

CONTRACT

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CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY

and

MONTANA EASTERN RAILWAY COMPANY

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CONSTRUCTION AND USE OF RAILROAD FROM A POINT  
NEAR GRASS RANGE TO A POINT NEAR JUNCTION  
OF FLATWILLOW CREEK AND MUSSELSHELL  
RIVER, MONTANA.

Dated December 1st, 1917.

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SUPPLEMENTAL CONTRACT,

Dated April 1st, 1919.

17-5-3

THIS AGREEMENT, made and entered into this first day of December, A. D. 1917, by and between the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, a corporation organized under the laws of the State of Wisconsin and authorized to do business as a foreign corporation in the State of Montana, hereinafter called the "Milwaukee Company", and the MONTANA EASTERN RAILWAY COMPANY, a corporation organized under the laws of the State of Montana, hereinafter called the "Eastern Company",

WITNESSETH:

WHEREAS, the Milwaukee Company has constructed and is operating a railway line extending from the City of Lewistown in the State of Montana, easterly to the Town of Grass Range, in township fifteen (15) north, of range twenty-three (23) east, M. P. M., Montana, and has located a railway route extending from said Town of Grass Range northeasterly and easterly to Winnett, in section six (6), township fourteen (14) north, of range twenty-seven (27) east, M. P. M., Montana, and thence easterly and southeasterly to a point near the mouth of Flatwillow Creek; and

WHEREAS, the Eastern Company has located, and is constructing a railway line extending from said City of Lewistown easterly to a point between one and two miles north of said Town of Grass Range; and has located a railway route extending thence

easterly through said Winnett, and easterly and southeasterly to a point near the mouth of said Flatwillow Creek; and

WHEREAS, the said railway routes as surveyed and located parallel, and to some extent conflict with each other from a point in said township fifteen (15) north, of range twenty-three (23) east, M. P. M., to a point near the mouth of said Flatwillow Creek; and

WHEREAS, a great expense would be saved to the parties by constructing a single line of railway to be used by them jointly from a point of connection to be established between said proposed railways in section fifteen (15), township fifteen (15) north, of range twenty-three (23) east, to a point west of the Musselshell River and in or in the vicinity of the southwest quarter (SW $\frac{1}{4}$ ) of section six (6), township thirteen (13) north, of range thirty (30) east M. P. M., Montana, near the mouth of said Flatwillow Creek; and

WHEREAS, both parties are desirous of avoiding such unnecessary expense and adjusting the said conflicts in the manner hereinafter provided;

NOW THEREFORE, in consideration of the mutual and interdependent covenants and agreements by each of the parties hereto to be kept and performed, the parties hereto hereby covenant and agree each with the other as follows:

## ARTICLE I.

SECTION 1. That the said parties will construct and complete, in the manner hereinafter described, a single track standard gauge railway extending from a point in section fifteen (15), township fifteen (15) north, of range twenty-three (23) east, M. P. M., Montana, to a point west of the Musselshell River and in or in the vicinity of the southwest quarter (SW $\frac{1}{4}$ ) of section six (6), township thirteen (13) north, of range thirty (30) east, M. P. M., Montana. Said railway shall be constructed along the route indicated by the red and black lines, shown on the plat signed by the Assistant Chief Engineer of the Milwaukee Company and the Chief Engineer of the Eastern Company, hereto attached as Exhibit "X", and hereby made a part hereof. It shall follow the location so shown on said Exhibit as closely as practicable, but the alignment thereof may be so varied as to secure the most advantageous line consistent with the character of the railway under construction; provided, however, that without the consent of the engineers representing both parties no changes in such location shall be made, which shall require a curvature rate in excess of three (3) degrees, and no grade rates shall be allowed in excess of six-tenths (0.6) of one per cent.

Location of Track.

SECTION 2. The Milwaukee Company is now constructing and will, as speedily as practicable have ready for use, an extension of its existing rail-

Construction by Milwaukee Co.

way from its present terminus adjacent to the Town of Grass Range, northeasterly and easterly to the point indicated on Exhibit "X" by the letter "B" and thence along the route shown on Exhibit "X" by the red line, to station 1880 of the survey stations of said railway, said point being in the northeast quarter (NE¼) of section six (6), township fourteen (14) north, of range twenty-seven (27) east, M. P. M., Montana, and located approximately nine hundred and thirty-four (934) feet eastward of the intersection of the center line of said railway with the west line of said northeast quarter (NE¼) of section six (6) aforesaid, the location of said point being indicated on Exhibit "X" by the letter "C". The Eastern Company will construct its railway extending eastwardly from said City of Lewistown to a connection with the railway to be constructed by the Milwaukee Company as aforesaid, in the southeast quarter (SE¼) of section fifteen (15), township fifteen (15) north, of range twenty-three (23) east, M. P. M., Montana, the location of said connection being indicated on Exhibit "X" by the letter "B". The said line to be constructed by the Milwaukee Company from the point of connection with the line of the Eastern Company in section fifteen (15) aforesaid, to the said point "C", adjacent to the Village of Winnett, is hereinafter designated as Joint Line No. 1.

The Eastern Company shall construct a railway along that portion of the route shown on Exhibit "X" by the black line extending from a connection with the line to be constructed by the Milwaukee

Company at said point "C", eastwardly to a point west of the Musselshell River, and in or in the vicinity of the southwest quarter (SW¼) of section six (6), township thirteen (13) north, of range thirty (30) east, M. P. M., Montana, the approximate location of which point is indicated on Exhibit "X" by the letter "D". The said line to be constructed by the Eastern Company from the end of the line to be constructed by the Milwaukee Company at said point "C", to said point "D", is hereinafter referred to as Joint Line No. 2. The exact location, on the track to be constructed by the Eastern Company, of the connection at the east end of Joint Line No. 2, has not been fixed; but it is understood and agreed that such location shall be fixed by the Chief Engineer of the Milwaukee Company with all convenient speed; and that whenever said location is so fixed, a memorandum agreement defining such location shall be executed by such engineer in duplicate, one copy of which shall be delivered to each of the parties hereto, which memorandum agreement shall be deemed and considered supplemental hereto, and the point indicated by the letter "D" on Exhibit "X" shall be understood and construed as referring to the exact location as fixed and defined in such supplemental memorandum agreement.

The Milwaukee Company, its successors and assigns, shall be and remain the owner of Joint Line No. 1 and the Eastern Company shall have no interest therein, except as hereinafter provided. The Eastern Company, its successors and assigns, shall

Ownership.

be and remain the owner of Joint Line No. 2 and the Milwaukee Company shall have no interest therein, except as hereinafter provided. The term "Owning Company" or "Owning Companies" as hereinafter used herein, shall, when used with reference to Joint Line No. 1, be understood and construed as referring to the Milwaukee Company, and shall, when used with reference to Joint Line No. 2, be understood and construed as referring to the Eastern Company. The terms "Using Company" or "Using Companies" as hereinafter used herein, shall, when used with reference to Joint Line No. 1, be understood and construed, unless a contrary intention is expressed, as referring to the Eastern Company, and shall, when used with reference to Joint Line No. 2, be understood and construed, unless a contrary intention is expressed, as referring to the Milwaukee Company.

