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November 15, 2022

City of Ely, Nevada Care of: Dr. Jerri Lynn Williams-Harper Mayor Pro Tempore 501 Mill Street Ely, Nevada 89301

RE: Retention of Maupin, Cox & LeGoy as Legal Counsel —

Northern Line of the Nevada Northern Railway

Dear Mayor Pro Tempore Williams-Harper:

This letter is a formal, written Agreement between Maupin, Cox & LeGoy (our "Firm" or, the "Firm") and the City of Ely, Nevada (the "City"), that documents our Firm's engagement and fee arrangement for representing the City in the matters described below. As a preliminary matter, any reference herein to the "Northern Line" refers to the portion of the Nevada Northern Railway between approximately Mile Post 0.0 at or near Cobre, Nevada, and Mile Post 127.00 at or near McGill Junction, Nevada. Additionally, any reference to the "Historical Line" refers to all other portions of the Nevada Northern Railway. This engagement will only relate to the Northern Line.

I

SUMMARY & SCOPE OF ENGAGEMENT

We have been and are currently representing Nevada Northern Railway Foundation, Inc. (the "Foundation"), with respect to the request by Great Basin Transmission, LLC, and LS Power Development, LLC, for a license or easement over parts of the Northern Line (the "LS Power Project"). Moving forward, the City requests that our Firm represent the City jointly with the Foundation regarding the LS Power Project and possibly other matters involving the Northern Line. We are comfortable representing both the City and the Foundation with respect to any of the following three (3) options, one of which should be chosen by the City and properly indicated by initialing below the chosen option:

1. Representation Regarding LS Power Project Only. Under this option, we will represent the City and the Foundation with respect all legal aspects of the LS Power Project that

MAUPIN, COX & LEGOY

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relate to Nevada law, including the review, edit, and negotiation of any documents and any research related to same.

2. Representation Regarding All Utility License or Easement Issues Affecting the Northern Line of the Nevada Northern Railway. Under this option, we will represent the City and the Foundation with respect to all matters involving utility crossing on the Northern Line, including the LS Power Project, a license or easement requested by Beehive Telephone Company, Inc. – Nevada, and any other projects involving potentially granting licenses or easements to utility companies on the Northern Line.

City's initials here if Option 2 selected:

J.L.W.H.

3. Representation Regarding All Aspects of the Northern Line. Under this option, we will represent the City and the Foundation with respect to all matters involving the Northern Line relating to Nevada law, including, but not limited to, utility crossings, the feasibility and execution of any car storage and/or development plans for the Northern Line, and any other matters relating to the Northern Line that the City and the Foundation request our Firm provide joint legal representation on and that our Firm agrees to.

City's initials here if Option 3 selected:

J.L.W.H.

II

FEE AGREEMENT

Our Firm's fees for legal services are determined in accordance with the Nevada Rules of Professional Conduct. Among the factors considered in the determination of appropriate attorneys' fees are the time and labor required, the novelty and difficulty of the matter involved, the skill requisite to perform the legal service properly, the time limitations imposed by the client or by the circumstances, the amount involved and the results obtained, the nature and length of the professional relationship with the client, and the experience, reputation, and ability of the lawyer or lawyers performing the services.

Each lawyer and staff member in our Firm has an hourly billing rate. I will serve as the lead attorney in this matter. My normal hourly rate is \$375; however, for purposes of this engagement, I have agreed to bill at the reduced hourly rate of \$300. Other attorneys who may be involved in this case include Brett Maupin, Esq., who will bill at \$375 per hour, and Christine M. Guerrazzi, Esq., who will bill at the hourly rate of \$300 per hour. It may be necessary to request

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the assistance of other attorneys in the Firm from time to time depending on their specific skill or expertise. The other attorneys' billing rates for our Firm range from \$300 to \$550 per hour, depending upon the reputation, seniority, and expertise of the attorney involved. We will split the billing evenly between the City and the Foundation, and each party will be jointly and severally liable for the amount.

The rendering of legal services involves the expenditure of our time. Therefore, we charge for our telephone conferences with representatives of the City and, as may be appropriate in our judgment, other persons pertaining to the particular assignment undertaken on the City's behalf. Ordinarily, we do not charge for telephone calls with our legal assistants, nor for clerical or secretarial time during our normal business hours. Should the City's request for legal services be expedited in a manner as to require secretarial services outside our normal business hours, we will charge the City for such services. We also bill for all attorney travel time at our regular hourly rates.

In addition to our fees, we bill clients for our actual out-of-pocket expenses, which we identify on our bills as "costs advanced" on the City's behalf. These normally include such items as court filings and certification fees, filing fees with various federal and state agencies, long distance telephone calls, computerized research, postage (including certified mailing fees), photocopy charges (20 cents per page), express or messenger delivery charges, mileage at the applicable IRS reimbursement rate (presently at 62.5 cents per mile for the last six months of 2022), appropriate travel expenses, clerical overtime, and other reasonable costs and expenses.

Fees and disbursements for our services are generally billed monthly. Payment of our statements is due promptly upon receipt. It is expected that payment will be made within 30 days of receipt of our Firm's billing. If you have any questions upon receipt of your statement, please contact us promptly. We reserve the right to impose and accrue interest on any unpaid balances at the simple annual rate of 1% per month from the date of our statement. Upon receipt of payments, amounts will be applied first to any accrued interest then to the unpaid balance of costs advanced and other expenses and fees. Should balances in the City's account remain past due, the City's account will be reviewed by our management committee which will determine whether to continue with the representation or withdraw.

III

TERM OF ENGAGEMENT

This engagement will take effect when you return an executed copy of this letter and the Common Interest and Joint Representation Agreement (discussed below) to our Firm and will relate back to the date we initially became involved in any matters under the scope of this engagement, though the City will only be billed for the time expended subsequent to November 17, 2022.

