



CITY OF ELY

501 Mill Street Ely, Nevada 89301

City Hall (775) 289-2130

Cityofelynv.gov

Cost Estimate for abatement of 1075 Avenue D, Ely, Nevada

This estimate includes cleanup of refuse including two refrigerant containing appliances, tree branches, Class I and Class III waste, and trimming overgrown weeds and grass.

- Two service workers for four hours at \$26.97/hour = \$215.76
- Two equipment operators for four hours at \$32.82/hour = \$262.56
- One six-yard dump truck for four hours at \$45.00/hour = \$180.00
- One loader for four hours at \$65.00/hour = \$260.00
- Two appliances requiring removal of freon at \$20.00 each = \$40.00

Total Expense: \$958.32

This estimate respectfully submitted by Public Works Supervisor Cracraft



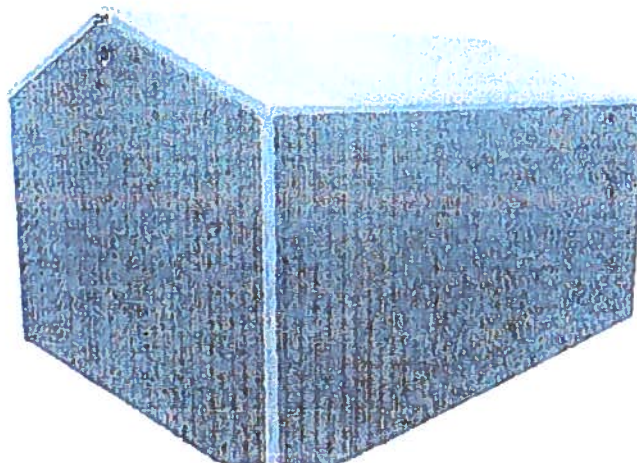
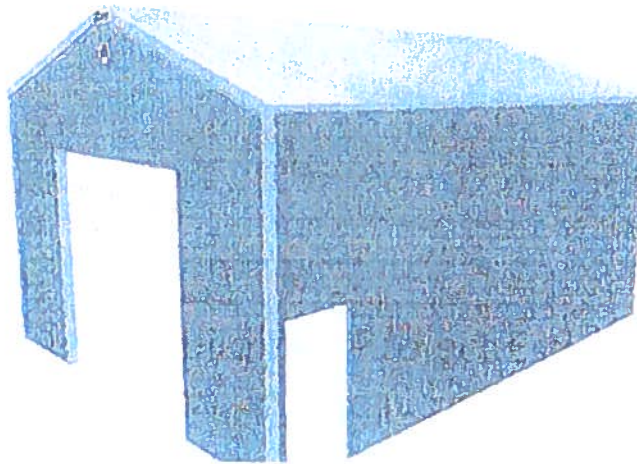
ESTEVAN GOICOECHEA
Phone Number: (775) 753-2488
Email: EGoicoechea@Clearybuilding.com

5/25/2023
CRACRAFT, MICHAEL
Doc ID: 21047320230525084544

Cleary Buildings Project Estimate

Client Proposal - Erected

Project Name: CRACRAFT, MICHAEL
Site Address: CAMPTON STREET ELY, NEVADA 89301
Email: publicworks@cityofelynv.gov
Cell Phone: (775) 293-0834





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Commercial 24' 0"x32' 0"x15' 4" with 14' 0" truss clearance from 100'-0" mark. (4 Bays at 8' o.c.)

Details:

Truss (Standard Lower Chord) with 4/12 roof pitch.

Default Ceiling Design: Not Designed to Support a Ceiling

Purlin Blocking: Both Endwalls are purlin blocked

Type Foundation: In Ground

Concrete Floor: Yes - Supplied by Cleary (Concrete not included unless otherwise noted in writing in the Additional Building Components section)

Upgrade to 2x6 Corner Bracing

52 psf Ground Snow Load with 2"x4" Continuous 2' 0" inch on center purlins.

Exterior Finishes:

Roof/Siding: PLP Prime AZ50

Roof Condensation Control: Double Bubble White Poly surface with rfoil reflective insulating material

Lifetime Film Integrity Warranty, 30 Year Fade and Chalk Warranty, and galvalume substrate.

Galvalume is not recommended for animal confinement and will void warranty.

Warranty does not apply to unpainted steel (Galvalume color).

Accessories:

Standard Ridge Cap: Not vented

Side Wall Overhang: None on S1 & S2

End Wall Overhang: None on E1 & E2

(1) - Overhead frame out. Size: 12' 0" Width x 12' 0" Height (Door not included unless shown in Additional Building Components or Clopay Building Products)

(1) Walk Door - Premium, Warm Edge, Thermally Broken 3'-0"x6'-8" with 2x6 frame

Additional Building Components

Concrete Floor

Form and pour a 24'x30'x 4" concrete pad with sawcut relief joints.

