix 7, a letter from the City Recorder of Sweetwater, contains some information.) The rentals were arrived at apparently by negotiations, which included some consideration of cost factors involved. The final figures agreed upon appear to have been compromise agreements rather than the results of specific calculations.

CONCLUSION

Author's preferences among plans

Taking the viewpoint of the municipal official responsible for the general city government, we indicate our preferences among the three financing plans. If the city does not have charter limitations on general debt and is not faced with other limiting forces, we consider that payment of the entire cost of construction by the city is the best plan (Plan 3). Second choice is Plan 2, under which the city shares construction costs with the electric system and is thus assured of permanent occupancy of at least part of the joint building. However, if under Plan 3 there exists a possibility that the electric system would move from the building, depriving the city of the rental income, Plan 2 would appear to be the first choice.

Plan 1, where the city is a lessee acquiring no equity in the building and without assurance of other than temporary occupancy, should be adopted only after careful consideration of other possible

methods of financing a joint building. Further study should be given to whether the city is entitled to permanent occupancy, on the basis of paying its pro rata share of construction costs in the form of interest and depreciation (or principal) charges included in its rental payments. Both Plans 1 and 2 require TVA approval of any changes in space allocation, cost factors, rental rates, or almost any other detail, and therefore are more cumbersome and interfere more with local autonomy than Plan 3.

TVA preferences among plans

The TVA Director of Power Utilization states the following preferences: "It is our feeling that under the usual circumstances and unless substantial economies can be shown in the use of a joint building, that the most desirable arrangement is for the electric system to provide itself with separate quarters. Where this is not the most economical plan we would prefer that the electric system and the municipal government jointly plan the type of building and space requirements needed for each activity and contribute to the cost and participate in the ownership of the building in proportion to these requirements. If this is not feasible the plan under which a joint building would be financed and owned by the municipal government would be our next choice. Finally, if none of the above arrangements are practical, it may be that some municipalities will find it advantageous to rent space in the electric system buildings on a temporary basis."

APPENDIX 1

SUMMARY OF JOINT-USE BUILDING ARRANGEMENTS

(Prepared by TVA Division of Power Utilization)

Most of the municipal TVA power distributors in the Valley invest in or rent facilities solely for electric purposes. In some few cases the city government has invested in facilities which are rented on a cost basis to the electric department. In other cases the municipal governments and the electric departments have shared the investment in these facilities in proportion to their needs.

There are a few municipal distributors of TVA power who have constructed modern facilities for their present and future use and permitted the temporary occupancy of the surplus space under a rental agreement which stipulates rental amounts sufficient to cover interest, depreciation, operation and maintenance, and the tax equivalent taken by the city government. In each of these cases an amendment to the standard power contract with TVA has been executed to permit this use of electric system funds.

Examples of arrangements for modern facilities occupied jointly by electric departments and other activities of the city government are summarized below:

McMinnville, Tennessee.

A building was constructed with electric system funds which cost about \$240,000 (including land). After a consideration of the use to be made of the building, 35 percent of the value of the space was allocated to the city and the remainder to the electric department. An annual rental charge equal to 12.6 percent of 35 percent of the cost of the building to cover interest, depreciation, operation and maintenance, and a tax equivalent (\$3.41) is paid to the electric department. Each party provides its own light, gas, and water facilities and performs routine operation and maintenance on its portion of the building.

Lewisburg, Tennessee.

The city occupies 48 percent of a modern building constructed by the electric department and costing \$160,000. During the time this surplus space is not needed by the electric department the city has agreed to pay annually in addition to their proportionate share of utility services an amount equal to about 15 percent of their

portion of the cost of the building. By a special agreement the payment for tax equivalent authorized to the city (\$5.16 per hundred) on the value of this building is waived during the rental period and the resulting difference is paid to the electric department by the city in rent.

Harriman, Tennessee.

The city contributed a lot valued at \$40,000 and the electric department constructed a \$200,000 building. At the present time the space is shared equally by the electric department and other departments of the city. The city pays rental of \$1,600 per year plus 15 percent of the value of the space it occupies over and above their equity of \$40,000 which is calculated to cover interest, depreciation, the tax equivalent (\$6.67), and operation and maintenance costs. The electric department furnishes all services for the building.

Murfreesboro, Tennessee.

The city purchased a building outgrown by the Middle Tennessee Electric Membership Corporation and rents this property to the electric department.

Loudon, Tennessee.

A building is being constructed for the Loudon Board of Public Utilities in which 45 percent of the space will be temporarily rented to the city for certain activities other than those of the electric department. The total cost of the building which is estimated to be \$150,000 is to be financed by the electric system and rental equal to 12 percent of the value of the space allocated to the city functions will be paid to the electric department during the rental period.

LaFollette, Tennessee.

The city financed the construction of a building, about 95 percent of which is being used by the electric department under a rental agreement to cover cost to the city of providing this space.

Sweetwater, Tennessee.

The city constructed a building costing about \$140,000, 60 percent of which is occupied by the electric department under a rental agreement which provides payment to cover the city's cost of providing this space.

Fayetteville, Tennessee.

The city functions and the electric department share a building constructed with \$40,000 of a WPA grant. About 60 percent of the space is occupied by the electric department.

Jackson, Tennessee.

Jackson is constructing a separate building with electric system funds to be used solely for activities of the Jackson electric department.

Nashville, Elizabethton, Gallatin, Rockwood, and Lawrenceburg are other examples of municipal electric distributors who have financed facilities to be used solely for electric department use.

APPENDIX 2

TENNESSEE VALLEY AUTHORITY

717 Church Street
Nashville 3, Tennessee

January 21, 1952

Mr. A. H. Sanders, Manager
Tullahoma Power System
Tullahoma, Tennessee

Dear Mr. Sanders:

Our power contracts with municipal distributors of TVA power do not permit the electric systems to finance the entire cost of buildings which are to be used jointly with other city operations. Under certain conditions, however, it may not be possible to finance a joint building by the respective parties. In order not to impede the progress of the area unnecessarily or to force the uneconomical and inconvenient construction of separate buildings, the TVA Board has indicated that in such cases TVA will amend its power contract with any municipality to permit carrying out building plans which comply substantially with the conditions set out below.

1. The transaction will not involve any substantial risk to the electric consumers, and will be consistent with the basic principle of using electric system funds in such a manner as to result in net benefits for the electric consumers.

2. The transaction will provide an economical method of providing for the present and future space requirements of the electric system.

3. The transaction will be an arm's length deal where the rentals charged are fixed at a fair value of the services and space furnished. Rental charges will be reviewed from time to time and adjusted to reflect current fair value of the services and space. In no case will the rent be less than the electric system's costs of providing the space, including maintenance, depreciation, interest, and tax equivalent payments.

4. The value of the space to be rented will not exceed the value of the space occupied by the electric system, and the electric system will have the right to expand into the rented space upon reasonable notice, as such space is needed in its operation.

5. If space is rented to other departments of the municipality the transaction will be covered by an agreement under which the rental payment may, if necessary, be deducted from the tax equivalent which the electric system pays to the municipality under the power contract. To permit this, the value of space provided for other departments of the municipality should not be so great that the total annual amount of the rent to be charged to them (based on the fair value of the services and space furnished) would exceed the current product of the municipal tax rate and the present value of that portion of the electric distribution system located within the municipal limits.

This new proposal for broadening the power contract as described herein will be employed only when other financing plans prove impractical. It may be more practical to finance the entire construction of your proposed office and city facilities with electric funds. In order to make the necessary changes in the power contract, you should submit for our review a statement concerning the financing plans, with a description of the transaction as it relates to items 1 through 5 above. On the determination of the fact that these plans comply substantially with the requirements outlined by the TVA Board, we shall prepare the necessary contract amendment.

Yours very truly,

TENNESSEE VALLEY AUTHORITY

/s/ Jack W. Eakin
District Manager

APPENDIX 3

May 10, 1950

Mr. G. O. Wessenauer
Manager of Power
Tennessee Valley Authority
Chattanooga, Tennessee

Dear Sir:

The growth of the electric system operated by the Harriman Utility Board and the inadequacy of the buildings used by the Board and by the governing board and other agencies of Harriman's City-Government (hereinafter collectively called "the City"), makes apparent a need for more adequate quarters for the Board's electric system and the City's purposes. We feel that the space requirements of both can be most economically provided by the construction of a municipal building to house both the electric system and the City. We, therefore, propose to construct such a building to be located on the northwest corner of the public square in the center of the business district of Harriman, which will be jointly financed and used in accordance with the plan hereinafter set forth.