The City has the right to terminate our Firm's representation in these matters at any time. Similarly, our Firm may withdraw from representing the City in these matters with the City's consent or for good cause and with court approval, if required. Good cause includes, but is not limited to, breach of this Agreement, including failure to pay statements when they are due, refusal or failure to cooperate with us or to follow our advice on a material matter or any fact or circumstance that would render our continuing representation unlawful or unethical. If our Firm is terminated, this fee agreement will remain in effect.

Our Firm will retain the City's files until the City requests that such files be returned to the City or for a period of at least seven (7) years after we have completed our work on the City's file. We reserve the right to keep the City's files, or copies thereof, for a longer period in our discretion. We may shred or otherwise destroy the City's files without notice to the City after the expiration of the seven (7) year period. Notwithstanding the foregoing, we will retain all original documents which have intrinsic value, such as assignments, deeds, and other transfer documents, until the City requests them or until we determine they no longer are operative. Please advise us if we have any other documents in our files that have particular value and should be retained or returned to the City at any point in time.

IV

RESOLUTION OF DISPUTES

Although we do not anticipate any disagreements between the City and our Firm, we recognize that legal representation can be difficult and complex, and that, despite the best efforts of both clients and legal counsel, disputes can arise between them. If any disputes should arise between us, we intend to resolve the disputes in a manner that is the most expeditious, least expensive, and the most private without jeopardizing the rights and remedies of either of us. Accordingly, we agree that if any dispute should arise between the City and our Firm over the terms of this engagement letter or otherwise resulting from our attorney-client relationship, including any legal malpractice claims that the City might assert against our firm or any of the members of the Firm, the dispute is to be resolved in accordance with this section of the engagement letter. We agree to first meet and confer in Reno within 30 days after the dispute arises in a good faith attempt to resolve the dispute between ourselves. If we are unable to resolve the dispute between ourselves, then we agree to enter into non-binding mediation as a method to attempt to resolve the dispute. The mediation is to be conducted here in Reno by a single, neutral mediator selected by us. If we are unable to agree on the selection of a neutral mediator, then the mediator is to be selected by the Chief Judge of the Second Judicial District Court of Washoe County, Nevada. The mediator must be independent of all parties involved, must be reasonably qualified to mediate the matter in dispute, and must have had at least five (5) years' experience with matters similar to that in dispute.

If we are unable to resolve the dispute between ourselves (or through non-binding mediation) within 120 days after the dispute arises (or any longer or shorter time period that might

be agreed to by both of us), then the dispute is to be resolved through binding arbitration conducted in Reno, Washoe County, Nevada pursuant to the Nevada Uniform Arbitration Act of 2000 (NRS 38.206 et seq. - the "Act"). The dispute will be resolved by an arbitrator selected by agreement between you and our Firm. If we are unable to agree upon the arbitrator, then the arbitrator will be selected by the Chief Judge of the Second Judicial District Court of Washoe County, Nevada. Any arbitrator must be independent of you and our Firm and must be reasonably qualified to arbitrate the matter in dispute. The arbitration proceeding shall be conducted here in Reno in accordance with the Rules for Arbitration in effect in the State of Nevada on the date of the dispute. The arbitration will be binding, and a judgment may be entered in a court of competent jurisdiction based upon the decision of the arbitrator. The prevailing party in the arbitration proceeding shall be entitled to recover reasonable attorneys' fees and all of the reasonable costs of the arbitration proceeding, including arbitrator's fees and costs, all of which shall be awarded by the arbitrator as part of his or her decision.

By signing this agreement, you and our Firm expressly waive the right to resolve any of our disputes in civil lawsuits, including court trials before a judge or jury. However, notwithstanding the foregoing, the provisional remedies of injunction and receivership may be pursued by any party through a court of competent jurisdiction, rather than through arbitration.

You and our Firm further acknowledge and agree that we are granting the specific authorization required pursuant to Nevada Revised Statutes section 597.995 and affirmatively acknowledge, consent to, and agree to the inclusion of the dispute-resolution provision provided for in this letter, and agree to execute any other documentation necessary or appropriate to evidence our intent to be bound by this provision as may, now or in the future, be required pursuant to section 597.995.

City's initials here: _____ Our initials: _____ C.S.

V

WAIVER OF POTENTIAL LEGAL CONFLICTS

There are some important ethical issues relating to potential conflicts of interest which should be reduced to writing at the commencement of our Firm's representation of the City. As you know, this Firm has previously provided and continues to provide representation to the Foundation in the above referenced matter, as well as in other matters. Additionally, our Firm previously represented both the City and the Foundation in litigation with S & S Shortline Leasing, LLC, and matters related thereto or arising therefrom, such as the Trackage Rights Agreement by and among the Foundation, the City, and Great Basin & Northern Railroad, Inc., dated as of April 25, 2022.

Our professional ethical obligations are governed by the Nevada Rules of Professional Conduct adopted by the Nevada Supreme Court. Ethically, those rules allow us to represent the City and the Foundation without waivers as long the parties' interests are not in conflict. You have advised us that you are not aware of any conflicts that currently exist and that you do wish for us to jointly represent the City and the Foundation in this matter.

However, because the City and the Foundation have previously been separately represented in the LS Power Project and in an abundance of caution, we are requesting that the City acknowledge and waive any actual conflict of interest, and any potential future conflict of interest, arising out of our Firm's joint representation of the City and the Foundation (and, if applicable, Great Basin & Northern Railroad, Inc., which, in addition to the Foundation, will be included in any applicable reference to the "Foundation" herein). Likewise, if the City chooses a limited scope, it hereby gives our Firm its informed consent to represent the Foundation in other matters related to the Northern Line. Finally, if the City engages our Firm in any capacity with respect to the Northern Line, it hereby gives our Firm its informed consent to represent the Foundation in all matters related to the Historical Line. By authorizing you to execute this letter Agreement, the City is waiving any actual or potential conflict of interest arising out of our Firm's representation of the Foundation.