**Preliminary Surveys.** SECTION 3. The Eastern Company shall deliver to the Milwaukee Company copies of its maps, profiles, and engineering notes and records pertaining to that portion of its surveyed line paralleling Joint Line No. 1; and the Milwaukee Company shall pay to the Eastern Company all the engineering cost and expense incurred by the Eastern Company in making surveys for said portion of its surveyed line; with interest at the rate of five per cent. (5%) per annum on the respective items thereof from the time the same were paid by the Eastern Company to the date of settlement by the Milwaukee Company.

The Milwaukee Company shall deliver to the Eastern Company copies of its maps, profiles and engineering notes and records pertaining to that portion of its surveyed line paralleling Joint Line No. 2; and the Eastern Company shall pay to the Milwaukee Company all the engineering cost and expense incurred by the Milwaukee Company in making surveys for said portion of its surveyed line, with interest at the rate of five per cent. (5%) per annum on the respective items thereof from the time the same were paid by the Milwaukee Company to the date of settlement by the Eastern Company.

Engineering costs and expenses, as used in this section, shall include the salaries, wages and expense accounts of the engineers and their assistants in making and platting said surveys. Payments of such engineering cost and expense shall be made by each of said parties to the other of said parties upon receipt of properly certified itemized bill or bills showing such cost and expense.

SECTION 4. The Eastern Company shall convey to the Milwaukee Company, by proper instruments of conveyance, all rights of way, easements and station grounds which it has heretofore acquired for its surveyed line paralleling Joint Line No. 1; and the Milwaukee Company shall and will pay to the Eastern Company the actual cost to the Eastern Company of such rights of way, easements and station grounds, with interest at the rate of five per cent. (5%) per annum on the respective

**Right of Way Transfers.**

items thereof from the time the same were paid by the Eastern Company to the date of settlement by the Milwaukee Company.

The Milwaukee Company shall convey to the Eastern Company, by proper instruments of conveyance, all rights of way, easements and station grounds which it has heretofore acquired for its surveyed line paralleling Joint Line No. 2; and the Eastern Company shall and will pay to the Milwaukee Company the actual cost to the Milwaukee Company of such rights of way, easements and station grounds, with interest at the rate of five per cent. (5%) per annum on the respective items thereof from the time the same were paid by the Milwaukee Company to the date of settlement by the Eastern Company.

The actual cost of rights of way, easements and station grounds so to be paid by the respective parties shall include all costs and expenses actually incurred by the conveying company in the acquisition of the rights of way, easements and station grounds so conveyed, and all taxes and assessments paid by such company on or on account of such properties.

The costs of rights of way, easements and station grounds to be so paid by each of said parties to the other of said parties as aforesaid, shall be so paid by the grantee company upon the delivery of the instrument or instruments of conveyance and a proper bill or bills showing such costs.

SECTION 5. The Milwaukee Company shall complete the acquisition of the right of way and sta-

tion grounds for said Joint Line No. 1 as expeditiously as may be; and shall with all reasonable diligence construct and complete said Joint Line, together with all side tracks, passing tracks, station tracks, telephone and telegraph lines, stations, depots and other buildings, fences and other structures required by law, necessary or convenient for the maintenance and operation of said Joint Line No. 1. All of said property shall be acquired and said work done at the sole cost and expense of the Milwaukee Company.

The Eastern Company shall complete the acquisition of the right of way and station grounds for said Joint Line No. 2; and shall construct and complete said Joint Line, together with all side tracks, passing tracks, station tracks, telephone and telegraph lines, stations, depots and other buildings, fences and other structures required by law, necessary or convenient for the maintenance and operation of said Joint Line No. 2. All of said property shall be acquired and said work done at the sole cost and expense of the Eastern Company.

The standard width of the rights of way to be so acquired for said Joint Lines shall be one hundred feet; and the rights of way (outside of station grounds) shall be acquired of not less than such width wherever practicable.

The Milwaukee Company shall, unless delayed by strikes or other causes beyond its control, complete Joint Line No. 1 ready and open for operation on or before December 31st, 1917. And the Eastern Company shall, unless delayed by strikes

or other causes beyond its control, complete Joint Line No. 2 ready and open for operation on or before December 31st, 1920; provided, however, the Eastern Company shall, upon the written request of the Milwaukee Company made at any time after the track is laid on Joint Line No. 1, at once enter upon the construction of Joint Line No. 2, unless delayed by strikes or other causes beyond its control, and shall, unless so delayed, complete said Joint Line No. 2 ready and open for operation within fifteen (15) months from the receipt of such request.

## ARTICLE II.

### Connections.

SECTION 1. The Milwaukee Company hereby grants to the Eastern Company the right, at the cost and expense of the Eastern Company, to connect its said railway now under construction eastwardly from Lewistown, with the railway to be constructed by the Milwaukee Company as hereinbefore provided, at a point in section fifteen (15), township fifteen (15) north, of range twenty-three (23) east M. P. M., Montana, which point is the point shown on Exhibit "X" by the letter "B", and is the western end of said Joint Line No. 1. The Eastern Company hereby grants unto the Milwaukee Company the right at the cost and expense of the Milwaukee Company, to connect its railway line with the railway to be constructed by the Eastern Company as Joint Line No. 2, at a point west of the Musselshell River and in or in the vicinity of the

southwest quarter (SW $\frac{1}{4}$ ) of section six (6), township thirteen (13) north, of range thirty (30) east as aforesaid, which point is understood to be the point shown on Exhibit "X" by the letter "D", and shall be the eastern end of said Joint Line No. 2. The installation of interlocking plants, signals or other safety devices at the points of connection at the west end of Joint Line No. 1 and east end of Joint Line No. 2, shall be done by the owner of the adjacent Joint Line, and the cost thereof as cost is defined in Section 3 of Article III of this agreement, shall be added to the capital account of the adjacent Joint Line. Thereafter the cost of operation, maintenance and replacement of the interlocking plants, signals or other safety devices shall be included in the cost of operation of the adjacent line to be divided between the parties in the manner specified in Section 8 of this article for the division of salaries paid to joint employes at the junction points of the exclusive lines of the parties hereto with the joint lines. The point of connection shall be deemed and taken to be the point of intersection of the connecting line with the right of way line of the owning company.

Interlockers.

SECTION 2. The Milwaukee Company hereby grants to the Eastern Company, for and during the term hereinafter mentioned, the right to the equal joint possession and use of said Joint Line No. 1 in common with the Milwaukee Company and such other companies as it may admit. The Eastern Company, with its own employes and equipment,

Grant by Milwaukee Co.

may do and transact over, upon and by means of said Joint Line No. 1, and appurtenances and all additions, improvements and betterments thereto, all such business as is, or hereafter may be, conducted and carried on by a railway common carrier, including mail and express, subject only to the terms and conditions hereinafter stated. Such right shall accrue to and be vested in the grantee company upon its acceptance thereof as hereinafter provided.

Grant by Eastern Co.

SECTION 3. The Eastern Company hereby grants to the Milwaukee Company, for and during the term hereinafter mentioned, the right to the equal joint possession and use of Joint Line No. 2 in common with the Eastern Company and such other companies as it may admit. The Milwaukee Company, with its own employes and equipment, may do and transact over, upon and by means of said Joint Line No. 2, and appurtenances and all additions, improvements and betterments thereto, all such business as is, or hereafter may be, conducted and carried on by a railway common carrier, including mail and express, subject only to the terms and conditions hereinafter stated. Such rights shall accrue to and be vested in the grantee company upon its acceptance thereof as hereinafter provided.