The building is being designed to provide ample space for the City's operations and for the offices, garages, storage and shop facilities necessary for efficient operation of the Board's electric system. The building will also include an auditorium capable of seating 500 persons which will be of approximately equal use and value to the City and to the electric system. The space in the service yard which will be adjacent to the building will be allocated approximately 90 percent to the electric system and 10 percent to the City. The estimated cost of the new building is approximately \$200,000 for building construction plus \$40,000 for the site. It is proposed that the total cost will be financed jointly by the City and the Board. The City does not have sufficient cash to pay for the construction cost of all the space to be used by it, but will furnish the site, valued at \$40,000, assume an equity in the entire property equal to the proportion which \$40,000 bears to the total actual cost of the building and site, and pay a fair rent determined as hereinafter provided for the value of the space allocated to the City in excess of \$40,000 and for services furnished by the electric system. The Board will furnish the remaining financing requirements and assume an equity in the total property equal to the proportion which its investment bears to the total actual cost of the building site.

The City's equity in the building and the site on which it is located will be excluded from electric plant for all purposes under Power Contract dated July 25, 1939, as amended, between the Tennessee Valley Authority and the City of Harriman, including without limitation, the determination of the City's investment in the electric system and the tax equivalent payable from electric system funds to the City's other funds.

Space in the proposed building will be allocated in accordance with the needs of the City and the Board's electric system. It is estimated that the value of the space allocated to each will be approximately equal. However, the final value of the space allocated to each will be determined as follows: The building will be divided into three categories - (a) space and facilities required exclusively for electric system operations, (b) space and facilities required exclusively for the City's operations, and (c) common-use space and facilities (exclusive of auditorium and service yard). The value of the space allocable to the electric system and the City, respectively, will be the total cost incurred in providing the space and facilities in categories (a) and (b), respectively, plus the portion of the total cost incurred in providing the space and facilities in category (c) allocable to each, respectively, on the basis of a division thereof proportionate to the division between the electric system and the City of the non-common-use space in the building, plus one-half of the total cost incurred in providing the auditorium, 90% and 10%, respectively, of the total cost incurred in providing the service yard, and a proportionate allocation of the cost of providing the site based upon the relationship of the sum of the other allocations to the total cost of the building.

The Board will perform all operation and maintenance of the building, and furnish heat, light, water, and janitorial service. The City will pay the electric system from City's general funds an annual rental for the space used and the service furnished equal to \$1,600 plus 15 percent of the excess over \$40,000 of the value of the space allocated to the City determined as provided above. In the event, and to the extent, that City fails to pay said rental the tax equivalent otherwise payable from electric system funds to City's general funds will be reduced accordingly. The City will continue to rent the space allocated to it for the life of the building, but should the Board in its sole judgment determine that any or all of the rental space is required for electric system purposes, such space will be relinquished to the electric system on reasonable notice and the rental will be adjusted accordingly. If the total value of the space occupied by City should be reduced by reason of Board's increased space needs to a proportion of the total space value less than the

proportion of its equity to the total cost of the building and site, Board shall make appropriate rental payments to City. Rental payments will be made monthly on the basis of one-twelfth (1/12) of the annual rental.

The annual rental hereunder will be subject to periodic review at the request of the Board, City or the Tennessee Valley Authority for the purpose of determining the current fair value of the space and services covered by the rental and the adjustments required by the results of such review will be made, subject to the approval of the Tennessee Valley Authority.

The governing board of the City of Harriman and the Harriman Utility Board are in complete agreement regarding the matters outlined above.

Please advise us whether our proposal affords a basis upon which you would be willing to present to the Board of Directors of TVA an amendment to our Power Contract with TVA which will permit, to the extent required by the above proposal, use of electric system funds in financing the proposed building.

Yours very truly,

CITY OF HARRIMAN
By Harriman Utility Board

By _____

CITY OF HARRIMAN

By _____
Mayor

APPENDIX 4

TENNESSEE VALLEY AUTHORITY
Chattanooga, Tennessee

November 6, 1950

Mr. C. A. Pickens, Chairman
Board of Public Utilities
Lewisburg, Tennessee

Mr. L. H. Simmons, Mayor
Town of Lewisburg
Lewisburg, Tennessee

Gentlemen:

This letter will serve to confirm the understanding reached among the governing body of the Town of Lewisburg (hereinafter called "City"), the Board of Public Utilities of Lewisburg (hereinafter called "Board"), and the Tennessee Valley Authority (hereinafter called "TVA") with reference to the construction and maintenance of a building to be jointly used by City and Board.

It is understood and agreed that Board will construct, own, maintain, and provide janitorial service for a building which will be used jointly by City and Board as hereinafter provided. Upon completion of said building approximately 48 percent of the space in said building will be made available to City for its purposes as indicated on the attached sketch, and the remainder of the space will be allocated to Board for electric system purposes. In consideration for the space and services furnished to City by Board, City shall waive payments in lieu of taxes on said building from electric system funds into City's other funds, and shall pay a monthly rental to Board in the amount of \$175; provided, however, that said monthly rental is based upon a cost of construction (including site) estimated to be \$100,000 and shall be adjusted upwards or downwards in the same proportion that the actual cost of construction exceeds, or is less than, respectively, said estimated cost of construction. In addition, City shall pay 48 percent of the monthly cost of water and electric service to said building computed on the applicable retail rates for such service, and will pay the cost of telephone service to City's offices and quarters in said building. Board shall pay the remainder of said cost of water and electric service and shall pay the cost of telephone service to its offices and quarters in said building.

Mr. C. A. Pickens
Mr. L. H. Simmons

In the event that the space rented to the City as outlined above is required for electric system operations, City agrees to relinquish such space to the electric system upon reasonable notice and the rental will be adjusted accordingly. Meanwhile upon the request of any of the parties hereto, at any time after June 30, 1953, the parties will re-examine the space requirements of each of the occupants of the building in the light of any change in conditions, to establish any new rental agreements on the basis of the values of the space and services to be furnished. It is understood that in no case will the rent to be paid for the space and services furnished to the City's other operations be less than the electric system's cost of providing such space and services including without limitation operating expenses, maintenance, depreciation, interest, and taxes or tax equivalents, if any. In the event the rental payments as provided above should ever become delinquent, the parties agree that the amount owed to the electric system will be deducted from any tax equivalent payments to be made by the electric system to City's general funds.

In the event the above correctly states the understanding reached among the parties, kindly indicate your approval and acceptance in the spaces provided below and return four copies for our submission to the TVA Board. After approval by the TVA Board, we shall consider this letter as supplementing the power contract between TVA and the Town of Lewisburg to the extent necessary to permit the pledge and use of electric system funds for the purpose of financing the construction of a building to be used for electric system and other municipal purposes in the manner described herein.

Very truly yours,

TENNESSEE VALLEY AUTHORITY

G. O. Wessenauer
Manager of Power

Division
of
law

Accepted and agreed to as of the date
first above written:

BOARD OF PUBLIC UTILITIES OF LEWISBURG

Chairman

Accepted and agreed to as of the date
first above written:

TOWN OF LEWISBURG

Mayor

APPENDIX 5

THIS CONTRACT, made and entered into on this the second day of November, 1942, by and between the Town of Sweetwater, Tennessee, acting by and through its regularly and duly elected governing body consisting of the Mayor and Board of Commissioners, hereinafter called party of the first part, and the Board of Public Utilities, of the Town of Sweetwater, Tennessee, acting in its official capacity as such, hereinafter called party of the second part,

WITNESSETH:

THAT WHEREAS, both the parties hereto, after due consideration, and in joint meetings, have recognized that party of the second part, since its inception and at this date, has been required by necessity to house its offices, equipment and operating facilities in inadequate rented quarters, the lease upon which will expire in 1946; and

WHEREAS, both parties hereto recognize the necessity of more adequate and more nearly permanent housing facilities for the offices, equipment and operations of the said Board of Public Utilities as well as the need for a well located central Municipal Building which, in addition, will house the various departments called party of the first part; and

WHEREAS, under and by virtue of the terms of the written contract, entered into on the twenty-fourth day of May 1939, by and between the Tennessee Valley Authority and the party of the first part, relating to the acquisition of the electric distribution system, operated by party of the second part, the parties hereto were specifically authorized and empowered to create, establish and maintain a certain fund, which would insure to the benefit of party of the first part, and which fund was called "payment in lieu of taxes"; which fund having been thus established as provided, on the books of party of the second part amounts to the sum of seven thousand, five hundred sixty and no/100 dollars (\$7,560.00) as of June 30, 1942; and

WHEREAS, it is the desire and intention of the parties hereto that said fund and such subsequent funds as may accrue by virtue of this contractual provision during the term of this contract, shall be paid, as hereinafter provided, to party of the first part and shall be set up in a special building fund segregated and earmarked for the purpose of constructing a Municipal Building as hereinbefore set out, and shall not be used for any other purpose.

NOW THEREFORE, in consideration of the foregoing necessities and of the covenants hereinafter set out, the parties hereto agree as follows:

1st. That the party of the second part will pay into the treasury of the Town of Sweetwater, in monthly payments, in such amounts as its operations justify, and permit, the sum of seven thousand, five hundred sixty and no/100 dollars (\$7,560), and such additional sums as may accrue from time to time as aforesaid during the life of this contract.