We are also sending a separate letter to the Foundation requesting their consent and waiver of our representation of the City with respect to this matter. Please understand that if an actual dispute arises with the Foundation relating to the matter which cannot be resolved to the mutual satisfaction of all parties, our Firm may be unable to represent any party in the matter, and we could not represent one party against the other in any resulting litigation.

In addition, by execution of this Agreement, the City is giving us the discretion to disclose information we receive from the City to the Foundation in the course of our representation of both the Foundation and the City, and vice versa. Additionally, the City is giving us discretion to disclose information we receive from the City or the Foundation to Thomson Hine LLP, the City's and the Foundation's counsel for federal matters. These matters are covered in greater detail in the Common Interest and Joint Representation Agreement that is being executed along with this engagement letter. The City also understands and agrees that we are not to disclose information regarding any separate and unrelated engagements our Firm may have with the Foundation to the City.

If at any time during our representation of the City the City decides to retain separate counsel in this matter, please advise so that we may also determine whether our continued representation of the Foundation is appropriate.

In addition to the above, we will inform you if we ever believe a potential conflict arises in the future.

VI

MISCELLANEOUS TERMS

As you already know, any documents or correspondence we prepare with respect to our representation may be complex, and it will be the City's affirmative duty to comprehensively review any documents we prepare before signing them, and it is the City's affirmative duty to comprehensively review any correspondence we send the City including copies of correspondence we send to other persons or entities on your behalf. It finally will be the City's affirmative duty to confer with us about any document, correspondence, or issue that may arise in this matter that you do not understand.

The unenforceability, invalidity, or illegality of any provision in this letter Agreement will not render any other provision unenforceable, invalid, or illegal.

This Agreement is binding upon and shall inure to the benefit of the City and our Firm, and the respective heirs, personal representatives, successors and assigns of each of us. Additionally, this Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument. A facsimile or electronic copy of this Agreement or its signature page shall be accepted as an original.

Each party represents that he, she or it has the authority to enter into this Agreement and that the party and individual signing this Agreement have the authority to do so.

The City is entitled and encouraged to hire legal counsel independent of our law Firm to review this letter Agreement and the Common Interest and Joint Representation Agreement before it executes both agreements. If the City chooses to forgo the use of independent legal counsel, please understand that the City voluntarily waiving this acknowledged right.

Please do not hesitate to contact me with any questions or concerns you may have regarding this letter Agreement. We are submitting this letter to you via electronic mail. If the City is in agreement with the terms and conditions outlined above, please sign a copy of this letter and return it to us via fax or email, along with the original draft containing your original (wet ink) signature. You should retain a copy of your executed document for your files.

[Remainder of page intentionally left blank.]

Thank you for giving us the opportunity to provide these services for the City. We look forward to continuing our representation of the City.

Sincerely yours,

MAUPIN, COX & LeGOY

Christopher M. Stanko, Esq.

Chris Stanker

c: Brett W. Maupin, Esq. Christine Guerrazzi, Esq.

APPROVAL OF ENGAGEMENT AND WAIVER OF CONFLICT

I have read the attached letter and, on behalf of the City of Ely, Nevada (the "City"), agree to the representation of the City by Maupin, Cox & LeGoy, as well as the other terms of the engagement, effective as of the date on which Maupin, Cox & LeGoy first provided services to the City.

Additionally, the City confirms that it is aware of the actual and potential conflicts of interest with respect to your Firm's representation of the City with respect to the scope of the engagement outlined above, given your Firm's representation of the Foundation in that matter also. However, because the City believes that your Firm's representation of the City in the matter outlined above will not adversely affect the City's relationship with your Firm, the City hereby agrees to waive any actual or potential conflict of interest and consents to your Firm's representation of the City in connection with the scope of the engagement outlined above. The City acknowledges the opportunity to discuss with your Firm and/or independent legal counsel the implications of representation and the advantages and risks involved and hereby consents to and authorizes your Firm's representation of the City in accordance with Rules 1.7, 1.8, and 1.9 of the Nevada Rules of Professional Conduct, as applicable.

		City of Ely, Nevada
Dated:	, 2022.	By: Dr. Jerri Lynn Williams-Harper, Mayor Pro Tempore

COMMON INTEREST AND JOINT REPRESENTATION AGREEMENT

This Common Interest and Joint Representation Agreement (this "Agreement") shall become effective on the date executed by all of the parties below and shall relate back to the first date in which any privileged or protected communications regarding the Transactions (defined below) occurred between the Parties, and is entered into by and among the City of Ely, Nevada, a Nevada municipal corporation (the "City"), Nevada Northern Railway Foundation, Inc., a Nevada nonprofit corporation (the "Foundation"), and Great Basin & Northern Railroad, Inc., a Nevada corporation ("Great Basin & Northern") regarding all matters for which they retain joint legal representation with respect to the Northern Line of the Nevada Northern Railway (the "Transactions"). For purposes of this Agreement, the "Northern Line" is defined as the portion of the Nevada Norther Railway between approximately Mile Post 0.0 at or near Cobre, Nevada, and Mile Post 127.00 at or near McGill Junction, Nevada. The purpose of this Agreement is to permit the City, the Foundation, and, where applicable and where the context requires, Great Basin & Northern (collectively, the "Parties," and each, a "Party," and, when references to two (2) Parities is made herein, Great Basin & Northern shall be included with the Foundation, as may be applicable) to share, without risking waiver of any applicable privileges, privileged information that may help the Parties advance their common interest in matters relating to the Transactions and/or secure legal advice from their counsel regarding the Transactions. Accordingly, the Parties agree as follows:

1. Purpose of Agreement. The Parties acknowledge and agree that they have certain mutual interests, common concerns, and common goals in connection with issues relating to the Transactions. The Parties agree that: (a) they believe and anticipate that the nature of the Transactions and the relationship among them has presented, currently presents, and will continue to present common legal and factual issues that implicate common interests; (b) the facts known

to each other have and may assist each in all matters related to the Transactions, and disclosure of those facts to the other Party is reasonably necessary for the accomplishment of a favorable outcome for any of the Transactions; (c) the Parties have a mutual interest in cooperating with one another in connection with the Transactions; and (d) the Parties' participation in and the existence of this Agreement governing the rules of participation is necessary to effectuate and protect the legal interests of each.