Overhead Doors

Furnish and Install 1) 12'x12' Insulated Model 4050 Clopay Garage Door

Excavating/Site Prep

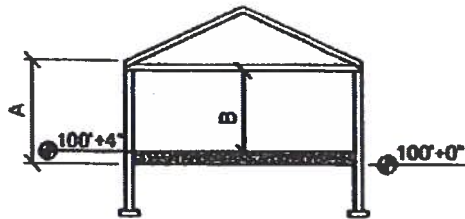
Prep a 44'x50'x4" pad with base material.



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Truss Type:



Standard Lower Chord Truss (SLC)

Interior Clearances:

"B" = Clearance from finished floor to bottom of truss **13' 8"**
(Trusses not designed to support a ceiling)

Exterior Heights:

"A" = Actual Eave Height: **15' 4"**
Roof Peak Height: **19' 4"**
Roof Pitch: **4/12**

Top of concrete floor must be at 100' + 4" for this foundation type. If thicker concrete floor is desired, the extra thickness will be below the 100' + 0" mark.

Responsibilities

Temporary Services:

- Purchaser will provide electric power during construction.
- Seller will provide sanitary facilities.
- Seller to pile scrap for Purchaser use or disposal.

Permit

Purchaser shall timely obtain at Purchaser's cost all necessary and required permits and licenses for the construction contemplated by this Agreement.

Site

If Seller is unable to proceed with normal digging procedures (concrete, rocks, etc.), then the extra expense resulting from such condition(s) will be the obligation of the Purchaser and shall be paid to Seller upon request.

Access must be provided for unloading materials to the building material placement area which must be within 75 feet of the building pad - If greater than 75 feet, additional charges will be applied

Total Building Proposal Investment: \$48,769

- Includes material, labor, tax, delivery, warranties and builder's risk insurance.
- Please note this price is subject to change without notice.

Dumpster Option - NOT included in the project investment price above

Seller to place scrap in the dumpster and remove from site (Price subject to change based upon delivery and travel charges for the dumpster) **\$400**

Note: If Dumpster Option is not selected, Seller will pile scraps and packaging near building for Purchaser use or disposal.



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1. Cleary Trained Crews
2. Workers Compensation and Builders Risk Insurance
3. Only National Builder debt free since 1985.
4. SteelWood University® - through our best-in-class in-house curriculum, we invest in our employees' education to have the premier team to provide you the best solution and the best service.
5. 99.0% Customer Satisfaction
6. Fully staffed for concept, engineering and construction with just one point of contact for you.
7. Dedicated to your design with personal service specialized by our unique Shamrock Service Guarantee.
8. Best warranties in the industry with the financial strength to stand behind them.

Payment Terms

Payment Terms

Amount	Type	Percent	Description
\$9,754	Down Payment	20%	Upon the signing of the contract with CLEARY BUILDING CORP.
\$19,508	Delivery Payment	40%	Payment due upon first load of building materials. In the event that multiple loads of materials are required, due to the size of the building, the remaining materials will be shipped to the site as needed while the building is under construction
\$9,754	Truss Payment	20%	When all trusses are installed on the building. In the event that there is more than one building on a contract, the truss in place payment is due upon installing the trusses in one of the buildings.
\$9,753	Final Payment	20%	Paid upon Completion and such payment to be delivered to the crew foreman of CLEARY BUILDING CORP.
\$48,769	Total Amount	100%	

TERMS OF PAYMENT: (1) If Contract Amount is \$35,000.00 or less, the terms of payment shall be as provided in the payment terms section above. (2) If Contract Amount is over \$35,000.00, the terms of payment shall be pursuant to the Bank Reference Form which is made a part of this Contract.

If the Purchaser fails to make a payment when due, Purchaser agrees to pay Cleary, upon demand, a delinquency charge equal to the lesser of three-quarter percent (.75%), or the highest rate allowed by law, of the delinquent amount per fifteen (15) days, from the date the delinquent amount is due, until the date it is paid.

Purchaser agrees not to send Seller payments marked "paid in full", "without recourse", or similar language. If Purchaser sends such a payment, Seller may accept it without losing any of Seller's rights under this Contract, and Purchaser will remain obligated to pay any further amount owed to Seller.

License numbers by state: VA #2705 123094A, MI #2102150963, MN #20076522, IL #104.002640, AZ # ROC212050 Limit \$250,000, NM #86107 Limit \$1,000,000, NV #0042464 Limit \$2,000,000, OR # CCB 115247, WA # CLEARBC044NE, PA120833, WV # WV034562

This contract has not been reviewed for energy code compliance. Conformance to the International Energy Conservation Code (IECC) may necessitate additional costs not included in this contract.