2nd. That said funds shall be paid under the provisions of said contract with the Tennessee Valley Authority and same shall not be deemed and treated as a part of the general fund of the town; but shall immediately upon its receipt be earmarked, deemed and treated as a special fund, created by virtue of this contract, and shall be designated and set aside for the specific purpose of building a Municipal Building to house all the offices and departments of both the parties hereto. It is further agreed that said fund thus earmarked and designated shall be adequately secured in the manner prescribed for the securing of public funds and shall not be subject to diversion to any other purpose except the purpose for which it is created.

3rd. That it is further contracted and agreed that this contract in all its phases shall remain in full force and effect for a period of 6 years from the date hereof, unless prior to such a time the accruals in said fund are sufficient for the purpose of erecting the building herein contemplated. Upon the termination of the 6 years, or upon the completion of the fund as above provided, then this contract shall be executed in the following manner. The party of the first part contracts that it will at such time use such funds for the erection of the building herein provided for. The parties further agree that they will elect, appoint or constitute a building committee to have charge of the planning, location and erection of said building; which building committee shall consist of the incumbent commissioner of the Town of Sweetwater who is assigned to the Department of Water and Lights, one member to be appointed by the Board of Public Utilities, and one member to be appointed by the Mayor and Board of Commissioners of the Town of Sweetwater. The plans for said building shall be procured by the Board of Public Utilities, which shall first approve said plans. After approval by party of the second part and by the committee herein created, said plans shall be submitted to and approved by a majority of the Mayor and the Board of Commissioners of the Town of Sweetwater. It is the intention of the parties, in the execution of this contract, to provide for the erection of a

building of sufficient size, quality and arrangement to adequately and conveniently house the offices and departments of both parties hereto, and for such other and further public uses as may be required. It is, therefore, contracted and agreed as part of the consideration herein that said building, when constructed, shall, insofar as possible, meet all of these requirements.

4th. That if upon the expiration of the time hereinbefore set forth it should be impossible to fully execute this contract because of a continuation of the present war, or of the emergencies created thereby, or because of some federal or state law regulating or prohibiting its erection then and in that event said contract and agreement shall not be terminated but shall remain in full force and effect until such time as it is possible to execute same.

5th. That it is further recognized that said fund and said building shall belong to and shall be the property of party of the first part, the Town of Sweetwater, Tennessee, but that party of the second part shall have the right to use and occupancy of such portions thereof as is necessary for, and is designed for, its use and benefit, upon terms to be agreed upon mutually between the parties at that time.

6th. That this contract is executed by the Mayor and the Recorder of the Town of Sweetwater on behalf of party of first part and by the Chairman of the Board of Public Utilities and the Manager of the Board of Public Utilities on behalf of party of the second part; said officials having been designated for that purpose by the respective parties.

IN WITNESS WHEREOF, the parties hereto have executed this contract IN DUPLICATE on the day and year first above written.

Town of Sweetwater

Attest: /s/ J. G. Engleman By /s/ M. P. Kilpatrick
J. G. Engleman, Recorder M. P. Kilpatrick, Mayor

Party of the first part

Board of Public Utilities

Attest: /s/ S. J. Randall By /s/ Joe H. Wright
S. J. Randall, Manager Joe H. Wright, Chairman

Party of the second part

APPENDIX 6

LEASE AGREEMENT

IN CONSIDERATION OF the mutual covenant hereinafter set out THE TOWN OF SWEETWATER, TENNESSEE, a municipal corporation, having its situs in Monroe County, Tennessee, hereinafter referred to as party of the first part, hereby contracts and agrees with THE BOARD OF PUBLIC UTILITIES OF THE TOWN OF SWEETWATER, TENNESSEE, hereinafter referred to as party of the second part, as follows:

WITNESSETH:

1st. That party of the first part hereby leases and demises to party of the second part certain portions, to be hereinafter described, of the building to be hereafter constructed, and that portion of the adjoining premises, hereinafter described, on that certain tract of land more specifically described as follows: lying and being in the first civil district of Monroe County, Tennessee, and in the Town of Sweetwater, Tennessee, bounded on the south by Monroe Street, on the west by High Street, on the north by Wright Street, and on the east by Oak Street.

2nd. That the parties further agree that the building to be constructed upon said premises shall be known as the Municipal Building or other appropriate designation, and shall be constructed specifically for the purpose of providing offices, housing and facilities for party of the second part, together with facilities for the other departments of the municipality, the Town of Sweetwater. The portion of said building herein leased and demised shall be specifically and especially set apart for the sole use of party of the second part and shall constitute a sufficient portion of said building to adequately house, maintain and accommodate the offices and all the various activities and facilities of party of the second part. Party of the second part shall also have the right to use such of the lot or adjoining property of the Town of Sweetwater as may be necessary to and pertinent in its business; the plans and specifications for said grounds and buildings having been referred to and approved by a joint committee representing both parties hereto.

3rd. Party of the first part covenants that the part of the second part may have lawful, peaceable and uninterrupted possession of said premises, and that party of the first part will maintain and keep said premises in good and habitable condition. Party of the second part agrees that it will occupy said premises for lawful purposes only and for the purpose of carrying on its business as the Board of

Public Utilities, or any activity that may come within the purview of such business or duties and that it will, at its own expense, make such changes or alterations as it may desire or need to make in the interior of the premises herein leased to it; and that it will at the expiration of this lease surrender said premises to the lawful owner in as good condition as when received, the usual wear and tear excepted.

4th. Party of the second part agrees that it will pay party of the first part as rentals upon said premises the sum of three hundred and no/100 dollars (\$300.00) per month, payable at the office of the party of the first part, upon the first day of each month.

5th. It is further agreed that this lease agreement shall remain in full force and effect for a period of twenty (20) years from and after the first day of February, 1947.

This lease agreement having been approved by the duly constituted and elected officials of both parties hereto same is executed IN DUPLICATE as of the first day of February, 1947, by the Mayor of the Town of Sweetwater and attested by the Recorder of the Town of Sweetwater, on behalf of party of the first part, and the Chairman of the Board of Public Utilities of the Town of Sweetwater and the Manager of the Board of Public Utilities of the Town of Sweetwater, on behalf of the party of the second part; said respective officials having been duly authorized so to do.

IN WITNESS WHEREOF the parties hereto have executed this lease agreement as of the day and year first above written.

Town of Sweetwater, Tennessee

Attest: /s/ J. G. Engleman
J. G. Engleman, Recorder

By /s/ Sam J. Pickel
Sam J. Pickel, Mayor

SEAL

Party of the First Part

Board of Public Utilities of the Town
of Sweetwater, Tennessee

Attest: /s/ S. J. Randall
S. J. Randall, Manager

By /s/ Joe H. Wright
Joe H. Wright, Chairman

Party of the Second Part

APPENDIX 7

October 30, 1952

Mr. Victor C. Hobday
Knoxville, Tennessee

Dear Mr. Hobday:

There are few details concerning the establishing of the amount of rent the Board of Public Utilities must pay the City.

Payments in lieu of taxes were started when the City went into the electric business under the wing of TVA. These payments were placed in a building fund and allowed to accumulate until the building was in the blueprint stage.

It was then decided that the building and lot would cost approximately \$140,000.00 and that a bond issue of \$100,000.00 was necessary. These bonds required a certain amount annually for debt service. The in lieu of tax payments were established; hence it was easy to arrive at the yearly rent necessary, which was \$3600.

All collections were placed in a Building Fund and all debt service for the Building Bonds are paid out of this Fund.

It is working perfectly--the City owns the building, pays no rent, and furnishes heat, water, lights and janitor service, which costs the General Fund about \$250.00 per month.

Very truly yours,

/s/ J. G. Engleman
J. G. Engleman, Recorder
City of Sweetwater

C O P Y

APPENDIX 8

Excerpts from

TVA STANDARD FORM POWER CONTRACT

and accompanying

SCHEDULE OF TERMS AND CONDITIONS

* * * * *

6. Disposition of Revenues: Municipality agrees to dispose of its gross revenues from electric operations in the following manner:

(a) Revenues shall first be used for the payment of all current operating expenses, including salaries, wages, cost of materials and supplies, power at wholesale, and insurance.

(b) From the remaining revenues Municipality shall next currently provide for the payment at maturity of interest accrued on all System Indebtedness, and for amortization charges and/or sinking fund payments thereon.

(c) Thereafter, from the remaining revenues Municipality shall currently set up reasonable reserves for replacements, new construction, and contingencies, and to provide a reasonable amount of cash working capital.

(d) From the remaining revenues Municipality may thereafter pay into its General Fund a return on its investment in the electric system, if any, as provided in the Financial and Accounting Policy in the Schedule of Terms and Conditions attached hereto.

(e) From the remaining revenues Municipality may thereafter pay into its General Fund a tax equivalent as provided in the Financial and Accounting Policy in the Schedule of Terms and Conditions attached hereto.

(f) All remaining revenues shall be considered surplus revenues and shall serve as a basis for the reduction or elimination of surcharges to consumers, and thereafter for the reduction of rates; provided, however, that Municipality may, subject to the consent of Authority, devote part or all of such surplus revenues to the purchase or retirement of System Indebtedness prior to maturity. Surplus revenues shall be computed as of June 30 of each year.