The Parties acknowledge and agree that they share certain mutual common interests and that such mutual common interests will be best served if, subject to the provisions of this Agreement, the Parties can fully exchange "Common Interest Materials" (defined below) otherwise protected by the attorney-client privilege, work product doctrine, and other applicable privileges or protections, without the danger that such privileges will be deemed to have been "waived" by disclosure of such information to another Party.

The Parties desire to continue to pursue their separate but common interests in connection with the Transactions while sharing amongst themselves otherwise privileged information relevant to their collective and/or individual interests. In doing so, the Parties acknowledge and agree that they have not and do not waive any privilege, whether the attorney-client privilege, work product doctrine, or other applicable privilege or protection. The Parties further acknowledge and agree that all communications amongst them concerning this Transactions are subject to the "co-client" or "joint client" privilege and, if, applicable, the common interest doctrine - that is, they are privileged and protected from disclosure to any person who is not a Party to this Agreement unless this Agreement or the Parties to such communication expressly provide otherwise.

The Parties further acknowledge and agree that it would impede their separate but common interests with respect to the Transactions if they were not able to share information confidentially

and, conversely, the Parties recognize that it would be highly prejudicial to each one and all of them if such shared information was not kept confidential, but disclosed to a person not a Party to this Agreement. Therefore, the Parties acknowledge and agree that the information they share concerning the Transactions is to be shared in confidence and not for the purpose of allowing publication and/or use or for the purpose of disclosing any information in proceedings against the Party providing such information to the other Parties hereto. Any information provided pursuant to this Agreement shall be used solely for the limited purpose of assisting the Parties in obtaining legal advice and facilitating the negotiations, analysis, drafting of agreements and documents, and other required actions with respect to the Transactions only.

The Parties acknowledge and agree that they desire and intend by this Agreement that the attorney-client privilege, the work product doctrine, the "co-client" or "joint client" privilege, and the common interest privilege, as broadly and legally possible, attach to their conversations, communications, and shared documents and information in connection with their mutual interests with respect to the Transactions, even if the Parties hereto later become or hereafter discover that they are adverse. The Parties intend to protect the disclosure of the Common Interest Materials to the maximum extent allowed by law.

2. <u>Cooperation in Negotiation and Agreement</u>. The Parties shall cooperate in good faith with each other by sharing information and documents, utilizing expert consultants, sharing relevant confidential information, and using their best efforts to collaborate for successful outcomes of the Transactions. The Parties shall only engage in negotiations with a third party on a unified, collaborative front and shall not engage in separate negotiation discussions with a third party with respect to the Transactions. No Party shall agree to any agreement without the express,

written consent of the other Party, which consent the other Party may withhold in its sole and absolute discretion.

Exchanges of Information, Communications, and Common Interest Materials. In connection with the Transactions, it has been and will be advisable and necessary for counsel for the Parties and for the Parties themselves to communicate with one another in confidence with the intent and for the purpose of facilitating the rendition of legal services to the Parties, as a whole, concerning matters of common interest, with the expectation that any such information shall not lose any claim of privilege or confidentiality that would otherwise apply but for the disclosure between the Parties as described herein. Such information and materials exchanged pursuant to this Agreement shall be referred to collectively as "Common Interest Materials."

Common Interest Materials exchanged among or between the Parties, their counsel, including, Thompson Hine LLP, the Parties' counsel for federal railroad matters related to the Transactions, and Maupin, Cox & LeGoy and the Ely City Attorney, the Parties' counsel for State of Nevada matters related to the Transaction, and/or their expert consultants, will be governed by the common interest doctrine, the attorney-client privilege, the work product doctrine, common interest privilege, the "co-client" or "joint client" privilege, and/or any other applicable privileges or protections provided by law. Common Interest Materials include all communications and documents of every kind, whether in digital, analog, or paper format. The parties may, but are not required to, mark Common Interest Materials as "CONFIDENTIAL PURSUANT TO JOINT REPRESENTATION AGREEMENT" or "SUBJECT TO JRA" or with some similar designation, but the failure to so mark such materials will not waive any applicable privilege or immunity.

All Common Interest Materials are confidential, and no Party shall disclose Common Interest Materials to a third party. All Common Interest Materials are protected from disclosure to

any third party by the attorney-client privilege, the work product doctrine, common interest privilege, the "co-client" or "joint client" privilege, and/or other applicable privileges and protections, and any such applicable privileges and protections shall not be waived as a result of such communications and exchanges between and among the Parties and their counsel. The Parties intend to and shall preserve all rights and privileges with respect to Common Interest Materials to the maximum extent permitted by law. No Party shall have authority to waive any applicable privilege or protection on behalf of another Party, and the waiver of an applicable privilege or protection by one Party shall not be a waiver on behalf of another Party.

This Agreement does not require any Party to maintain as confidential those documents or any information for which that Party was the original source or that the Party obtained independently from the Transactions notwithstanding its provision of such Common Interest Materials to the other Parties hereto; *provided, however*, that no Party shall disclose any document to a third party, regardless of whether the document is confidential, if either Party reasonably determines that such disclosure could be harmful to the negotiations of the Transactions, any potential agreement related to the Transactions, or the purpose of this Agreement. Therefore, a disclosing Party shall first provide written notice pursuant to Section 25 below to the other Party before making any disclosure that the other Party could reasonably object to pursuant to the terms of this paragraph.