Telephone and Telegraph  
Lines.

SECTION 4. The using company shall have the right upon entering into the use of the joint property as hereinafter provided, to string its tele-

graph and telephone wires upon the existing or future pole lines located upon and along the right of way of the owning company. The using company shall also have the right at its own expense, to erect and thereafter maintain upon said right of way of the owning company, on said Joint Line No. 1 and said Joint Line No. 2, its own pole line, and string thereon its telegraph and telephone wires and connect such wires with its own or other telegraph or telephone lines.

The owning company agrees that it will not, during the life of this agreement, make or renew any agreement with any telegraph or telephone company which will in any way interfere with the right of the using company to use or construct such pole lines as hereinbefore provided or to conduct a telegraph or telephone business thereon, or which will in anywise interfere with the right of such using company (which right is hereby conceded) to enter into an agreement with any telegraph or telephone company to carry on a commercial telegraph or telephone business over the wires of such using company, whether strung upon the jointly used pole line or upon pole line or lines to be constructed by the using company, or to enter into an agreement with such telegraph or telephone company to install, maintain and operate, for such purposes, wires of its own on such pole line or lines so constructed by the using company. But nothing herein contained shall be construed to prohibit the owning company from conducting on the jointly used pole line a telegraph or tele-



phone business, nor from entering into any agreement with any telegraph or telephone company to carry on a commercial telegraph or telephone business over the wires of such owning company, or permitting such telegraph or telephone company to install, maintain and operate, for such purposes, wires of its own on such jointly used pole line, or any pole line constructed by the owning company.

Express Business.

SECTION 5. The owning company agrees that it will not, during the life of this agreement, make or renew any agreement with any express company for carrying express matter upon or over the Joint Line owned by it, which will in anywise interfere with the right of the using company to carry express business or messengers upon or over same; and that it will not interfere with the right of the using company to enter into an agreement with any express company which the using company may at any time or times select for the purpose of carrying express matter, business or messengers upon the trains of the using company; provided, however, that nothing herein contained shall be construed to prohibit the owning company from carrying express matter or messengers upon its trains, nor to prohibit the owning company from entering into any agreement with any express company which the owning company may at any time or times select for the purpose of carrying express matter, business or messengers upon the trains of the owning company.

SECTION 6. The owning company shall have charge, supervision and control of the Joint Line owned by it and the operation and maintenance thereof, shall pay all assessments and taxes (other than taxes on earnings and profits) that shall be levied thereon, shall maintain and at all times keep the same in good condition and repair and suitable for the business of the using company, and make all betterments, renewals and replacements thereof, and shall do all acts and things necessary and proper for the operation thereof and comply with all the regulations prescribed by law or any public authority with respect thereto for the safety of the public or otherwise; subject, however, to the provisions of the following sections of this article. The owning company will furnish water and other supplies incident to the maintenance and operation of the Joint Line; it shall not be bound to furnish any fuel or other supplies except water for the trains or equipment of the using company, nor for the special or exclusive use in any manner of the using company, or the officers or employees thereof. The owning company shall have the power to change, add to and better the Joint Line as it may deem advisable, provided, however, that such changes, betterments or repairs shall not permanently impair the usefulness of said Joint Line to the using company.

Control and Maintenance.

Supplies.

Betterments.

SECTION 7. Each party shall have the right to run its trains and engines over said Joint Lines with its own power, trainmen and enginemen, and

Train Operation.

each party shall provide power, enginemen and trainmen, and all supplies other than water necessary to the movement of its engines or trains over said Joint Lines, and the wages of said enginemen and trainmen and the cost of said fuel and supplies shall not be included in the cost of operation as used in this agreement.

The owning company shall order and direct the movement of engines, cars and trains on the Joint Line of which it is such owner under such reasonable rules and regulations customary among railways as it may from time to time adopt. All trains, engines and cars shall move over such Joint Lines under and in accordance with the orders of the officers of the owning company having authority in that behalf in matters relating to the movement of trains, or in any other way affecting the safe and proper working of the Joint Lines, and all conductors, enginemen, trainmen and other employes of the using company connected with its trains, engines and cars shall, while upon the Joint Lines, be subject to the rules and regulations of the owning company and the orders of its said officers in respect of such movement. All rules, regulations and train schedules shall be equal, just and fair as between both parties using the property and shall not unjustly discriminate against either. The using company shall have in every respect the same right and privilege in the transaction of its business that the owning company has as to its business and the trains of the using company shall in every respect be given by the officers, agents and

employees in charge or control of, or engaged upon, the Joint Line, equality of right, privilege and advantage with the trains of a similar class of the owning company thereon and shall equally have preference over trains of an inferior class belonging to any party using said line. All passenger trains shall be given preference over other trains and through trains shall be given preference over local trains. The main track or tracks of the joint line shall, so far as practicable, be at all times kept unobstructed for the use of all parties entitled to the use thereof.

SECTION 8. The owning company shall operate the joint line owned by it and shall employ all persons, except train crews and engine crews for the using company, necessary to carry on the business of both parties in connection with said Joint Line. Employes at the junction points of the exclusive line of each of the parties hereto with the Joint Line shall be employed by the company owning the adjacent Joint Line and shall be considered as employes on the Joint Line. The owning company shall require all of the joint employes to be neutral in the performance of their duties to the parties hereto and to do the business of the using company without discrimination. Such agents and employes shall not solicit business or recommend the routing thereof, but shall in all respects act with entire impartiality between the companies using such Joint Line. The owning company shall pay the total salaries of all such joint employes, but the

Track Operation.

amounts so paid shall be included in the operating expenses of the Joint Line and be apportioned between and borne by the parties as hereinafter provided; provided, however, that of the salaries so paid to joint employes stationed at the junction points of the exclusive lines of the parties hereto with the Joint Line, only fifty per cent. (50%) shall be so included in the operating expenses of the connecting Joint Line, and twenty-five per cent. (25%) of such salaries shall be charged to and borne by each of the parties hereto as an operating expense of its connecting separate line. Upon the request in writing of the using company, for good cause shown, the owning company will transfer any of said joint employes that are unsatisfactory to the using company. It is expressly understood and agreed that this section is not intended to cover, and does not cover, employes engaged exclusively in the train service of either of the parties hereto, but any employe engaged in the service of either party upon or about trains, coal bunkers or round-houses shall be withdrawn from service on the Joint Line on the request in writing of the other party giving reasonable grounds for such withdrawal.

All employes engaged in joint service shall serve both companies impartially and without discrimination and shall keep each company's accounts and records, and make such reports to each company as to its business, and settle with and account to each company as often, and as fully, as may be required by it and shall furnish all such surety

bonds as each company may demand and in such manner as it may deem necessary for its protection, and shall also conform to the regulations of each company as to its own business. All agents collecting or receiving money shall be, in so far as the custody of any money or revenues or effects is concerned, deemed the sole and separate employe of the party for which they handle and receive the same and shall report and remit directly to it, and neither party shall be liable to the other party hereto on account of the handling of money, revenues or effects by any of such employes or on account of the embezzlement, theft or loss of such money, revenues or effects in any manner whatsoever.