* * * * *

10. Purpose of Contract: It is hereby recognized and declared that, pursuant to the obligations imposed by the Tennessee Valley Authority Act of 1933 as amended, Municipality's operation of a municipal electric distribution system and Authority's wholesale service thereto are undertaken primarily for the benefit of ratepayers and that Municipality shall receive from the operation thereof for the benefit of its General Fund, to be used for any permissible municipal purpose, only (a) a return on any investment made from general funds in the electric system, and (b) an amount in lieu of taxes, representing a fair share of the cost of government properly to be borne by such system. In accordance with these principles, which are mutually recognized as of the essence of this agreement, Municipality agrees to operate its electric system and to maintain its financial accounts and affairs in full and strict accordance with the provisions of this Power Contract.

* * * * *

10. Financial and Accounting Policy. Municipality agrees to be bound by the following statement of financial and accounting policy:

(a) Municipality's Investment. For purposes hereof, it is stipulated and agreed that Municipality's initial investment (i.e. as of the date of initial delivery) in the electric system is \$. This initial investment shall be increased only as herein specifically provided and by the payment of moneys from the funds of Municipality (other than the electric fund) for the payment of debt incurred by or on account of the electric system or otherwise for the benefit of the electric system.

(b) Maximum Return. Adjustments in Municipality's investment in the electric system shall be made as necessary from time to time and in any case at the end of each fiscal year. Municipality shall receive a return on this investment each month not to exceed one-half ($1/2$) of one (1) per cent per month, computed on the basis of the investment as of the last day of the month next preceding. In the event revenues of the electric system sufficient for the payment of such return are not available, an amount equal to the portion of the computed return not paid shall be added to Municipality's investment at the end of each fiscal year.

(c) Payments in Lieu of Taxes. Municipality may take from the electric department revenues or funds for the general funds of Municipality an amount in lieu of taxes (representing a fair share of the cost of government properly to be borne by its electric distribution system) to be determined subject to the terms and conditions hereinafter stated.

(1) To the extent surplus revenues are available after the satisfaction of all items set forth in subsections (a) through (d) of section 6 of the Power Contract, Municipality may take from the electric department revenues or funds for the general funds of Municipality an amount calculated by applying the prevailing municipal property tax rate to the value of the property used in electric operations within the municipal limits.

(2) To the extent surplus revenues are available after the satisfaction of all items set forth in subsections (a) through (d) of section 6 of the Power Contract, Municipality may take from the electric department revenues or funds for the general funds of Municipality an amount calculated by applying the prevailing county and state tax rates to the value of the electric system; provided, however, that if Municipality shall, directly or indirectly, and voluntarily or otherwise, make any payment or payments out of electric system revenues or funds to the state and/or any political subdivision thereof other than Municipality in satisfaction of a claim or obligation for taxes or payments in lieu of taxes, or in consideration of or as compensation for franchises or operating rights, then and in such event, and whether or not such payment or payments be measured by taxes or tax values at any time levied or assessed, the county and/or state tax equivalents to which Municipality would otherwise be entitled under this subsection (2) shall be reduced by the amount of such payment or payments; and provided further, that no such payment shall operate to reduce the tax equivalents to which Municipality is entitled under subsection (1) immediately preceding. It is understood and agreed, however, that Municipality shall not, in respect of any year, voluntarily make or agree to make any payment or payments of the kind referred to in this subsection when such payment or payments, either separably or in conjunction with all other similar payments in respect of that year, voluntary or otherwise, would exceed the amount derived by applying the prevailing county and state tax rates to the value of the electric system.

(3) For the purposes of (1) and (2) above the value of the electric system or any part thereof shall be the book cost of the tangible plant attributable to the system or to such part thereof, less the proportion of the depreciation reserve properly allocable thereto as of the date of determination. The said value shall be determined as of the beginning of each taxable year.

(4) Municipality agrees that it will not impose any tax or other charge not expressly provided for in this contract upon the property or operations of its electric system, or upon the sale,

purchase, use or consumption of electric energy supplied thereby. In the event Municipality should impose such a tax or charge the tax equivalent which Municipality would otherwise be permitted to take under this section shall be reduced each year by the aggregate amount of the tax or charge so imposed; provided, however, that no such reduction in tax equivalent payments shall in any way prejudice the rights of Authority to enforce, by whatever means available to it, said agreement and any other provision or provisions of this contract which may be violated by the imposition of said tax or charge.

(d) Payment by Electric Department for Services. The electric department shall pay the salaries and wages of those persons who devote their full time to the operation of the electric system, and an equitable portion of the salaries and wages of those persons devoting part time to the operation of the electric system.

(e) Withdrawals and Reinvestments by Municipality. If at any time Municipality should withdraw from the funds of the electric department for Municipality's general funds amounts in excess of the allowable return on investment and the tax equivalent, Municipality's investment shall be reduced in the amount of such excess withdrawals. Withdrawals of Municipality's investment shall be made only at such times and in such amounts as will not interfere with the efficient operations of the electric system, including requirements for expansion. In no event shall the excess withdrawals by Municipality exceed the amount of Municipality's investment in the electric system. If at any time Municipality should fail to withdraw the full amount due on account of its investment, that part or whole of the return which is not withdrawn shall be added to Municipality's investment to the extent such amount is needed by and used in the operation of the electric system. In the event funds of the electric system sufficient for the payment of said tax equivalents are not available, the portion of the computed amount not paid shall be accrued in a separate non-interest-bearing account and shall be paid to the general funds at such time as the funds of the electric department will permit. In no case shall such accrued tax equivalents be added to Municipality's investment or in any way subjected to the payment of a return or interest.

(f) Publication of Statement of Municipality's Investment. Municipality shall publish at the close of each fiscal year a balance sheet and an income and expense statement covering the operation of its electric system. Copies thereof shall promptly be forwarded to Authority at its office at Wilson Dam, Alabama.

*

*

*

*

*

APPENDIX 9

AMENDMENT TO AMENDED POWER CONTRACT

Between

TENNESSEE VALLEY AUTHORITY

And

THE CITY OF JACKSON, TENNESSEE

THIS AMENDMENT, made and entered into as of June 6, 1944, by and between TENNESSEE VALLEY AUTHORITY (herein called "Authority"), a corporation created and existing under and by virtue of the Tennessee Valley Authority Act of 1933 as amended, and THE CITY OF JACKSON (herein called "Municipality"), a municipal corporation duly created, organized, and existing under and by virtue of the laws of the State of Tennessee,

W I T N E S S E T H :

WHEREAS, the parties hereto have heretofore entered into a contract dated as of June 6, 1944 (herein called the "Amended Power Contract"), under the terms of which Municipality agreed to purchase from Authority and Authority agreed to supply Municipality's entire requirements of electric power and energy, subject to the terms and conditions therein outlined; and

WHEREAS, Municipality normally would be able to make additions to its municipal electric plant which would be reflected by the tax equivalent payments computed in accordance with section 10(d) of the Terms and Conditions attached to and made a part of the Amended Power Contract; and

WHEREAS, Municipality has been and will be unable to make such additions to its electric plant because of the shortage of critical materials but intends to do so as soon as the necessary materials become available; and

WHEREAS, the parties desire to amend the Amended Power Contract in the respects necessary to provide a method of computing tax equivalent payments which will be equitable under the circumstances; and

WHEREAS, all acts, things, and conditions necessary under law and Municipality's charter to make this agreement the valid and binding obligations of the parties hereto have been duly done, performed, and complied with;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and subject to all of the provisions of the Tennessee Valley Authority Act of 1933 as amended, the parties hereto mutually covenant and agree as follows:

1. Section 10(d)(3) of the Terms and Conditions attached to and made a part of the Amended Power Contract is hereby amended to read as follows:

In determining the amount to which Municipality is entitled in lieu of taxes under subsections (1) and (2) above, the tax rate shall be applied to the value of the property mentioned therein as determined in paragraph (a) above plus net additions, less the depreciation reserve as shown by the books at the beginning of each current taxable year. For purposes of computing such amount, reasonable quantities of materials and supplies, and a reasonable amount of cash working capital referred to in said paragraph (a) shall be considered to have a total value of not more than \$74,208.

Until such time as the amount determined in accordance with the first paragraph of this subsection exceeds \$25,000 Municipality may take a tax equivalent payment of \$25,000 in lieu of the amount determined in the said first paragraph. The said \$25,000 is arrived at by applying in accordance with subsections (1) and (2) above the prevailing tax rates to the depreciated value of the property mentioned in said subsections as shown on the books as of June 30, 1942, and to the sum of \$74,208 referred to in the said first paragraph of this subsection. It is understood and agreed that if any of the tax rates are reduced, the tax equivalent payment of \$25,000 shall be reduced to the amount which would result from the application of the reduced rate or rates in accordance with subsections (1) and (2) above to the value of the electric plant shown on the books as of June 30, 1942. It is further understood and agreed that in the event Municipality sells or otherwise disposes of any portion or portions of its electric plant the said tax equivalent payment of \$25,000 shall be reduced to the amount which would result from applying the prevailing tax rates in accordance with said subsections (1) and (2) to the value of Municipality's electric plant remaining in service depreciated to June 30, 1942.

