11503 - N - 1576 #3.

THIS AGREEMENT, made and entered into this 14th day of March, 1921, by and between the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, a Wisconsin corporation hereinafter called the "Railway Company" and the INTERMOUNTAIN POWER COMPANY, a Montana corporation, hereinafter called the "Power Company."

W I T N E S S E T H :

WHEREAS, by written agreement dated March 13, 1917, made between the parties hereto, provision was made for the furnishing to the Railway Company by the Power Company, of electric power for the operation of portions of the Railway Company's railroad lines in the States of Idaho and Washington; and

WHEREAS, for the purpose of securing a portion of the power to be furnished the Railway Company for its operation, the Power Company entered into a written agreement dated November 1, 1916, with the Washington Water Power Company, whereby, the Power Company agreed to take from said Washington Water Power Company certain fixed amounts of electric power and was given the option of taking certain additional electric power and, among other options, was given the right to take and use 10,000 Horse Power of electric power from and after October 1, 1921, the right to said option being contingent upon notification by the Power Company to The Washington Water Power Company on or before October 1, 1920; and

WHEREAS, at the request of the Railway Company the Power Company, prior to October 1, 1920, exercised its option to take said 10,000 Horse Power of electric power from The Washington Water Power Company for a period of ninety-nine years from and after October 1, 1917, and pay therefor at the rate of Ten Dollars ($10.00) per Horse Power per annum, in monthly installments, under and in accordance with the provisions of said contract of November 1, 1916, between the said Washington Water Power Company and the said Power Company, party hereto, and

WHEREAS, by a certain contract of even date herewith (hereinafter called the "Use Contract"), the parties hereto have stipulated and agreed, among other things, that the Power Company will sell and deliver to the Railway Company and the Railway Company will buy and receive from the Power Company electric power in the minimum amount of 10,000 kilowatts, for the operation of that portion of the Railway Company's railway extending between the stations of Avery, in Idaho, and Othello, in Washington, upon the terms and for the considerations in said contract expressed; and

WHEREAS, it is in and by said contract stipulated that said contract shall take effect and be in force only in the event that the Railway Company given notice unto the Power Company of an election upon its part to electrify said section of said railway, said notice to be so given on or before October 1, 1925.

NOW, THEREFORE:

1. The Railway Company agrees to pay to the Power Company the sums of money which the Power Company shall be required to pay to the said Washington Water Power Company for the said 10,000 Horse Power of electric power which the Power Company, by the exercise of said option, became obligated to take and pay the said Washington Water Power Company for; said payments to be made at times and in amounts as follows: On or before the first day of each month, beginning with the month of November, 1921, the Railway Company will pay to the Power Company the sum of Eight Thousand Three Hundred Thirty-three and Thirty-three One Hundredths Dollars ($8,333.33) being the amount which the Power Company is obligated by its exercise of said option to pay unto said Washington

Water Power Company as the monthly installment for said 10,000 Horse Power of electric power for the month of October; and thereafter the Railway Company will, on or before the first day of each calendar month pay unto the Power Company a like sum, such obligation to continue, except as hereinafter provided, so long as the Power Company is obligated by the terms of the option exercised by it as aforesaid, to make such payments to the said Washington Water Power Company.

2. It is agreed that in consideration of the payments to be made by the Railway Company, as aforesaid, the Power Company shall make the payments unto the Washington Water Power Company for said 10,000 Horse Power of electric power as required by the terms of the agreement between the Power Company and The Washington Water Power Company, and hold the right to take and use said 10,000 Horse Power of electric power for the purpose of supplying electric power unto the Railway Company pursuant to the provisions of said Use Contract. And in the event the Railway Company shall elect to put said Use Contract into force and effect as therein provided, the payments for electric power to be made by the Railway Company to the Power Company, under and pursuant to the terms of said Use Contract, shall be taken and accepted as in lieu of the payments to be made by the Railway Company to the Power Company, as provided in Section 1 hereof, and from and after the time when the Power Company begins to furnish electric power to the Railway Company for which it is to be paid under and pursuant to the terms of said Use Contract, all obligations of the Railway Company to make payments unto the Power Company under the provisions of Section 1 hereof shall cease; Provided, however, that if the payments made unto the Power Company by the Railway Company under the provisions of the Use Contract for the power furnished during the first year in which power is furnished under such contract, shall aggregate less than Eight Thousand Three Hundred Thirty-three and Thirty-three One-Hundredths ($8,333.33) Dollars for any calendar month the Railway Company shall and will pay unto the Power Company for such month such additional sum as will, when added to the amounts paid as provided in said Use Contract, equal such sum of Eight Thousand Three Hundred Thirty-three and Thirty-three One-Hundredths ($8,333.33) Dollars.