SECTION 9. Either party may construct and maintain on the Joint Lines for its own exclusive use, round-houses, shops, fuel stations and like facilities under reasonable conditions as to the connection with the Joint Line; provided that the construction and maintenance of the same does not impair the use of the Joint Line by the other party; but the cost of said structures and facilities, when so erected on the Joint Line, shall not be added to the cost thereof, and the using company shall not be required to pay any rental or interest upon the cost of such structures or facilities .

Exclusive Facilities.

The parties may agree in writing that the owning company shall construct and maintain on the Joint Line, for the joint use, round-houses, shops, fuel stations and like facilities, under such condi-

tions as to connection with Joint Lines as may be agreed upon. In such case the cost of the said structures and facilities shall be added to the cost of the Joint Line to which they are appurtenant, and such structures and facilities thereafter shall be considered and deemed a part of such Joint Line. In the absence of such written agreement for the construction of round-houses, shops, fuel stations and like facilities for joint use, the owning company shall not have the right either in the original construction of the Joint Line or thereafter, in the construction of additions, betterments and improvements, to erect, construct or maintain as a part of the Joint Line, round-houses, shops, fuel stations and other facilities, but this provision shall not prevent it from constructing such structures and facilities at its own cost for its own exclusive use.

Double Track. SECTION 10. If the using company shall at any time deem the construction of an additional main track necessary to the proper conduct of its business and the business of the other users of the property, and the owning company be unwilling to construct such additional main track, then the using company shall have the right to submit the question of the reasonable necessity of the same to arbitration, as hereinafter provided, and the decision in such arbitration shall be binding and conclusive on both parties as to the necessity thereof, as a part of the Joint Line. If such decision be in favor of such reasonable necessity, such track shall

be constructed by the owning company and the cost thereof (as cost is defined in Section 3 of Article III of this agreement) shall be added to the cost of the Joint Line to which it is appurtenant, and it shall thereafter be deemed a part of such Joint Line. If the using company, notwithstanding an adverse decision as to the necessity, as part of the Joint Line, of an additional main track, shall still desire such additional main track and shall be willing to construct the same at its own cost and expense, it shall have the right so to do and the owning company shall, upon request of the using company in writing, grant to the using company, at a rental to be agreed upon or determined by arbitration, as hereinafter provided, to be paid by the using company, the right to occupy with such track or tracks, so much of the right of way as may be necessary for the construction of the same, and as can be occupied without interfering with the operation of the original main track. If the owning company shall thereafter so elect, it may purchase and acquire such additional track by payment to the using company of the cost thereof (as cost is defined in Section 3 of Article III of this agreement) and such cost shall thereupon be added to the cost of the Joint Line and said additional main tracks shall thereafter be deemed a part of said Joint Line. In the event that the using company shall construct an additional main track at its own cost and expense, notwithstanding an adverse decision by arbitrators as to the necessity of such additional main track as a part of the Joint Line, both the original

main track and the additional main track so constructed shall nevertheless, in order to permit of double track operation by the using company, be used by the trains of both parties in double track operation, but the owning company shall not be required to pay any interest upon the cost of such additional main track. For all purposes of maintenance and operation, however, such additional main track shall thereafter be considered a part of the Joint Line. At any time after such adverse decision as to the necessity of an additional main track as part of the Joint Line, upon a showing by the using company of changed conditions, it shall be open to the using company to have the question of the mutual need of a double track again determined. If after the construction of such additional main track by the using company the arbitrators shall determine that the same is reasonably necessary as a part of the Joint Line, or the owning company shall in writing agree upon such necessity, the owning company shall within thirty (30) days after such agreement or such determination, pay to the using company the cost of such additional main track (as cost is defined in Section 3 of Article III of this agreement) and such amount so paid shall be added to capital account as in the case of additions, betterments or improvements, as hereinafter provided, and the said additional main track shall thereupon become a part of the Joint Line for all purposes.

Should either party desire to change the character of its motive power and use some form of power

Change of Power.

other than steam, and for the purpose of such change add to the Joint Line facilities of which the other company makes no use and obtains no benefit, it shall be, and hereby is, permitted so to do; provided that such change shall not materially interfere with the use of said Joint Lines by such other company but such other company shall not be required to pay any part of the cost, charge or expense of maintenance and operation of the said added facilities so created unless and until it shall desire to use the same. Should such added facilities be installed by the owning company and the using company thereafter elect to use the same, thereupon the cost of such facilities (as cost is defined in Section 3 of Article III of this agreement) shall be added to the capital account as in the case of improvements, betterments and additions as hereinafter provided and said facilities shall thereupon become a part of the Joint Line. Should such added facilities be installed by the using company and the owning company shall thereafter elect to use the same, thereupon it shall, within thirty (30) days after its election to so use the same, pay to the using company the cost thereof (as cost is defined in Section 3 of Article III of this agreement), and such amount so paid shall be added to the capital account as in the case of improvements, betterments and additions as hereinafter provided and said added facilities shall thereupon become a part of said Joint Line.

SECTION 11. Branch lines of either party shall be allowed to make connections with the Joint Lines

Branch Lines.

at suitable and convenient points and the owning company may grant to any other user of the property the right to make such connections with any branch line of such other user. The cost of making and expense of maintaining and operating any such connection shall be borne by the company making the same. The term "branch line" as used herein shall be construed as including any line constructed, owned or controlled (either through stock ownership, lease or otherwise) by the owning or using company, or by any company which owns or controls (either through stock ownership, lease or otherwise), the owning or using company, or by such other user of the Joint Line.

SECTION 12. Industry tracks connecting with either of said Joint Lines may be constructed and maintained when necessary by either party hereto and the cost thereof shall, if both parties agree to the necessity of the construction and maintenance, be paid by the owning company and added to capital account as in case of improvements and additions as hereinafter provided.

If the using company shall construct an industry track in the construction of which the owning company does not desire to join, the cost and expense of construction, maintenance and operation thereof shall be paid and borne by the using company and the owning company shall not have the right to, and shall not use such track, but it may at any later date elect to use such track and shall, within thirty (30) days after such election, pay

to the using company the cost thereof (as cost is defined in Section 3 of Article III of this agreement), and such amount so paid shall be added to the capital account as in case of improvements, betterments and additions, as hereinafter provided, and said industry track shall thereupon become a part of the Joint Line.

If the owning company shall construct an industry track, in the construction of which the using company shall not desire to join, the cost and expense of construction, maintenance and operation thereof shall be borne by the owning company and the using company shall not have the right to, and shall not use the same, but it may at any later date elect to use such track, and thereupon the cost of such track (as cost is defined in Section 3 of Article III of this agreement) shall be added to the capital account as in the case of improvements, betterments and additions as hereinafter provided, and said industry track shall thereupon become a part of the Joint Line.

No industry track shall be constructed by either party which creates a hazardous and unsafe operating condition, and if a dispute shall arise as to whether any industry track desired to be constructed by either party would create such a condition, such dispute shall be submitted to arbitration as hereinafter provided.