2. This amendment shall be effective as of July 1, 1944, and shall continue for the term of the Amended Power Contract.

3. Except as provided for herein, the Amended Power Contract is hereby ratified and confirmed as the continuing act and contract of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers, as of the day and year first above written.

Attest: (SEAL)

/s/ Loona LeRoy
Assistant Secretary

Attest: (SEAL)

/s/ B. F. Graves
City Recorder

TENNESSEE VALLEY AUTHORITY

By /s/ Gordon R. Clapp
General Manager

THE CITY OF JACKSON

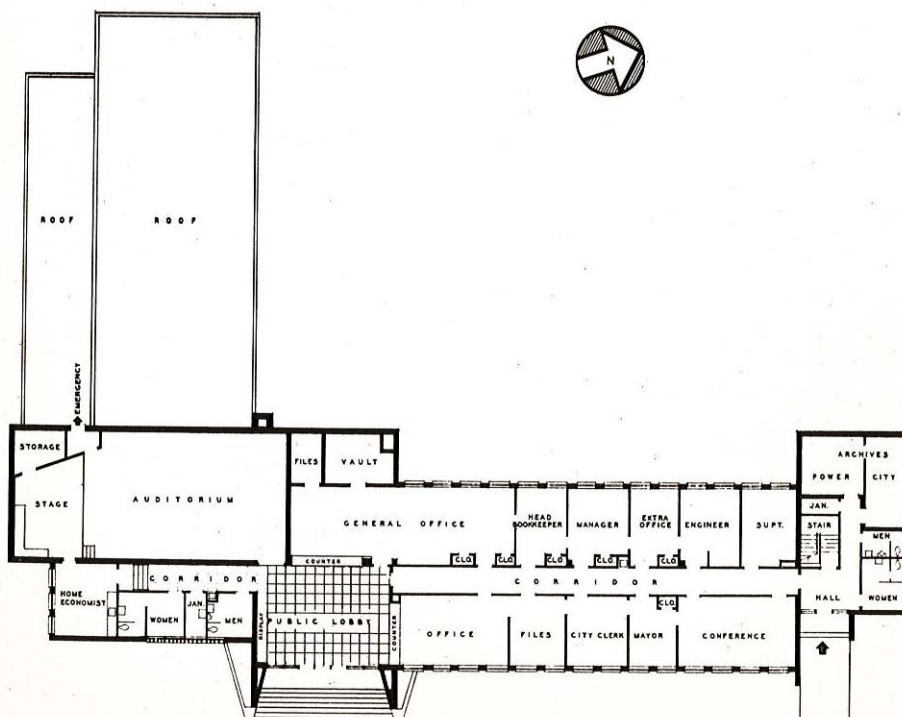
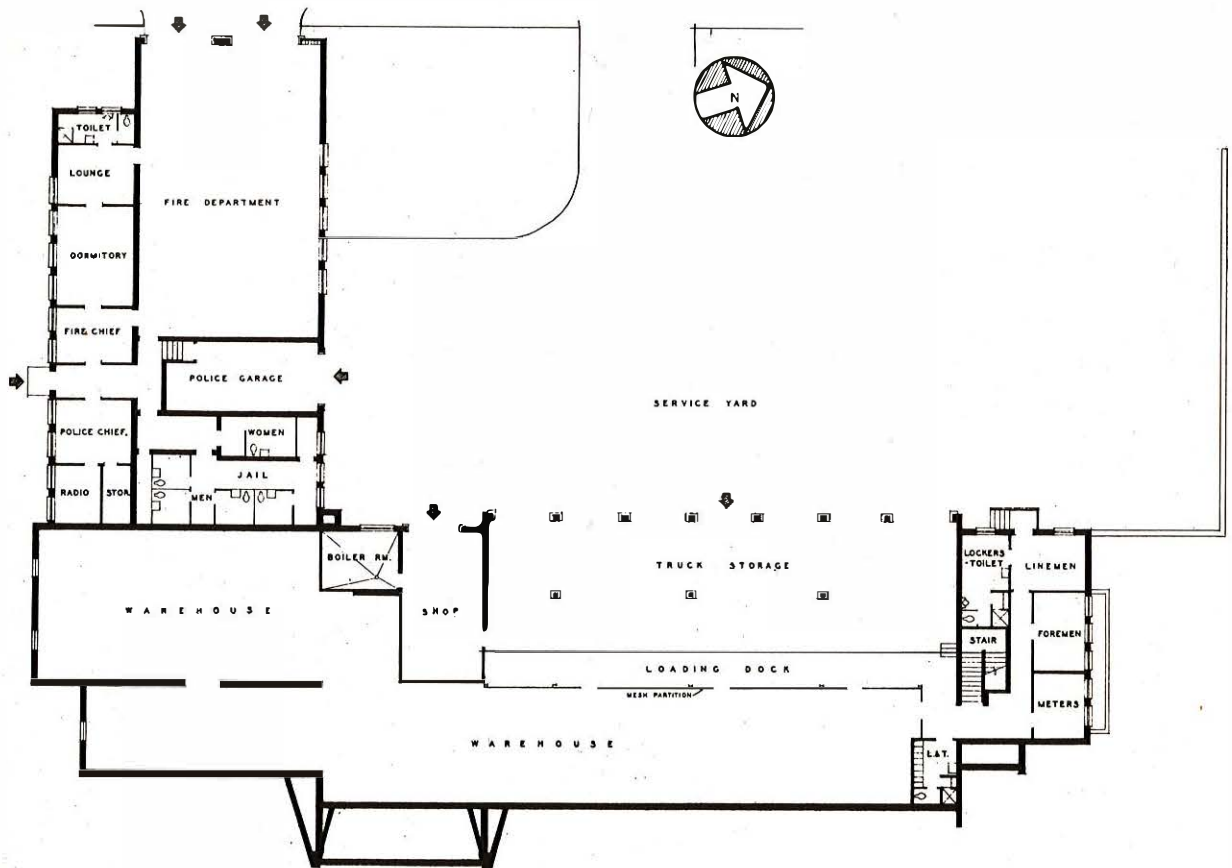
By /s/ P. H. Callahan
Vice Mayor

C.A.R.
Legal
Dept.

CLINTON

Municipal & Utilities Building (Ground Floor & First Floor)

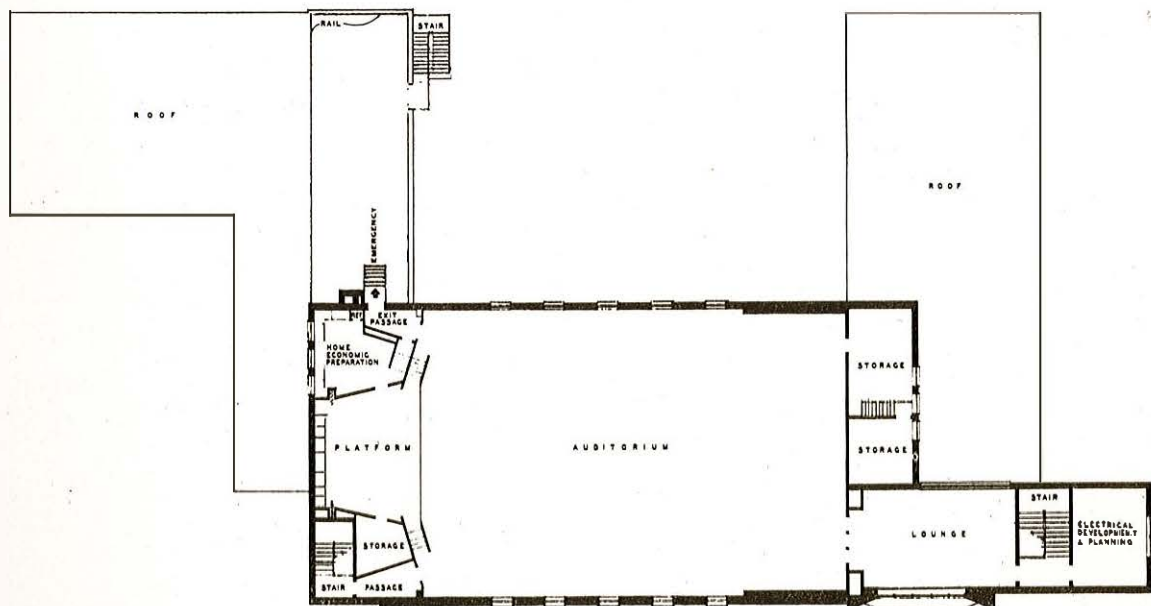
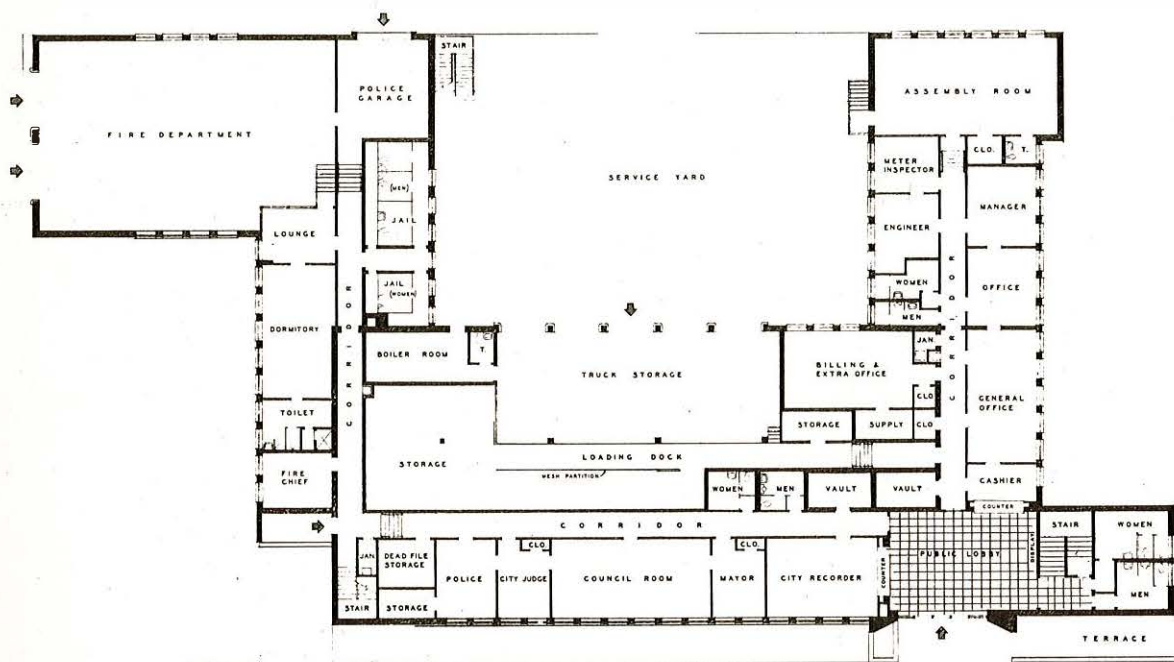
BIANCULLI, PALM & PURNELL
Chattanooga, Tennessee