3. In the event the Railway Company shall not elect to put said Use Contract into force and effect on or before said first day of October, 1925, in accordance with the provisions thereof, the Power Company may, if it so elects, at any time withdraw and appropriate or dispose of said 10,000 Horse Power of electric power, or may, from time to time, withdraw and appropriate or dispose of any part or parts of said power, for its exclusive use or benefit, by giving unto the Railway Company written notice of its purpose so to do; and thereupon all obligations of the Railway Company to make payments unto the Power Company as provided in Section 1 hereof, shall cease and determine to the extent of the amount of such 10,000 Horse Power of electric power which the Power Company shall so elect to withdraw and appropriate or dispose of for its exclusive use and benefit. For the purpose of determining the extent to which the Railway Company is so released, in the event the Power Company elects at any time to so withdraw and appropriate or use less than the whole of such 10,000 Horse Power of electric power, it is agreed that the obligations of the Railway Company to pay unto the Power Company, as provided in Section 1 hereof, shall cease and determine at the rate of Ten Dollars ($10.00) for each Horse Power of such electric power so withdrawn and appropriated or disposed of by the Power Company for its exclusive use and benefit.

4. Save and except as such 10,000 Horse Power of electric power may be used for the operation of the Railway Company's railway as provided in Section 2 hereof, or as the same may be withdrawn and appropriated, in whole or in part, to the exclusive use and benefit of the Power Company, as provided in Section 3 hereof, and the Railway Company thereby relieved as provided in said Sections, in whole or in

part, from its obligation to make payments unto the Power Company, as provided in Section 1 hereof, the said electric power shall be used or disposed of only upon the consent of both parties hereto to such use or disposal. It is understood and agreed, however, that neither party will arbitrarily, unreasonably, or for the purpose of obtaining an undue or inequitable advantage of, or causing a loss to, the other, withhold such consent to a use or disposition of such power which the other may desire to be made; and the Power Company shall, and hereby agrees that it will, from time to time, within the limitations prescribed in said contract between the Power Company and The Washington-Water Power Company, and all amendments and supplements thereto, make and enter into contracts with third parties for the use and disposition of such power upon such terms and conditions as may have been agreed upon between the parties hereto, copies of which contracts shall be furnished by the Power Company to the Railway Company. All moneys obtained from the use or disposition of such power used or disposed of pursuant to the consent of both parties as above provided, shall be appropriated to the benefit of and apportioned between said parties as follows: All expenses of selling and delivering said power or energy including a reasonable charge for transmitting the same, shall be a first charge against and deducted from the moneys so derived; the net amount remaining, after making such deductions, not exceeding Ten ($10.00) Dollars per annum for each Horse Power so used or disposed of, shall then be applied as a credit upon the amounts payable by the Railway Company to the Power Company under the provisions of Section 1 hereof for the period during which such power is so sold, used or dis-posed of; and any balance in excess of the amounts so credited to the Railway Company, for the period during which such power is so sold, used or disposed of, shall be retained and appropriated to the use of the Power Company.

5. By said agreement of March 13, 1917, between the parties hereto, the Power Company agreed to sell and deliver to the Railway Company, and the Railway Company agreed to buy and receive from the Power Company, electric power for operating the railway of the Railway Company between the station of Othello on the east, and the stations of Seattle and Tacoma on the west, in a maximum amount of Twenty-five Thousand (25,000) Kilowatts, a portion of which power is now procured by the Power Company from the said Washington Water Power Company and delivered to the Railway Company at or near said Station of Othello, and fifteen thousand (15,000) Horse Power of which power the Power Company may, under the terms of its said contract with The Washington Water Power Company, procure from said Washington Water Power Company and may, under the provisions of its said contract with the Railway Company of March 13, 1917, deliver, less transmission losses, unto the Railway Company for the electric operation of said railway between said Othello on the east and said Seattle and Tacoma on the west. And it is now stipulated between the parties hereto:

(a) That the said 10,000 Horse Power of electric power taken by the Power Company pursuant to its option from The Washington Water Power Company, as hereinbefore set forth, is not any part of the electric power to be delivered by the Power Company to the Railway Company, under said contract of March 13, 1917, for the operation of said railway between said Othello and said Seattle and Tacoma, but is in addition thereto;

(b) That the Railway Company shall not, without the consent of the Power Company, have the right to use, or request the use of any portion of said 10,000 Horse Power of electric power, for the operation of its said railway between said Othello and said Seattle and Tacoma, until and unless it shall have first taken, under the provisions of said contract of March 13, 1917, the full amount of 25,000 kilowatts to which it is entitled under said contract, for the operation of said portion of its railway. In the event the Railway Compa shall so desire it may, after having taken said maximum amount of 25,000 kilowatts under said contract of March 13, 1917, require the

of any portion of said 10,000 Horse Power of electric power, less transmission losses, then remaining unappropriated and undisposed of, for the operation of its said railway west of Othello. It shall, however, in such event, take such electric power for the remainder of the life of said contract of March 13, 1917, at the rates and under the conditions provided for in such contract, or in such contract as it may then be amended or supplemented, or of such contract, if any, as may then be in force and effect as a substitute for said contract of March 13, 1917, and the obligations of the Railway Company to make payments to the Power Company, pursuant to the provisions of Section I hereof, for that portion of said 10,000 Horse Power of electric power so diverted for the operation of the Railway Company's lines West of Othello, shall cease from and after the time when the Power Company shall be entitled to payments therefor at the rates prescribed in said contract of March 13, 1917, or in said contract as amended, supplemented, or in such substituted contract, if any, as may have been substituted therefor.