Either party may, when such establishment does not create a hazardous and unsafe operating condition, authorize and permit the establishment of industries upon either of said Joint Lines, upon

Industries.

reasonable conditions and rentals and may, subject to the conditions hereinbefore set forth, permit the construction, maintenance and operation of industry tracks for the benefit thereof; but all such contracts shall provide that in the event the other of the parties hereto shall acquire the right to the equal use of such industry track any provision in such contract for indemnity, or requiring the routing of the whole or any part of the traffic of such industry over the line of the company making such contract, or giving any preference to it in traffic, shall inure equally to the benefit of the other party hereto; and shall, so far as it shall relate to routing or preference of traffic, be complied with by routing or giving such preference to the lines of either party hereto.

Purchase of Exclusive Facilities.  
SECTION 13. In any case in which an industry track, round-house or other facility, other than main track, is constructed by either party without the consent of the other, but the other later elects to use such industry track, round-house or other facility, there shall be paid by the party so electing to use said facilities, to the party which constructed such industry track, round-house, or other facility, (in addition to the sums provided to be paid in Sections 10 and 12 of this Article) as and for a carrying charge, a sum equal to two and one-half per cent. ( $2\frac{1}{2}\%$ ) per annum on the cost thereof, (as such cost is defined in Section 3 of Article III of this agreement) from the date of the completion and coming into use of such facilities

by the party constructing the same unto the date of the coming into use by the party electing to use such facilities. Such sum paid as and for a carrying charge shall not be added to the capital account as any part of the construction cost of such industry track, round-house or other facility.

SECTION 14. The owning company shall maintain at all stations facilities adequate and suitable for the business of both parties hereto, including all necessary station, siding and passing tracks. If it shall fail so to do the using company may establish and maintain its own station facilities, either at the existing stations or at points between existing stations, under reasonable conditions as to connections with the joint line. The owning company shall nevertheless have the right to purchase at a fair price such facilities built on the Joint Line for the full joint and equal use and benefit of the parties using the joint line and the price paid therefor shall be added to capital account as in the case of other improvements, betterments and additions. If the parties cannot agree on what is a fair price to be paid therefor the determination thereof shall be submitted to arbitration as hereinafter provided and the decision in such arbitration shall be conclusive and binding on both parties.

Station Facilities.

## ARTICLE III.

SECTION 1. The Eastern Company may, at any time within five years after Joint Line No. 1 shall have been completed ready and open for operation by the Milwaukee Company as hereinbefore provided, accept the rights and privileges hereby granted unto it by the Milwaukee Company with respect to said Joint Line No. 1, and upon giving notice of such acceptance to the Milwaukee Company in writing it shall be admitted to the use and benefit of said rights and privileges, and it shall, from and after the date of entering on the use thereof pursuant to such acceptance, but in no event beginning later than the end of said five-year period, pay the rentals and its proportion of the costs and expenses of maintaining and operating said Joint Line No. 1 as hereinafter provided.

SECTION 2. The Milwaukee Company may, at any time within five years after Joint Line No. 2 shall have been completed ready and open for operation by the Eastern Company as hereinbefore provided, accept the rights and privileges hereby granted unto it by the Eastern Company with respect to said Joint Line No. 2 and upon giving notice of such acceptance to the Eastern Company in writing it shall be admitted to the use and benefit of said rights and privileges and it shall, from and after the date of entering on the use thereof pursuant to such acceptance, but in no event beginning later than the end of said five-year period, pay the

rentals and its proportion of the costs and expenses of maintaining and operating said Joint Line No. 2 as hereinafter provided.

SECTION 3. The using company covenants and agrees to pay to the owning company from and after its entry on the use of the Joint Line in pursuance of its acceptance of the rights and privileges hereby granted as aforesaid, and until the termination of this agreement, as full compensation and rental for all the rights and privileges hereby granted, a sum of money which will equal two and one-half per cent. (2½%) per annum upon the cost to the owning company of such Joint Line and this payment shall be increased from time to time by a sum equal to two and one-half per cent. (2½%) per annum on the actual cost to the owning company of all improvements, betterments and additions to the Joint Line owned by it properly chargeable to capital account. Said payment is hereinafter referred to as "rental payment". The cost upon which such payments shall be computed shall include:

(a) The amount paid by the owning company to the using company for engineering cost and expense incurred by the using company as provided in Section 3 of Article I hereof and its own engineering costs and expenses on said line preliminary thereto and during the construction thereof.

(b) The cost of right of way, easements and station grounds including the sum paid by the own-

Rental.

Items of Cost.



ing company to the using company for rights of way, easements and station grounds as provided in Section 4 of Article I hereof.

(c) The cost of construction, which shall include the cost to the owning company of labor and transportation of labor, materials, work-train service and of similar items incurred in the actual construction of said Joint Line, including as a part of the cost of material, freight charges thereon at tariff rates and the cost of inspection thereof.

(d) The expenses of supervision and management during the period of construction.

(e) Interest at the rate of five per cent. (5%) per annum on any payments made by the owning company on any of the aforesaid items in paragraphs (a), (b), (c) and (d) described from the time said payments were made by the owning company until the date of the completion and coming into service of the owning company of its Joint Line or any part thereof.

(f) All other expenses which may properly and legally be chargeable to the cost of such Joint Line, the use of which is hereby granted.

Operating Expenses.

SECTION 4. The using company will also pay unto the owning company such pro rata proportion of the cost actually incurred by the owning company in the maintenance and operation of the Joint Line owned by it as aforesaid (which cost shall include insurance, assessments and taxes

other than taxes upon earnings and profits and a just sum to cover the cost of superintendence) as the number of miles on said Joint Line, or any part thereof, run by engines and cars in its trains, bears to the whole number of miles run by engines and cars in the trains of all the parties using the same, or any part thereof. Each engine and tender shall be considered two cars. All movements of engines and cars shall be considered as train movements within the meaning of this section; except that the switching of cars within actual yard limits, or the movement of work trains engaged in work upon the Joint Line shall not be counted. Operating expenses shall include premiums paid for insurance upon property of the Joint Line and reasonable salaries and traveling expenses of the General Superintendent and Chief Engineer and of subordinate officers, agents and employes of the owning company engaged in the transaction of the business of both parties upon the Joint Line and the proportion to be paid by the using company shall be ascertained in the manner hereinbefore provided. Such proportion shall, however, extend and apply only to such percentage of the total salaries and traveling expenses of such officers and employes as the main track mileage of the Joint Line is of the entire main track mileage under the jurisdiction of such officers and employes at the time. Such reasonable amount for accounting services shall also be included as may be mutually agreed upon.

The using company shall not be charged on account of the maintenance or operation of any telegraph or telephone line not used in its business in the operation of the Joint Line, but it shall be charged with the entire expense of maintaining, renewing and replacing any telegraph or telephone wires it may string for its own use and a proportionate part of the cost of any renewals or replacement of the poles and fixtures on which the said last mentioned wires may be strung.

Accounting after Admission  
of other Companies.

SECTION 5. The sums to be paid as rental payments as provided in Section 3 of this article are based upon the joint use of the Joint Line by the parties hereto only and if another railway company or other railway companies be admitted by the owning company to the use of such Joint Line, or any part thereof, the using company shall be entitled to equal benefit with the owning company from the revenue derived from the admission of such other company or companies; it being understood that in the event of the admission of another company or other companies to the use of said Joint Line, the using company shall not be obligated to pay a greater proportion of a sum equal to five per cent. (5%) per annum upon the cost of said Joint Line and of the improvements, betterments and additions thereto than one is to the entire number of parties using said Joint Line.