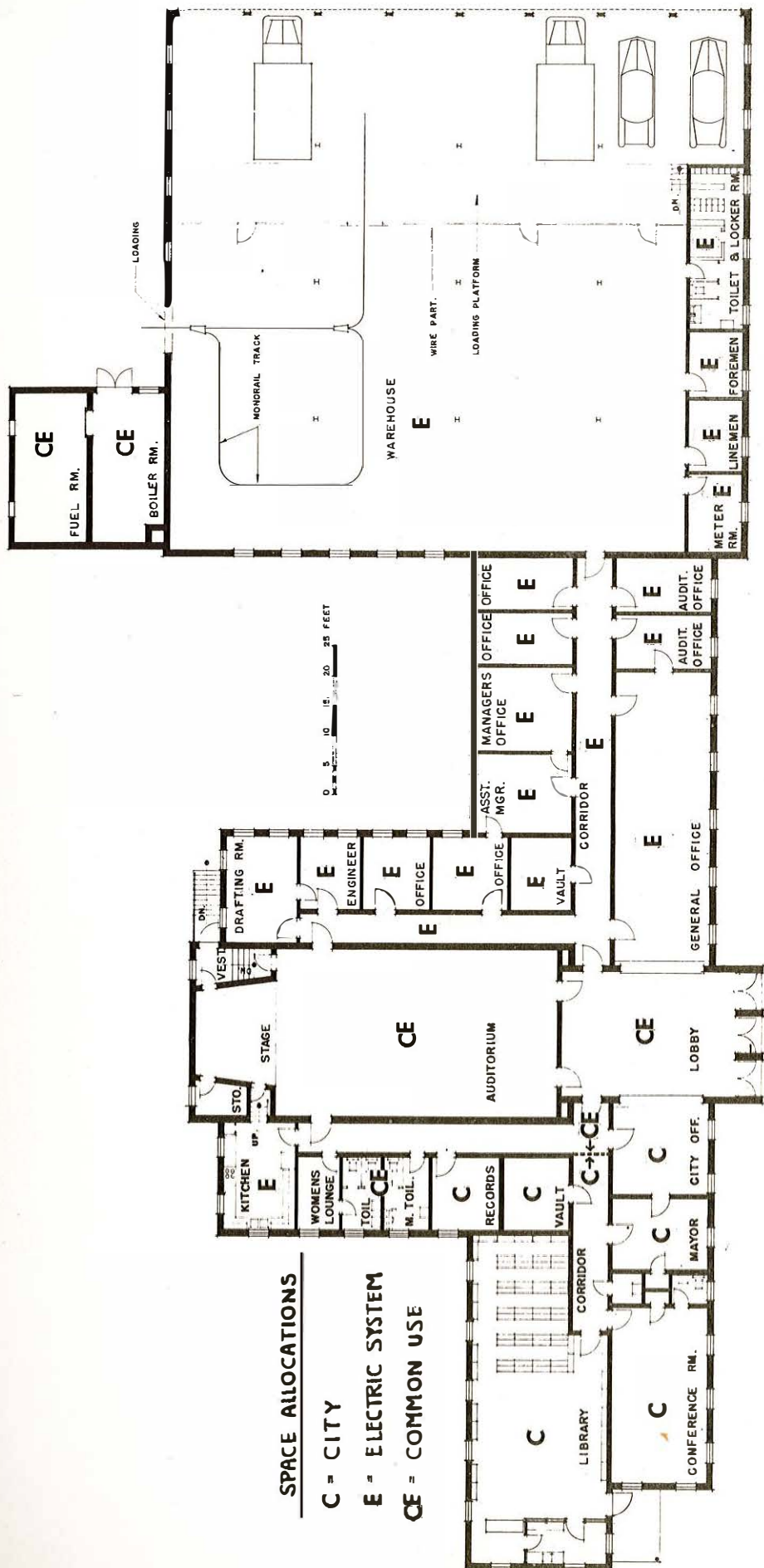


HARRIMAN

Municipal & Utilities Building (First Floor & Second Floor)

BIANCULLI, PALM & PURNELL





SPACE ALLOCATIONS

C = CITY

E = ELECTRIC SYSTEM

CE = COMMON USE

LA FOLLETTE

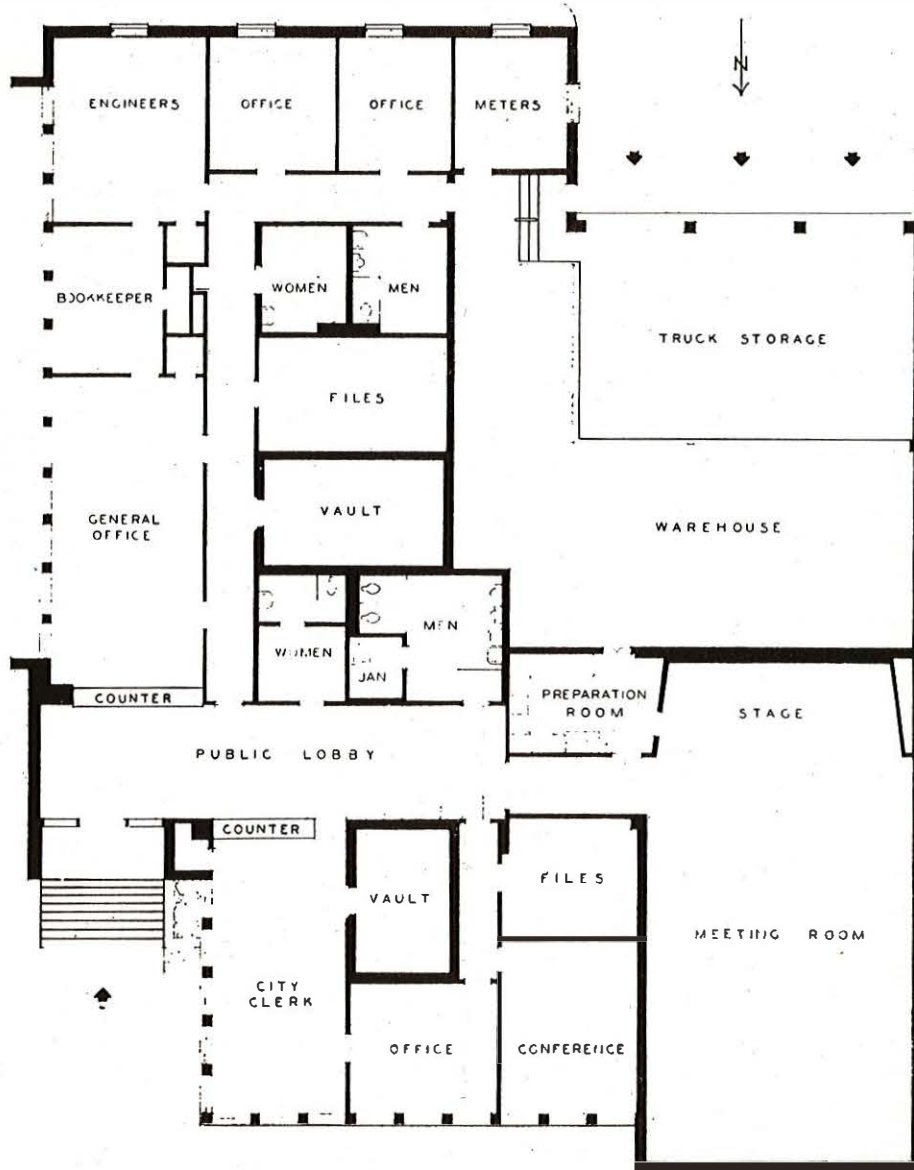
Municipal Building
(with space allocations indicated,
showing portion of
building used by the
city and the electric
system and that used
by both)