The exchange and discussion of Common Interest Materials, or the contents thereof, by and among the Parties, their counsel, and/or experts shall be subject to the following conditions, which the Parties believe will, and by which they intend to, preserve the applicable confidentiality of such Common Interest Materials pursuant to the attorney-client privilege, the work product

doctrine, common interest privilege, the "co-client" or "joint client" privilege, and/or other applicable privileges and protections:

- (a) Common Interest Materials shall be maintained in confidence by counsel and used by counsel solely for the purpose of rendering legal advice in connection with the Transactions and to analyze and investigate issues and negotiate and draft agreements and/or other documents related to the Transactions and, if appropriate, initiate, prosecute, settle, or defend any appropriate litigation or proceeding with respect to the Transactions. The Parties shall use their best efforts to ensure Common Interest Materials are maintained in confidence by the Parties and by all other individuals who are permitted access under this Agreement, including without limitation, expert consultants.
- (b) Common Interest Materials, or the contents thereof, may be disclosed only to the following persons: (i) outside counsel, including Thompson Hine LLP, and Maupin, Cox & LeGoy, and in-house counsel representing a Party in connection with the Transactions, including, but not limited to, the Ely City Attorney; (ii) representatives, employees, or officers of a Party responsible for assisting counsel in such representation; (iii) such counsel's staff, other employees, and service vendors (including outside copying services and outside support services), but only those assisting in the conduct of the Transactions; (iv) present or former officers or employees of a Party, solely for the purposes related to the Transactions; (v) expert witnesses and consultants retained by the Parties in connection with the Transactions; and (vi) applicable regulatory bodies, persons or entities to whom disclosure is mandatory in the ordinary course of business such as auditors, accountants, and insurance carriers; *provided, however*, that no disclosure to such regulatory body, auditor, accountant, insurance carrier, or other similar entity or person shall be made until such third-party executes a confidentiality agreement satisfactory to all Parties.

Regardless of whether persons permitted access to Common Interest Materials are advised that the Common Interest Materials are privileged and subject to the terms of this Agreement, Common Interest Material's shall remain private and confidential.

- (c) Upon the request of any Party, all Common Interest Materials furnished by that Party, including any and all copies thereof, shall be returned to that Party or destroyed by the other non-furnishing Parties.
- (d) In the event Common Interest Materials are requested or subpoenaed from any Party, including any Party in any future litigation, any Party hereto, or any government agency, the Party to whom such a request or subpoena is directed shall: (i) preserve and invoke any applicable privileges and protections; (ii) immediately notify the other Party of the disclosure request, provide copies of any writing or documents, including the subpoena, demand, or court order, which related to the disclosure request, and describe its proposed response thereto; and (iii) cooperate with any Party's efforts to enforce claims of privilege and to prevent the disclosure of Common Interest Materials disclosed under this Agreement by such Party, including taking steps to ensure that the affected Parties have a reasonable opportunity to be heard in any judicial proceedings relating to the disclosure of the Common Interest Materials. However, nothing in this Agreement shall preclude any Party from complying with a valid court order or valid legal process that pertains to Common Interest Materials.
- (e) Any inadvertent or unintentional disclosure of Common Interest Materials to persons who are not permitted access to such material under this Agreement shall not be a waiver in whole or in part of any applicable confidentiality, privilege, or immunity, either as to the specific material disclosed or as to any other material relating thereto. Upon discovery of any inadvertent or unintentional disclosure, the Parties shall cooperate to take steps to immediately preserve or restore

the confidentiality, privilege, or immunity to the disclosed material, including retrieval of all copies.

- 4. Prior Communications. The Agreement also confirms that, to the extent that the Parties, their counsel, their experts, or their representatives have already been in communication with one another about matters related to their common interests and/or negotiation of the Transactions, their communications and work product have been, and are, subject to this Agreement, including, without limitation, the confidentiality provisions herein, and are subject to all applicable privileges. Additionally, nothing in this Agreement shall be construed to waive or prejudice any attorney-client privilege, work-product protection, or any other applicable privilege or protection applicable to any information or materials exchanged prior to execution of this Agreement.
- 5. Equal Sharing of Fees and Costs. As of the signing of this Agreement, the Parties have both engaged: (1) the Reno, Nevada, law firm of Maupin, Cox & LeGoy to represent each of them with respect to the Nevada law aspects of the Transactions; and (2) the Washington D.C. law firm of Thompson Hine LLP to represent them with respect to the federal railroad law aspects of the Transactions. As long as the Parties each have the same counsel, they shall each pay one-half (1/2) of all legal fees and costs incurred in the Transactions (i.e., the City shall pay one-half (1/2) and the Foundation and Great Basin & Northern shall pay one-half (1/2). To the extent one Party does not pay its one-half obligation, and the other Party agrees to cover the non-paying Party's share with respect to a given payment, the paying Party will have a claim of contribution against the non-paying Party.
- 6. <u>Attorney-Client Relationship</u>. Except to the extent that counsel have appeared jointly on behalf of both Parties, nothing in this Agreement shall be construed to mean or suggest that any Party's attorney represents any other Party to this Agreement or that any Party's attorney has

assumed a duty of loyalty to any other Party to this Agreement. Each Party expressly agrees that the exchange of any Common Interest Materials or other information under this Agreement by any Party or its counsel shall not be used by any other Party as a basis for seeking to disqualify any attorney for such other Party from representing that Party or any other client in the Transactions or any other matter, now or in the future.

- Termination. This Agreement may be terminated by any Party after providing thirty (30) days' written notice to the other Party. After termination of this Agreement, Common Interest Materials shall continue to be treated as confidential by the Parties, and all obligations of the Parties with respect to outstanding fees and costs as of the date of the date of termination will still be due by each Party and all provisions in Section 5 hereof relating to the payment of such fees and costs and the rights of contribution related thereto shall survive with respect to all fees as costs outstanding or accrued as of the date of termination. Without limiting the foregoing, all notices and letters of acceptance of termination shall be delivered by and to each of the Parties in accordance with the notice provisions outlined in Section 25 hereof. The Parties hereto acknowledge and agree that any counsel jointly representing the Parties will almost certainly withdraw from representing both Parties with respect to the Transaction if any Party terminates this Agreement, unless, however, such counsel can obtain any waivers deemed necessary to continue representing one of the Parties in the Transaction.
- **Additional Parties.** In the event that a third party wishes to be included in this Agreement, written notice shall be provided to all of the Parties hereto pursuant to the noticing provisions contained in Section 25 hereof, with each such Party having a reasonable time to consider the addition of such additional party, and such new party being required to immediately execute this Agreement before becoming entitled to receive Common Interest Materials. All Parties to this

Agreement must unanimously agree to the inclusion of an additional party and such action shall constitute a modification to this Agreement subject to Section 9 of this Agreement.