In determining whether or not a particular capital expenditure is or is not justified within this agreement, the total or contemplated total use of

the Joint Line, or any part thereof, by all lines then using or about to use the same shall be taken into consideration, but the using company shall not be required to pay upon any capital expenditures which would not have been necessary except for the admission of other users to the Joint Line unless it shall make use of the improvements, betterments or additions, for which such capital expenditure is made.

In the event that any company or companies shall use a portion only of a Joint Line, the Joint Line shall during such use, for the purpose of accounting, be divided into sections conforming to the use which may be made thereof.

In the event of another company or companies being allowed to use any portion of the Joint Line separate accounts shall be kept in respect of all the various portions of the Joint Line used by some companies and not by others and the pro rata proportion of the cost and expense of maintenance and operation and the percentage on capital charges to be borne by each company using the Joint Line, or any part thereof, shall be based on the several portions so used by said several companies, the intention being that a company hereafter admitted using a portion of a Joint Line shall not be called upon to bear a part of the operating expenses or capital charges on portions thereof not used by such company.

It is understood and agreed, however, that the use of a Joint Line, or portion thereof, (1) by any subsidiary company the operations of which are

controlled (either by stock ownership, lease or otherwise) by either of the parties hereto, or (2) by any parent company which owns or controls either of the parties hereto (by stock ownership, lease or otherwise), or (3) by any subsidiary company owned or controlled by any company so owning or controlling either of the parties hereto, shall be considered as the use of such line, or portion thereof by such party.

Classification of Expenses.

SECTION 6. In determining whether expenditures on the Joint Lines, or any portion thereof, or of either thereof, are for improvements, betterments or additions, or for maintaining, repairing or operating the Joint Lines respectively, such expenditures as according to the rules and regulations of the Interstate Commerce Commission are chargeable to cost of property or capital account shall be deemed expenditures for improvements, betterments and additions in respect of which the using company shall pay rental on the cost thereof; and expenditures which according to such rules and regulations would be entered in operating expense account shall be deemed expenses of maintaining, repairing and operating the Joint Line in respect of which the parties hereto shall contribute to the cost thereof on a car mileage basis as hereinbefore provided.

Miscellaneous Revenues.

SECTION 7. In the event of the sale of any property now or hereafter forming a portion of a Joint Line, or being appurtenant thereto, the cost of such

property as carried and stated in the capital account shall be credited to capital account and the rental reduced accordingly. Amounts derived from rental of any portion or portions of the Joint Line other than from other railway companies for the joint use thereof, shall be apportioned equally between the owning and using companies. Revenues from concessions at joint stations, such as restaurant and news-stand privileges, and from the operation of joint facilities, such as, parcel room or telephone booths, shall be apportioned between the owning and using companies upon the same basis as that provided in the contract for apportioning operating expenses.

Abandoned Facilities.

SECTION 8. In the event of the abandonment by the parties hereto of the use of any industry track or other facility or improvement theretofore jointly used, the cost of which had been included in the capital account in fixing the basis of rental as hereinbefore provided, such cost as carried and stated in the capital account shall be credited to capital account and the rental reduced accordingly, but the using company shall thereupon pay to the owning company one-half of the difference between such cost and the net salvage realized from such abandoned facility or improvement, or if any additional company or companies shall have been admitted to the use of such improvement or facility, that proportionate part of such loss which one is to the entire number of companies using such aban-

doned facility or improvement at the time of the abandonment thereof.

Insurance. If any insurance money shall be collected by the owning company for loss of or damage to property forming a part of the Joint Line, the amount collected shall be applicable toward any expense incurred in the rebuilding, replacement and repair of the damaged or destroyed property, and any amounts collected and not so applied shall be retained by the owning company and deducted from the capital account of such Joint Line and the rental reduced accordingly.

#### Bills and Payments.

SECTION 9. The Eastern Company shall make all payments to the treasurer of the Milwaukee Company at the City of Chicago, Illinois. The Milwaukee Company shall make all payments to the treasurer of the Eastern Company at the City of St. Paul, Minnesota. All payments shall, at the option of the receiving company, be made in gold coin of the present standard. The rental payments to be made by the using company as hereinbefore provided shall be made in twelve equal monthly installments on the first day of each month for the preceding month. Bills for maintenance and operation shall be rendered monthly by the owning company as soon as may be after the close of each month and shall be paid within thirty days thereafter. Such bills shall contain a detailed statement of the amount due on account of expenses incurred and rendered during such month, and shall be accompanied by the necessary

mileage statements to enable the amounts payable as aforesaid to be determined. Said statements shall be subject to verification and correction by the using company. All books, records, vouchers, accounts and papers of the owning company touching or material to the cost of construction, improvements, betterments or additions to the Joint Line owned by it or touching or material to the cost of maintenance or operation thereof shall at all times be freely open to the examination of the using company. The payment of bills rendered shall not be delayed for errors which are not serious and important but bills shall be paid as rendered notwithstanding any error of ordinary character likely to occur in railway accounts, subject to correction and adjustment of all such errors in subsequent bills. Bills not paid within thirty (30) days of the date when due shall bear interest at the rate of six per cent. (6%) per annum until paid.

SECTION 10. If the using company shall fail to make any payment when due as in this contract required, or fail in any other respect to perform the obligations on its part to be performed under this contract and such default shall continue for twelve months after notice in writing shall have been given by the owning company to the using company of an intention to terminate the contract so far as it relates to the Joint Line owned by the owning company, the owning company may at its election declare this agreement terminated so far as it re-

Defaults.

lates to such Joint Line and may exclude the using company from all use thereof; provided, that failure to make any payment which is the subject of dispute or of arbitration or of election between the parties shall not, pending such dispute, arbitration or election be deemed cause for forfeiture hereunder. The owning company may waive any such default but any such waiver shall not affect any subsequent default or impair its rights resulting therefrom.

#### ARTICLE IV.

##### Defects in Structures.

SECTION 1. The owning company shall be bound to use only reasonable and customary care, skill and diligence in maintaining and repairing the roadway, tracks, structures and appliances of and pertaining to the Joint Line owned by it. The using company shall not, by reason of any defect in the roadway, track, structures or appliances of such Joint Line, or by reason of the failure or neglect of the owning company to repair any such defect, or by reason of the failure or neglect of any joint employe, as herein defined, to repair such defect, have or make against the owning company any claim or demand for any loss, damage or injury whatsoever arising from such defect, neglect or failure; but in the event the owning company shall fail to repair any defect within a reasonable time after the using company shall have notified it, specifying the defect and requesting that it be repaired, then the using company shall have the

right to make the necessary repairs at once and the owning company shall and will pay to the using company the cost thereof, but shall include and apportion the amount thereof in operating expenses as provided by Article III of this agreement.

The using company shall at all times require its officers and employes to give prompt notice to the owning company of any defect in the tracks, structures or appliances of the Joint Line which may come to the notice of such officers and employes, but in no case shall the using company be liable in damages to the owning company, or to any person using the Joint Line for the failure of such officers or employes to give such notice.