BARBER & MCMURRY
Knoxville, Tennessee

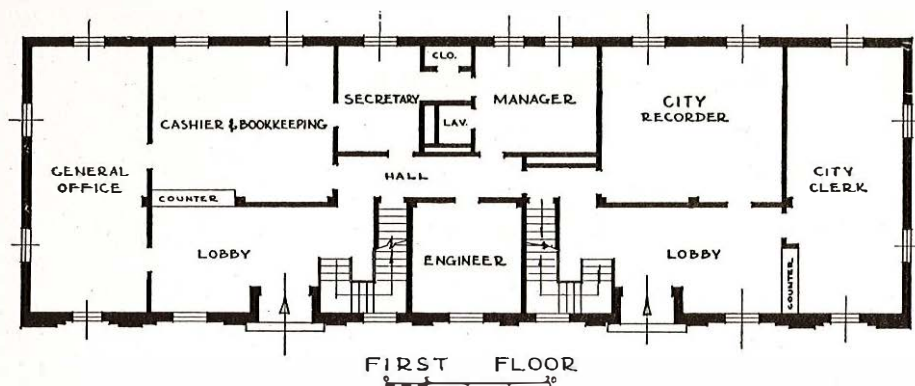
LEWISBURG

Municipal & Utilities Building*

BIANCULLI, PALM & PURNELL
Chattanooga, Tennessee



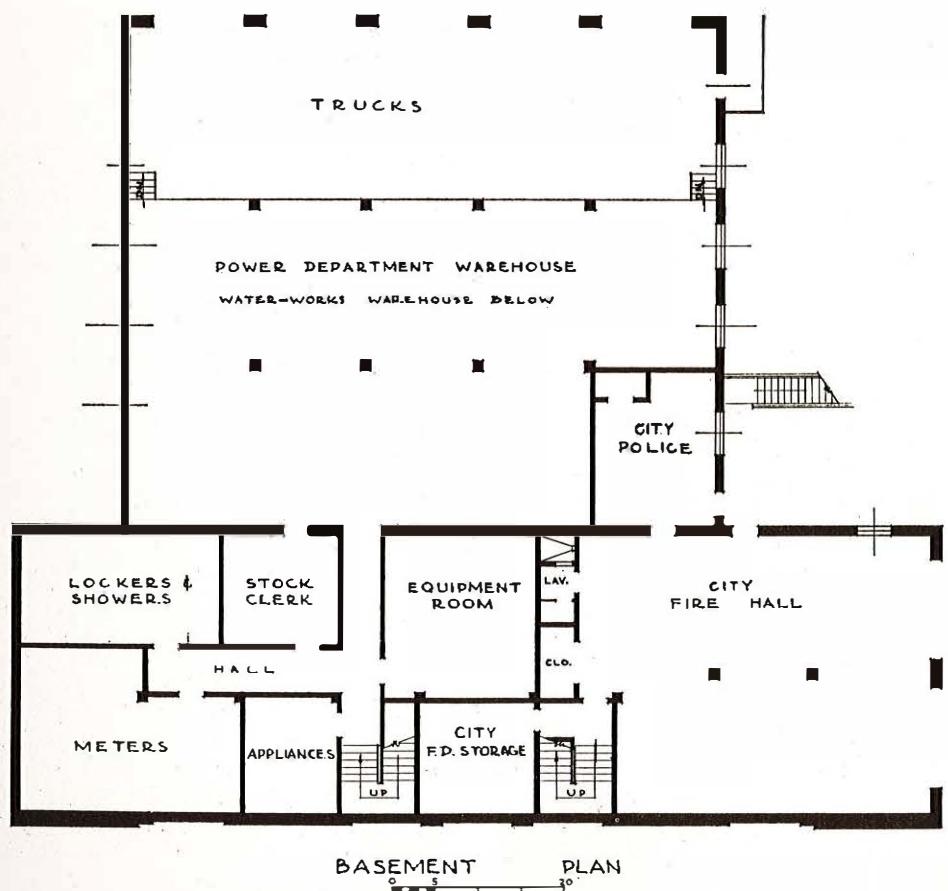
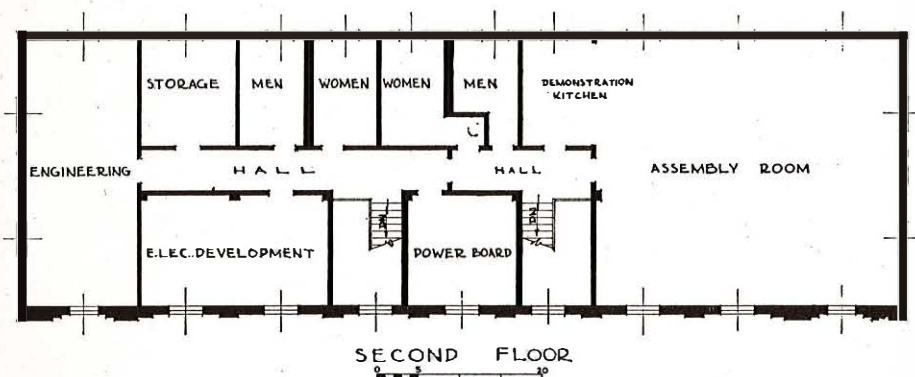
* As it appeared in the February 1952
issue of Tennessee Town & City magazine .



M C M I N N V I L L E

City Hall & Electric
Building (Basement &
First, Second Floors)*

WALLACE & CLEMMONS
Nashville, Tennessee

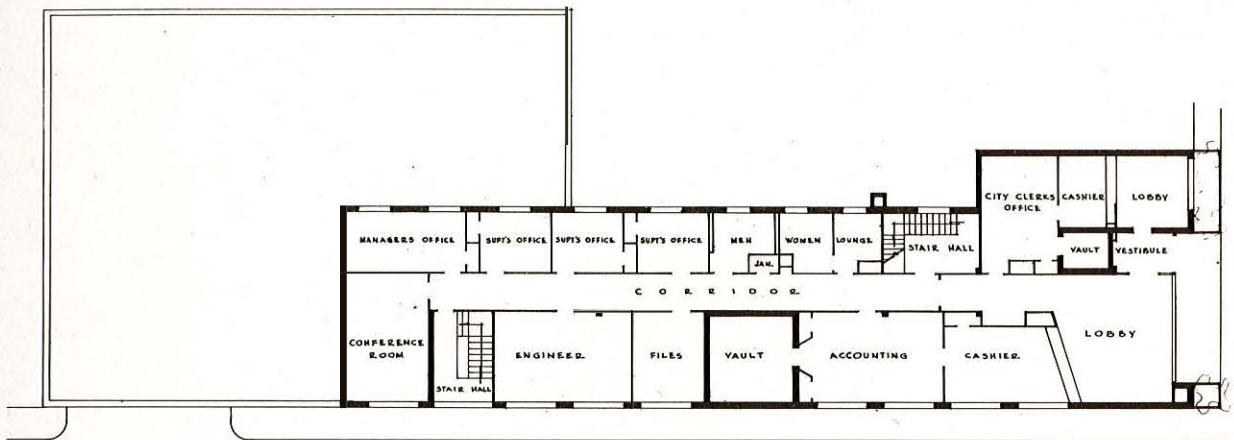


* As plans appeared
in the November 1951
issue of Tennessee
Town & City magazine.