6. If at any time the Power Company desires to sell or dispose of any of the power which it is now, or may hereafter be entitled to take from said Washington Water Power Company, to any customer in addition to the customers now being served by the Power Company from said Washington Water Power Company power, a method of measurement of all power delivered by the Washington Water Power Company to the Power Company shall be agreed upon between the parties hereto, in order to determine what part, if any, of the 10,000 Horse Power of power, which the Railway Company may be paying for under Section 1 hereof, is being utilized by the Power Company. If the parties hereto do not agree as to such method of measurement, such a method shall be determined by arbitration, as hereinafter provided. Pending such agreement or arbitration, the Power Company may serve such additional customer or customers.

7. Any and all questions which shall or may arise touching this agreement or the construction or performance of any provision thereof shall be submitted to the decision of three disinterested persons to be chosen as follows:

The Railway Company shall select one and the Power Company shall select one, and the two thus chosen shall select the third, and the persons thus chosen, after a full hearing of both parties and full examintaion of the matter in dispute, shall determine the same in writing, and the decision of the majority of the three persons thus chosen shall be final. If either party shall neglect or refuse to appoint an arbitrator on its own part, then ten days after receiving written notice from the other of its appointment of an arbitrator on its part, the arbitrator so appointed by the party giving such notice may select a disinterested person to act as an arbitrator for and on account of the party so notified and refusing or neglecting to appoint an arbitrator on its part, and the two thus chosen shall select a third. If the two thus chosen in either of the methods above provided shall be unable to agree upon a third arbitrator, or shall fail to agree upon a third arbitrator, and such inability shall continue for a period of fifteen days, then in that event the parties hereto shall and may notify the Chief Justice of the Supreme Court of the State of Washington of such fact, and he shall and may appoint said third arbitrator. The decision and award of the arbitrators as herein provided, or any two of them, shall be binding and conclusive upon the parties hereto with respect to the matters so submitted to and decided by said arbitrators.

If any arbitrator appointed by either of the parties hereto shall neglect or fail to act, notice of such failure shall be served upon the party appointing such arbirator by the other party, and in case such party shall fail to appoint another arbitrator, or shall fail to cause the arbitrator first appointed to act, and such failure shall

continue for a period of ten days, then the arbitrator appointed by the other party may select a disinterested person to act as an arbitrator for and on account of the other party, and the two thus chosen shall select a third, and the decision and award of such arbitrators, or any two of them, shall be binding and conclusive uponsaid parties hereto with respect to the matter so submitted and decided by said arbitrators.

The award and decision of the arbitrators under the provisions hereof shall be served by them, or some one of them, upon the parties within fifteen days after the time when such arbitrators shall make their award.

IT IS FURTHER MUTUALLY AGREED that any difference which may arise as to the construction of or the transaction of any business, under this agreement by the parties hereto shall not interrupt the trasnaction of such business nor the operation of trains, nor the delivery of power, but all said business of either party and operations of trains and the delivery of power shall continue in the same manner in which the same shall have been transacted prior to the arising of such difference until the matter of difference shall have been fully determined by the arbitrators as aforesaid, and thereupon such payments or restoration shall be made by the respective parties to the other as may be required by the decision or awardof said arbitrators.

In case any charge made or item embraced in any statement rendered by either party to the other shall be contested and submitted to arbitration under the terms hereof, and an award shall be made by said arbitrators requiring payment thereof or any part thereof, or in case any failure to comply with any other covenant or agreement in this contract is alleged by either party against the other, and the same is submitted to arbitration as herein provided and decided by said Board of Arbitration, then the losing party shall pay the amount of such award or comply with the terms and requirements thereof; and if it fails so to do, and such failure shall continue for a period of thirty days after the service of the award, then and in that event the prevailing party shall have the right to terminate this agreement according to the terms and provisions thereof for and on account of such failure and default.

8. IT IS AGREED that the terms and provisions of this contract shall inure to the benefit of and its obligations shall be binding upon the successors, grantees, or assigns of the respective parties hereto.

IN WITNESS WHEREOF, the respective parties have caused these presents to be executed in duplicate by their proper officers, thereunto duly authorized, the day and year first above written.

INTERMOUNTAIN POWER COMPANY,

By Cornelius F. Kelley,
Its President.

(Seal)
Attest: (Illegible)
Secretary.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,

By H.E.Byram,
President.

(Seal)
Attest: R.J.Marony,
Asst.Secretary.

Approved for execution: H.B.Earling, Vice President.
Form approved: F.M.Dudley, Gen'l.Attorney.
R.Beeuwkes, Electrical Engineer.