- 9. <u>Modifications to this Agreement</u>. This Agreement may not be modified except by a writing executed by all Parties.
- No Reliance. Each Party represents and acknowledges that in executing this Agreement it does not rely on, and has not relied on, any representation or statement made by the other Party or any of their attorneys with regard to the subject matter, basis, or effect of this Agreement, other than those specifically stated in this Agreement.
- 11. Substitution of Parties or Counsel; No Third-Party Beneficiaries. This Agreement shall automatically apply to substitute, additional, or associated counsel who may appear on behalf of a Party with respect to the Transactions. This Agreement shall not be subject to abrogation by any heir, assign, or other successor in interest to any Party hereto. Nor shall such heir, assign, or successor in interest waive any privilege or doctrine with regard to information shared pursuant to this Agreement by, or among, the undersigned counsel and their respective clients. Additionally, this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other legal or natural person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 12. <u>Illegality and Severability</u>. Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision shall be deemed not to be part of this Agreement.

- Rules of Construction. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be considered to include the others whenever the context so indicates. The captions of this Agreement shall have no effect on its interpretation. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted, and the Parties expressly waive any right to assert a rule for presumption against the drafter. This Agreement shall be construed and enforced in a manner that provides the broadest protection against release of information under the attorney-client privilege, work product doctrine, and/or other applicable privileges and protections. This Agreement also covers all communications regarding the Trackage Rights Agreements by and among the Parties dated as of April 25, 2022, but is not intended to modify the terms of that agreement in any way.
- **Entire Agreement**. This Agreement, together with the Recitals, which are incorporated by reference herein and made part hereof as if set forth fully in this Agreement, sets forth the entire agreement between the Parties hereto and fully supersedes any prior agreements and understandings, written or oral, between the Parties hereto pertaining to the subject matter hereof.
- 15. <u>Waivers</u>. The waiver by any Party of any right or remedy under the terms of this Agreement shall not be construed as a waiver of any other provision of this Agreement.

16. <u>Disputes</u>.

(a) <u>Mediation</u>. The Parties shall use their best, good faith efforts to endeavor to resolve any dispute arising under this Agreement through negotiations by their senior level management representatives. If a dispute or conflict cannot be resolved through such negotiations within thirty (30) days, or if senior level management representatives fail to meet within thirty (30) days, any Party may issue a statement of the dispute or conflict (collectively, the "conflict") to the other

Parties, and each other Party shall have the opportunity to respond, in writing, to such statement of the conflict. The Parties shall then meet and confer to select a third-party mediator to resolve the issues presented for conflict resolution by the Parties. The Parties shall endeavor in good faith to mutually agree upon the selection of such third-party mediator. In the event the Parties cannot mutually agree on the selection of a third-party mediator, each Party shall submit to the other Parties a list of three acceptable third-party mediators on a date that is mutually agreed to at 9.00 a.m. on that day. To the extent those lists identify any of the same mediators, the Parties shall select the first identical mediator using any additional identical mediators as alternative mediators. To the extent there are no identical mediators chosen, each Party shall designate a representative of its choosing to select a third-party neutral mediator and the committee of such three such persons shall meet to select a mediator, whose selection must be unanimous by the three-person committee.

The inability of that committee of three to agree on a mediator shall satisfy the mediation obligation of this Agreement and the Parties shall proceed to a binding arbitration as provided for below. The Parties shall agree in writing as to the terms and date of any mediation and shall equally share in the cost which shall include the mediator's costs as well as the facility costs of such mediation. The mediator's recommendations are not binding on the Parties to this Agreement; provided, however, that each Party shall operate in good faith to examine resolutions proposed by the mediator. The Parties acknowledge and agree that the City's approval of any agreement via mediation is subject to Chapters 241 and 268 of the Nevada Revised Statutes and any other applicable law.

(b) <u>Binding Arbitration</u>. To the extent the conflict certified pursuant to this Section 16 cannot be resolved by the Parties through mediation, the Parties shall submit their issues to a binding arbitration conducted pursuant to the following terms:

- i. Scope, Governing Rules. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, that is submitted to arbitration under this Section 16.b. shall be determined by final and binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and Mediation Procedures ("Commercial Rules"). The Parties acknowledge and agree that the City's approval of any settlement arising out of binding arbitration is subject to Chapters 241 and 268 of the Nevada Revised Statutes and any other applicable law.
- ii. <u>Authority of Tribunal, Judicial Review</u>. The award rendered by the arbitrator shall be final, non-reviewable, non-appealable, and binding on the Parties and may be entered and enforced in any court having jurisdiction; provided, however, that nothing in this Section 16.b.ii shall prohibit a Party from attempting to vacate, modify, or appeal an award if otherwise allowed pursuant to Chapter 38 of the Nevada Revised Statutes. Notwithstanding any other provision of this Agreement, the arbitrator shall have no jurisdiction over matters exclusively within the jurisdiction of the Surface Transportation Board of the United States.
- iii. <u>Selection of Tribunal</u>. There shall be one arbitrator agreed to by the Parties within twenty (20) days of receipt by respondent[s] of the request for arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules.
- iv. <u>Consolidation, Joinder</u>. If more than one arbitration is commenced under this Agreement and any Party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator selected in the first-filed proceeding shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator.
 - v. <u>Seat of Arbitration, Languages</u>. The seat or place of arbitration shall be Ely,

Nevada. The arbitration shall be conducted and the award shall be rendered in the English language.