SECTION 2. Except trainmen and enginemen, all employes of the owning company engaged in maintaining, repairing or operating a Joint Line, or in dispatching, giving orders for or directing the movement of trains, cars or engines thereon, or in the performance of any other service for the common benefit of each of the parties using the Joint Line, shall, as between the parties hereto, for the purposes of this agreement, be deemed while engaged in such work as joint employes of both parties hereto. Enginemen and trainmen of any work train engaged in maintaining and repairing the Joint Line shall likewise be deemed joint employes but if any persons are engaged partly in the maintenance or operation of a Joint Line and partly in service not connected therewith, then and in such case they shall be considered as joint employes only

Joint employes

to the extent of their employment for the joint use and benefit of the parties hereto in connection with such Joint Line.

Loss, Damage and Injury.

SECTION 3. Each party hereto assumes all risk of loss, damage or injury which shall in any manner occur upon the Joint Line, or any part thereof, either to property of such party, or to property in its custody, or to its passengers, or to its employes, or to third persons, or which the property covered by this agreement, or which the property of third persons shall suffer by reason of the movement of any engine, car or train of such party in all respects as if said party had been in exclusive use and control of such Joint Line, or part thereof, excepting only such loss, damage or injury as shall be caused by the sole negligence of the sole employes of the other party, and excepting only as aforesaid each party agrees to save the other harmless from such loss, damage or injury and from all liability and claim therefor, and from all consequent costs and expenses. Each party agrees to save the other party hereto harmless from loss, damage or injury caused by negligence of its own sole employes and from all liability and claim therefor, and from all consequent costs and expenses.

The parties hereto expressly covenant and agree that in case of a collision between their respective engines, cars or trains on a Joint Line, or of other train accident caused by the negligence of enginemen or trainmen or of other sole employes,

the party whose employes are alone at fault shall be solely responsible for and shall settle and pay for the entire loss and damage caused thereby, and shall save the other party harmless therefrom, and in case any such collision or other such accident is caused by the fault of employes of both parties, or by the fault of any joint employe or employes, or in case the cause of the collision or other such accident is so concealed that it cannot be determined whose employe or employes were at fault, each party shall bear and pay all the loss, damage and injury which its own property or property in its custody, or its passengers, or its employes may have suffered in consequence thereof and an equal share of all damage to property jointly used.

In the event that such loss, damage or injury shall be occasioned by the negligence of joint employes not covered by some other provision of this contract, or shall be occasioned by the operation of engines, cars or trains in such way that it cannot be determined whose engines, cars or trains caused such injury, loss or damage, then all such loss, damage or injury to persons or property shall be charged to operating expenses and apportioned in accordance with the provisions of Article III of this agreement.

Each of the parties hereto, who under the terms and provisions of this contract is liable for any loss, damage, cost, charge or expense, shall and will indemnify and save harmless the other party

from and against such loss, damage, cost, charge or expense and from all liability therefor.

In case a suit or suits shall be commenced by any person or persons, corporation or corporations, against either party hereto for or on account of any damage or injury for which the other party is made solely liable by this agreement, the party so sued shall give to the other party notice of the pendency of such suit and thereupon such other party shall and will assume the defense of such suit and shall and will save and hold the party so sued harmless from all loss and from all costs by reason thereof. Neither party shall be concluded by any judgment against the other unless it shall have had reasonable notice that it was required to defend and had reasonable opportunity to make such defense. When such notice and opportunity shall have been given the party notified shall be concluded by the judgment as to all matters which could have been litigated in such suit. The parties will settle as between themselves any claim for loss or damage according to the terms of this contract notwithstanding any judgment or decree of a court or other tribunal in a proceeding brought by third parties.

Derailments.

SECTION 4. In case any of the using company's trains or engines shall be derailed while on a Joint Line, such derailed equipment shall be picked up and removed by the owning company and the using company shall pay the bills rendered for such service unless the using company can promptly re-rail

and remove such obstruction with its own engines and crews.

Neither party shall under any circumstances have any cause of action against the other for loss or damage of any kind caused by or resulting from interruption or delay to its business.

SECTION 5. The using company shall, and it hereby covenants and agrees that it will, comply with all laws and lawful regulations respecting its equipment and the appliances thereof while in use upon the Joint Line owned by the other of said companies, and the using company shall, and it hereby covenants and agrees that it will, save harmless and indemnify the owning company from all penalties, liabilities and costs growing out of any breach by such using company of such covenant.

Safety Appliance Laws.

SECTION 6. The owning company shall, in the event that it admits other users to the use of the Joint Line owned by it, or any part thereof, as hereinafter provided, insert or cause to be inserted in any agreement admitting such other user or users and make binding upon such user or users, the provisions of this Article IV respecting joint employees and respecting liability for loss, damage and injury, for the benefit of the using company when similar circumstances arise between the using company, and such other user or users, and such agreement with such other user or users, shall be construed as if it were signed by all the railway

Other Joint Users.

companies at one time in the joint use of such Joint Line, or any part thereof.

Defaults.

SECTION 7. The provisions of this agreement in respect to the remedies of either party, in the event of any failure or default of the other party, shall not be exclusive, but the party injured may nevertheless resort to other legal or equitable remedies.

#### ARTICLE V.

Arbitration.

SECTION 1. If at any time a question shall arise touching the construction of this contract, or concerning the business or manner of transacting the business to be carried on under its provisions, or concerning the observance or performance of any of its covenants, upon which question the parties cannot agree, such question shall be submitted to the arbitrament of three disinterested persons familiar with such business and experienced in railway management. The party demanding such reference shall give to the other party notice of such demand, stating specifically the question to be submitted for decision and nominating a person who has the required qualifications to act as one referee. If at the expiration of thirty days from the receipt of such notice the party receiving it has not notified the party demanding the reference of its nomination of a second referee having like qualifications, the party making the demand may make such selection. The first and second referees chosen shall select a third, and when the board is

complete the referees shall fix a day and place for the hearing, of which the parties shall be severally notified. If the referees chosen shall be unable to agree upon a third referee such third referee may be appointed upon ten days' notice upon motion of either party by the Judge of the United States District Court for any District of Montana. After hearing the testimony and arguments which may be submitted by each party, the referees, if they unanimously agree upon an award, shall state it in writing, which when delivered to both parties shall be binding and conclusive upon each, and each party hereby expressly agrees to be bound conclusively thereby. If such referees cannot agree unanimously they shall forthwith select two additional referees having like qualifications. If the two additional referees cannot be agreed upon they may be appointed by any judge hereinbefore in this section referred to. To the board thus constituted shall be submitted a statement touching the facts as to which there is a unanimous agreement between the three referees first selected, and the testimony as to matters remaining in dispute. The award of the majority of the five referees shall be in writing, and when delivered to the parties shall be as final and conclusive as an award by the first chosen referees would have been. Immediately after any award each party will make such changes in the conduct of its business, or such payments or restitution as the case may be, as are in and by such award required of it to be made. But if the question at issue affects the use of the property by



more than two railway companies, such notice of a demand for arbitration shall be given to each company interested, and each shall have a right and be obligated to name a referee having the qualifications before stated. Should any company fail within thirty days after receipt of such notice to name its referee, those who shall be named as referees shall select one for the company so failing, and if they cannot agree he may be appointed on ten days' notice by any judge hereinbefore in this section referred to. The referees so chosen, if an even number, shall select three, if an odd number, two additional referees having the qualifications before stated. If they fail, the additional referees may on motion of any one of the companies be appointed by a judge as and in the manner before stated. After hearing the parties the board so constituted shall make an award by majority vote, which shall be final and conclusive as between all the railway companies using the property. In order to insure settlements in such cases which bind all the companies using the property, the owning company will cause to be inserted in every contract admitting any other railway companies clauses for arbitration similar to those contained herein, and such arbitration clauses shall be construed as if signed by all railway companies using the property.