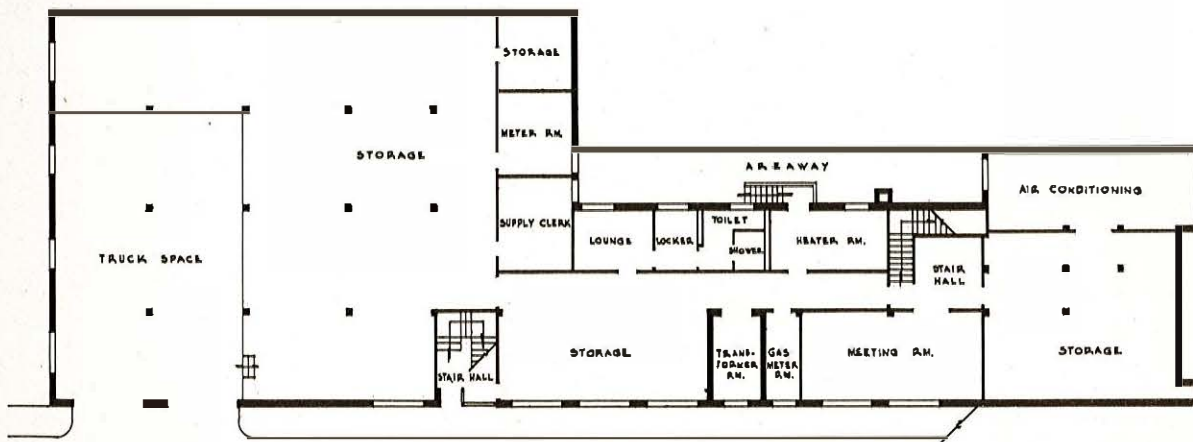
S P R I N G F I E L D

City Hall (First Floor & Basement)

WOOLWINE, HARWOOD & CLARK
Nashville, Tennessee



FIRST FLOOR

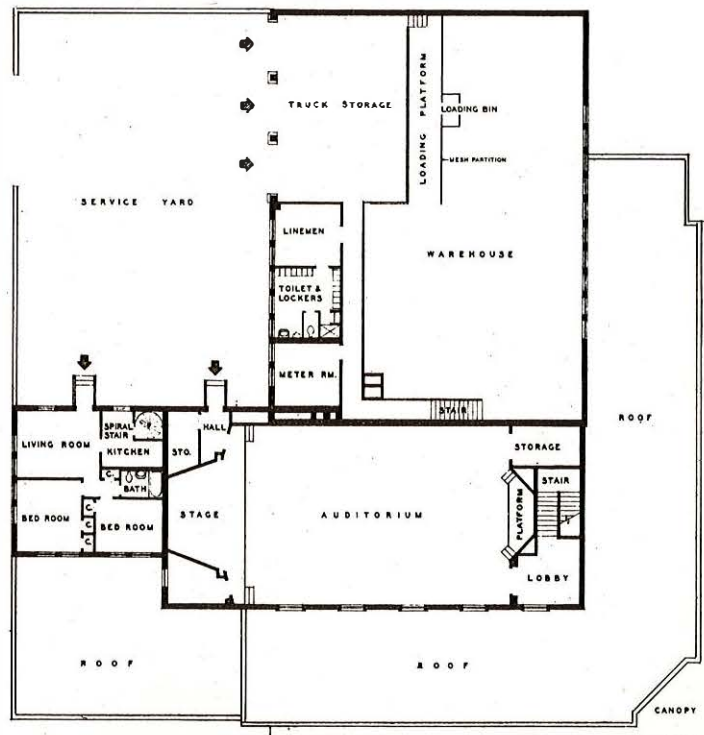
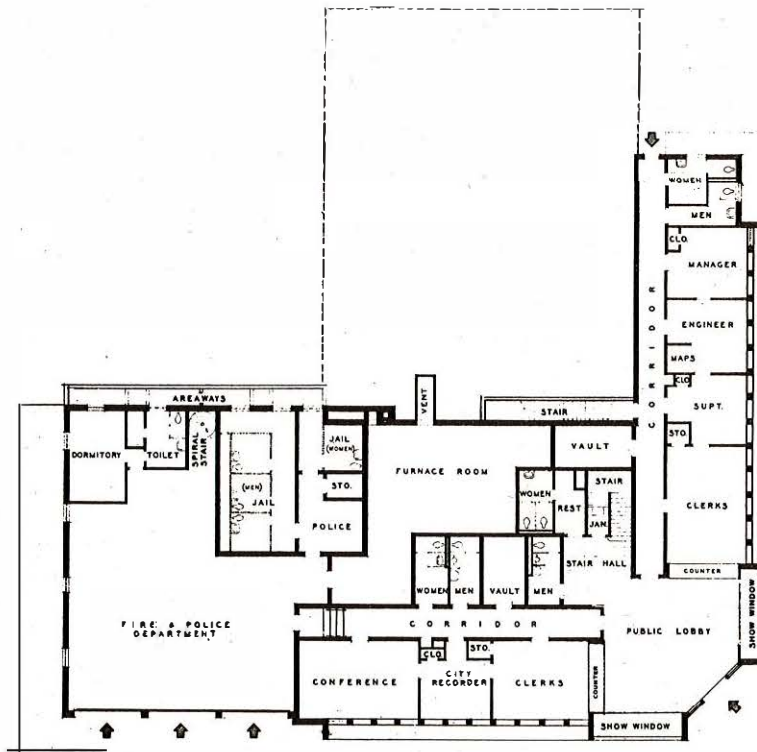


BASEMENT

S W E E T W A T E R

Municipal & Utilities Building (First Floor & Second Floor)

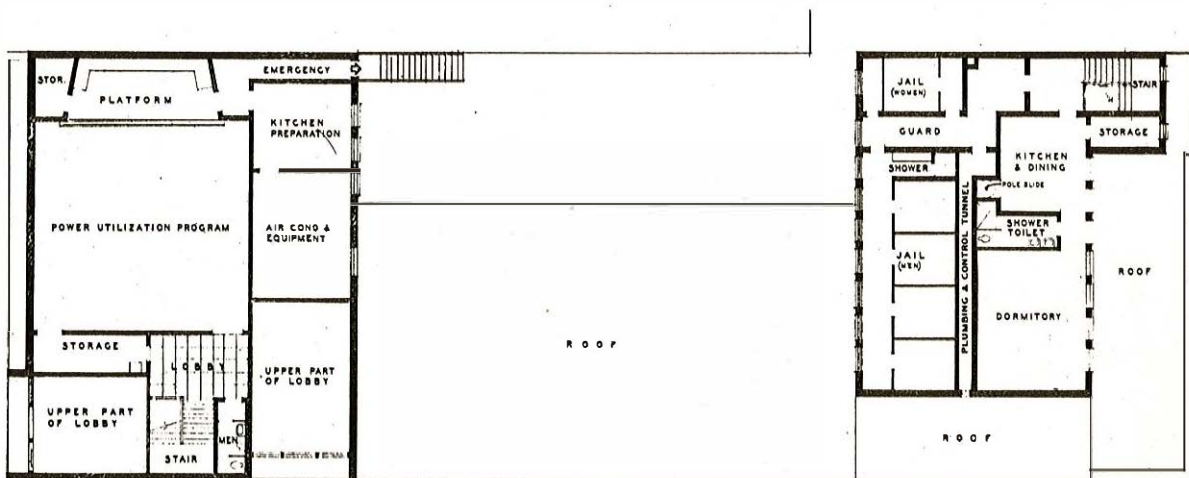
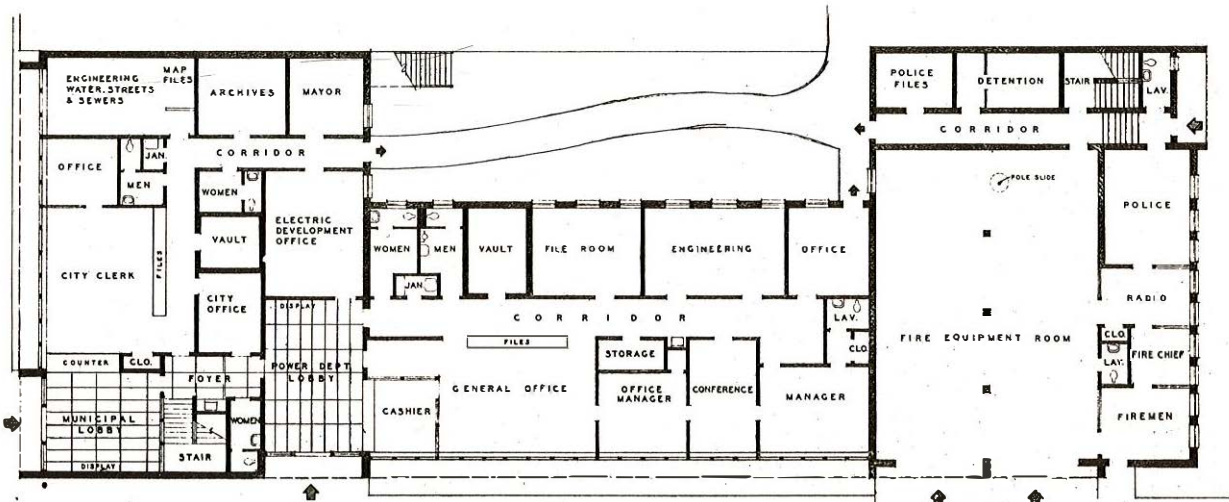
BIANCULLI, PALM & PURNELL
Chattanooga, Tennessee



T U L L A H O M A

Utilities Building (First Floor & Second Floor)

BIANCULLI, PALM & PURNELL



WINCHESTER

Municipal Building

JOHN H. PARMELEE & ASSOCIATES
Nashville, Tennessee