- vi. Remedies. The arbitrator will have no authority to award punitive damages.
- vii. <u>Attorneys' Fees and Costs</u>. The prevailing Party(ies) in the arbitration shall be entitled to receive, in addition to all other damages which it(they) may be entitled, the costs incurred by such Party(ies) in conducting the arbitration, including reasonable attorneys' fees and reasonable expenses and costs.
- viii. Specific Intent to Be Bound. The Parties further acknowledge and agree that they are granting the specific authorization required pursuant to Nevada Revised Statutes Section 597.995 and affirmatively acknowledge, consent to, and agree to the inclusion of the disputeresolution provisions provided for in this Agreement, and agree to execute any other documentation necessary or appropriate to evidence their intent to be bound by these provision as may, now or in the future, be required pursuant to Section 597.995.

City's Initials	Foundation's Initials	GB&NRR's Initials

(c) <u>Suits for Equitable Relief.</u> Notwithstanding the foregoing, conflicts which cannot properly be resolved by arbitration under applicable law (such as the enforcement of temporary restraining orders, preliminary injunctions, permanent injunctions, and other equitable relief), shall be resolved by a court of competent jurisdiction, consistent with the jurisdiction and venue provisions in Section 22 below. The prevailing Party(ies) in such an action shall be entitled to receive the costs incurred by such party(ies) as a result of the action, including reasonable attorneys' fees and reasonable expenses and costs.

- 17. Equitable Remedies and Enforcement. Notwithstanding anything in Section 16 above to the contrary, the Parties acknowledge and agree that: (i) a breach or threatened breach by a Party of any of its obligations under this Agreement would give rise to irreparable harm for which monetary damages would not be an adequate remedy; and (ii) in the event of a breach or a threatened breach by a Party of any such obligations, the other Party shall, in addition to any and all other rights and remedies that may be available to such Party at law, at equity, or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Notwithstanding anything in Section 16 to the contrary, the non-petitioning Party agrees that it will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 17. Additionally, this Agreement may be enforced by either Party in filing with a court of appropriate jurisdiction.
- 18. <u>Counterparts and Electronic Signatures</u>. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission and/or executed electronically shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Counterparts may be delivered and/or executed via electronic mail (including pdf or any electronic signature complying with the United States federal ESIGN Act of 2000, e.g., <u>www.docusign.com</u>) or other

transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

- 19. <u>Attorneys' Fees and Costs</u>. If any Party brings an action or proceeding, to enforce, protect, or establish any right or remedy under the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs.
- **Full Cooperation in Execution of Agreement**. The Parties agree to fully cooperate with each other in the execution and performance of this Agreement, to execute any and all supplementary documents necessary to fulfill the intent of this Agreement, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
- 21. <u>Assignment and Delegation</u>. Notwithstanding any other provision of this Agreement, no Party shall assign any rights, or delegate or subcontract any obligations, under this Agreement without the other Party's prior express, written consent, which the other Party may withhold in its sole and absolute discretion. Any assignment in violation of the foregoing shall be deemed null and void.
- **Governing Law and Venue**. The Parties agree that the laws of the State of Nevada shall govern the terms, interpretation, and enforcement of this Agreement and all matters or documents arising out of or in any way related to this Agreement, without regard to any conflict of law provisions to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Nevada. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction and venue of the state courts located in White Pine County, Nevada.

- 23. <u>Survival</u>. The respective representations, warranties, rights, and obligations of the Parties hereto shall survive the termination of this Agreement to the extent necessary to carry out the intentions of the Parties under this Agreement.
- **Legal Representation**. Each of the signatories represents it has been advised and given adequate opportunity to consult with independent legal counsel with respect to this Agreement and, if such signatory has not consulted with such independent legal counsel, he or she has voluntarily waived that right and opportunity.
- 25. Notices. Except for routine communications, which may be transmitted in accordance with the agreement or acquiescence of the Parties, all notices under this Agreement shall be in writing and delivered by electronic mail, certified mail, or overnight courier. Notices transmitted by electronic mail shall be deemed to be received as of the date and time of electronic transmission. Notices transmitted by either certified mail or overnight courier shall be deemed received as of the date and time signed for by the recipient. Notices shall be transmitted to the electronic and physical addresses of the Parties as follows:

Great Basin & Northern	The City	The Foundation
Railroad, Inc.		
Address:	Address:	Address:
John Gianoli, President	Jennifer Lee, City Clerk	Mark Bassett, President
Great Basin & Northern Railroad,	City of Ely, Nevada	Nevada Northern Railway
Inc.	501 Mill Street	Foundation, Inc.
PO Box 150040	Ely, Nevada 89301	1100 Avenue A
Ely, NV 89315	3 1 3	Ely, NV 89301
Email: jgianoli@fnbely.com	Email: CityClerk@cityofelynv. com	Email: president@nnry.com

26. WAIVER OF JURY TRIAL. NOTWITHSTANDING ANY OTHER PORTION OF THIS AGREEMENT, IN CONNECTION WITH ANY ACTION PROPERLY BEFORE A

COURT, THE PARTIES HEREBY EXPRESSLY WAIVE AND FORGO ANY RIGHT TO HAVE THE FACTUAL ISSUES DETERMINED BY A JURY IN CONNECTION WITH ANY ACTION OR PROCEEDING SEEKING TO ENFORCE ANY PROVISION OF, OR BASED ON ANY RIGHTS ARISING OUT OF, THIS AGREEMENT, AND THE PARTIES AGREE THAT ALL ISSUES, WHETHER LEGAL OR FACTUAL, MAY BE FINALLY DECIDED AND DETERMINED BY THE JUDGE OR ARBIRATOR, AS THE CASE MAY BE, ALONE. EACH PARTY REPRESENTS THAT THIS AGREEMENT IS EXECUTED, KNOWINGLY, FREELY, AND VOLUNTARILY AFTER HAVING BEEN FULLY AND COMPLETELY READ AND UNDERSTOOD BY THE PARTY OR ITS AUTHORIZED REPRESENTATIVES, AND THAT THE PARTY UNDERSTANDS THE NATURE OF THE RIGHT BEING WAIVED AND THAT IT HAS HAD THE ADEQUATE OPPORTUNITY TO DISCUSS THIS WAIVER WITH ITS COUNSEL.