The books and papers of both parties, so far as they relate to any matter submitted to arbitration, shall be open to the examination of the arbitrators, and the party against whom the award is made shall pay all the fees and expenses of the arbitra-

tion; and until the referees shall make their first award upon any question submitted to them, the business, settlements and payments to be transacted and made under the terms of this agreement shall continue to be transacted and made in the manner and form existing prior to the arising of such questions.

If either party shall refuse to keep and perform any award, the adverse party may enforce the same by apt proceedings in any court of law or equity.

## ARTICLE VI.

SECTION 1. All notices which are herein provided to be given by either party to the other shall be given in writing to the President, Vice President or Secretary of the other company.

Written Notices.

SECTION 2. As soon as either of the Joint Lines is ready for operation, the owning company shall notify the other company in writing and the other company shall thereafter and within the time hereinbefore prescribed, notify the owning company of its election to accept the rights and privileges hereby granted, and in the event of its failure to so notify the owning company, it shall be deemed not to have accepted such rights and privileges, and the said contract shall, so far as it relates to the line of which such company would, if it accepted the rights and privileges hereby granted, become the using company, be ended and determined.

Notice of Acceptance.

Assignment.

SECTION 3. This agreement shall attach to and run with the railways of the respective parties during the term hereof, and shall be binding upon and inure to the benefit of the Railway Company hereafter owning or operating either of such railways. The using company may sell or assign by way of mortgage the rights herein granted it in connection with and as part of its railway line, and may further sell, assign, lease or in any way set over the rights herein granted it to any company which now or hereafter owns or controls such using company by stock ownership or otherwise, or to any company, the capital stock of which is owned or controlled by the using company or by such company owning or controlling the using company. The covenants and agreements herein contained shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, in so far as the right to assign is permitted by this paragraph.

Admission of Other Companies.

SECTION 4. The owning company may admit another company or companies to the use of the Joint Line of which it is such owner, but such admission shall not be made on more favorable terms than those herein granted to the using company, and the using company shall be entitled to, and shall have equal benefit with the owning company of all revenue derived from the admission of such other company or companies other than subsidiary companies as hereinbefore provided. The owning company shall cause such other company or compa-

nies, which it may admit, to enter into and execute an agreement for the use of the Joint Line of which it is the owner, or such portion thereof as such company or companies may use, similar in terms and conditions to this agreement, and such agreement, when so signed by such other railway company or companies, shall be construed as if it were signed by all of the railway companies at any one time in the joint use of the Joint Line, or any part thereof.

SECTION 5. Trains, engines and cars of the using company, its successors or assigns, and of any subsidiary company, the operations of which are controlled (either by stock ownership, lease or otherwise) by the using company or of any parent company which owns or controls the using company (by stock ownership, lease or otherwise) or of any subsidiary company owned or controlled by any company so owning or controlling the using company, shall be considered trains, engines and cars of the using company, and the using company or any company or companies so owning or controlling it shall have the right to operate the same in their own names, respectively, or in the name or names of any companies so owned or controlled by them under the terms of this agreement. Except as above provided, the using company shall not have the right to admit any other company to the use of the joint lines, nor shall it operate thereover under the guise of doing its own business, trains, engines and cars of any other company.

Proprietary and Subsidiary Companies.

Third Persons.

SECTION 6. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by means of damages or otherwise against either of the parties hereto.

Duration of Contract.

SECTION 7. This agreement shall become effective upon the execution thereof, but the obligations of either party as a using company, which by the terms of Article III are made dependent upon the acceptance by such party of the rights and privileges granted therein, shall become binding immediately upon the acceptance of the said rights and privileges in accordance with the terms of the said Article III, and from the time of such acceptance and unless sooner terminated for cause, as hereinbefore provided, shall continue for the period of 999 years from the date of such acceptance.

IN WITNESS WHEREOF, each party hereto has caused this instrument to be executed in duplicate originals by its proper officers and its corporate seal to be hereunto affixed by its secretary the day and year first herein written.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,

By .....

President.

Attest:

.....

Secretary.

MONTANA EASTERN RAILWAY COMPANY,

By .....

President.

Attest:

.....

Secretary.

SUPPLEMENTAL AGREEMENT, made and entered into this first day of April, 1919, by and between the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, a corporation organized under the laws of the State of Wisconsin and authorized to do business as a foreign corporation in the State of Montana, hereinafter called the "Milwaukee Company", and the MONTANA EASTERN RAILWAY COMPANY, a corporation organized under the laws of the State of Montana, hereinafter called the "Eastern Company",

WITNESSETH:

WHEREAS, by agreement dated the first day of December, 1917, the parties hereto have provided for the construction and joint use, upon terms and conditions in said agreement stated, of a line of railroad from a point near the Town of Grass Range, in the State of Montana, to a point near the junction of Flatwillow Creek and the Musselshell River in said State; and

WHEREAS, since the date of said agreement, the President of the United States has assumed possession, use, control and operation of the railway properties of the parties hereto, and it is the desire of the parties hereto, except insofar as they may secure the approval of the Director General of Railroads of the United States, during such Federal control of said properties, to suspend the agreement of the first day of December, 1917;

NOW, THEREFORE, in consideration of the premises and of the mutual and dependent covenants of the parties hereto, and the sum of one dollar (\$1.00) by each of the parties paid to the other party hereto, the receipt whereof is hereby acknowledged,

THIS AGREEMENT WITNESSETH:

Until the properties of the parties hereto now, through the Director General of Railroads, in the possession, use, control and operation of the United States, shall have been returned to the possession, use, control and operation of their respective owners, neither of the parties hereto shall be called upon or required by the other to do or perform any of the things by it undertaken to be done or performed by or under said agreement of date December first, 1917.

All the rights, privileges, obligations and covenants of the parties under said agreement shall be suspended during the period of Federal control of the railroad properties of said parties, but upon the termination of such Federal control and the return to their respective owners of said railroad properties, or the return to either thereof of its said railroad property, such rights, privileges, obligations and covenants shall again become effective and binding upon said parties; the intent being that to the time within which the various things required of the respective parties were to have been done according to the provisions of said agreement, there shall be added a period of time equiva-

lent to the duration of such Federal control of the properties of both of said parties; Provided, however, that if the Director General of Railroads for the United States, or other authorized agency or representative of the United States, first shall have approved the creation of any of the facilities for which provision is made in said agreement of December first, 1917, the party obligated in said agreement to create the facilities so approved, may be called upon and required by the other party to construct and create the same according to the provisions of said agreement.

IN WITNESS WHEREOF, each party has caused this instrument to be executed in duplicate originals by its officers and its corporate seal to be hereunto affixed by its secretary, the day and year first herein written, as a supplement to the above described agreement.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,

By .....  
President.

Attest:

.....  
Secretary.

MONTANA EASTERN RAILWAY COMPANY,

By .....  
President.

Attest:

.....  
Secretary.