Time of Essence. Time is of the essence of this Agreement whenever time limits are imposed herein, for the performance of any obligation by any person, or whenever the accrual of rights to any of the parties hereto depends upon the passage of time.

[Remainder of page left blank. Signatures on following page.]

NEVADA NORTHERN RAILWAY FOUNDATION, INC.

GREAT BASIN & NORTHERN RAILROAD, INC.

Dated:, 2022.	Dated:, 2022.
By: Mark Bassett	By:
Mark Bassett	John Gianoli
Its: President	Its: President
CITY OF ELY, NEVADA	
Dated:, 2022.	
By: Jerri-Lynn Williams-Harper	_
Its: Mayor Pro Tem	
Approved as to Form:	
MAUPIN, COX & LeGOY	THOMPSON HINE LLP
Dated:, 2022.	Dated:, 2022.
By:	Bv:
By: Christopher M. Stanko, Esq.	By:
ELY CITY ATTORNEY	
ELY CITY ATTORNEY Dated:, 2022.	



Court Name:		Ely Municipal Court	
Court ID:		M071701	
Report Month:		Oct-2022	
Prepared By:		Linnea Prengel	
Approved By:	in the second	Michael Coster	
Today's Date:	11/14/2022		

Court ID: M071701	
Elv Municipal Court	
Court	

Oct-2022 MMM YYYY Date:

Justice & Municipal Court Case Types - Misdemeanors (Dictionary p. 1-4)

Drugs Weapons Public Order Motor Vehicle - DUI Motor Vehicle - Reckless Driving Misdemeanor Traffic				2 2 2			2		8 2 19 1																				6 2 19 1
Domestic Violence Older/Vulnerable Person(s) Abuse Protection Order Violation Protection Protection				9	9				2																				2
Criminal Caseload (Dictionary p. 9-13) Petrsons	1. Begin Pending	a. Active	b. Inactive	2. New Filings	a. Charges	3. Reopened	4. Reactivated	5. Dispositions (Entry of Judgment)	a. Original	b. Reopened	6. Placed on Inactive Status	7. End Pending	a Active	b, Inactive	8. Set for Judicial Review	Active Pending Caseload	Original, 0 - 90 days	Original, 91 - 180 days	Original, 181 - 365 days	Original, >365 days	v. Reopened, 0 - 60 days	Reopened, 61 - 180 days	vii. Reopened, >180 days	10. Time to Disposition	a. Original, Mean Number of Days	b. Original, Median Number of Days	ned, Mean Number of Days	d. Reopened, Median Num. of Days	11. Self-Represented Litigant

Form RS-100 Rev 4 0

Prepared by: Linnea Prengel Court ID: M071701 Ely Municipal Court Court:

Oct-2022 MMM YYYY

Date:

Approved by: Michael Coster Chief Judge

Municipal Court Case Types - Misdemeanors (Dictionary p. 1-4)

Form RS-101 Rev 4 0

Preliminary Hearing Continuances Fotal Prelim Hearing Continuances Defendant Request (pro per) Defendant Request (pro per) Defense Attorney Request Defense Attorney Request **Fotal Trial Continuances** Prosecution Request Prosecution Request Trial Continuances Additional Criminal Proceedings (p. 6-9) Court Need Court Need Other Court ID: M071701 4 15 Request for Modification of Sentence Probable Cause Findings/Hearings Post-Adjudication Case Activity Coroner's Inquest Hearings Search Warrants Requests Post-Conviction Relief Grand Jury Proceedings Sentencing Violation Arraignment Hearings Preliminary Hearings Extradition Hearings Sentencing Hearings Extraordinary Writs Remanded Cases 72-Hour Hearings Additional Criminal Caseload Statistics (p. 5) Death Penalty (Rule 250) Statistics (p. 5) Mental Competency Statistics (p. 5-6) Orders for Mental Competency Evaluation Spanish
Tagalog
Chinese (Mandarin/Cantonese)
American Sign Language
Other Languages Court Interpreter Statistics (p. 6) Ely Municipal Court NOI to Seek Death Penalty Filed Cases with Court Interpreters Mental Competency Hearing Aggressive Driving Charges Findings of Incompetence Other Languages Death Penalty Imposed MMM YYYY Oct-2022 NOI Withdrawn Graffiti Charges Bench Trials Jury Trials Court: Date:

Ely Municipal Court

October 2022 - September 2023 Community Service Report

Comm. Serv. - Misc.

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	JuC	Aug	Sep	Total
New Partic.	0	0	0	0	0	0	0	0	0	0	0	0	0
Partic. Marked Completed	-	_	0	0	0	0	0	0	0	0	0	0	2
Partic. Marked Non-Compliant	0	0	0	0	0	0	0	0	0	0	0	0	0
Hours Assigned	0	0	0	0	0	0	0	0	0	0	0	0	0
Hours Completed	14.56	0	0	0	0	0	0	0	0	0	0	0	14.56
Hours Marked Non-Compliant	0	0	0	0	0	0	0	0	0	0	0	0	0
Money Completed	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Money Marked Non-Compliant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Tc	Totals												

New Partic. 0

Partic. Marked Completed 2

Partic. Marked Non-Compliant 0

Hours Assigned 0

Hours Completed 14

Money Completed \$0.00 Hours Marked Non-Compliant 0

Money Marked Non-Compliant \$0.00

		8	