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This proposal and similar work hereunder are predicated on non-union (non-prevailing wage) labor. If union (prevailing wage) is required, the additional costs will be covered by the purchaser.

Building Proposal Investment is based upon paying with cash or check. If credit card payment is requested (MasterCard, Visa, Discover, or American Express), the purchaser waives the 3% cash or check discount that would be applied to the contract amount.

Roper Buildings
1656 W 2550 S
Ogden, UT 84401 US
801-689-3630
office@roperbuildings.com
roperbuildings.com



ESTIMATE # 14709
DATE 05/22/2023

ADDRESS

Michael Cracraft
City of Ely, Public Works
Campton Street
Ely, NV 89301

PLEASE DETACH TOP PORTION AND RETURN WITH YOUR PAYMENT.

SALES REP

Gene (435) 272-2954

DESCRIPTION	1	34,268.00	34,268.00
Description Design and build a 24' Wide x 32' Long Pole Building with a 15' eave height giving the building a 14' clear height that includes the following: 4/12 roof pitch. 1ea 3'x6'8" Personnel door. -Erection of building -Engineered plans (UP TO A 51LB SNOW LOAD) -Includes building material debris removal (lumber, trash, etc. Removal or relocation of pole hole spoils. All scrap metal to be stacked on site. All post will have ancor bolts through them and set in concrete. All Gerts will be 24" on center using 2"x6" lumber. Trusses will be a double truss for all trusses except the gable ends. All perlings will be 2"x6" 24" on center or less. This estimate EXCLUDES the following: *A fire wall of any kind. If required by the city, it will be an additional cost *A trench footing/grade beam. If required by engineering, it will be an additional cost	1	34,268.00	34,268.00
Option The following items are not included in the base bid price. They can be added at the listed prices. *Site prep as specified in addendum and walk through. \$6,485.00 *All plane paper work, and pay for permit. \$1,500.00	1		0.00
Overhead Door/Doors 1ea 12'x12' Insulated Overhead Door. (this does not include windows or automatic door opener)	1	3,438.00	3,438.00
NV Concrete 4" concrete floor -- (DOES NOT INCLUDES A REBAR OR FIBER MESH IN THE CONCRETE) 864 sq ft. OPTIONAL ITEMS, WE DO RECOMEND THESE BE ADDED. #4 REBAR 18" ON CENTER \$1,080.00	864	11.00	9,504.00

* FIBERMESH IN CONCRETE. \$432.00

-----ANY CONCRETE POURED FROM SEPT.
1ST THRU MAY 30TH IS SUBJECT TO THE
FOLLOWING CHARGES DEPENDING ON
TEMPERATURE AND WEATHER-----

*Additives ; Hot Water (10.00 PER YARD), Calcium
(UP TO 15.00 PER YARD), IF needed there will be
an extra cost for them that will be billed on either the
framing or final invoice

* If blankets are required they are \$8 a day per
blanket and will be billed on either the framing or
final invoice

Roper Typically Includes

Estimate valid for 14 days from the date received.
After 14 days this estimate must be requested.

1

0.00

0.00

Roper Buildings liability and workers compensation
insurance and licenses are current and up to date.
For copies and questions on coverage, feel free to
contact our agent at:

Stratford Insurance Group

Mike Crandall

Policy 60476088

2307 North Hill Field Road Ste 103 Layton UT
84041

Office (801) 784-4945

Utah Contractors License #5988440-5501 & Nevada
Contractors License #0075420 & Idaho Contractors
License # RCE-42129 Monetary limit is
200,000.00

All Roper buildings include the following, unless
otherwise noted:

1- Painted-Galvanized 29 gauge steel on walls and
roof

2- 2x6 Perlins on 16-24" centers

3- 2x6 Girts on 24"-32" centers

4- Treated poles rated for direct burial, embedded in
concrete and set on 8 to 12' centers. (Lifetime
guarantee)

5- Only the highest grade of lumber and steel are
used

General things the customer needs to know:

1- If the foundation holes cannot be dug with a skid
steer and an auger, there will be extra cost for a
backhoe and extra concrete (holes will be a little
bigger if dug with a backhoe)

2- Any utilities that are not marked by Blue Stakes or
the utility companies are the responsibility of the
owner.

3- Travel expenses are included

4- We estimate concrete prices to be less than
\$250.00 per yard. If it is more than this there will be
an extra charge.

5- If the materials being delivered have to be staged
50 feet or more from the job site, additional mobility
and labor costs may occur

TOTAL

\$47,210.00

Accepted By

Accepted Date

CITY OF ELY

Resolution Number 2023-09

RESOLUTION ESTABLISHING A FIRE HYDRANT FLOW TEST FEE

- WHEREAS,** the Ely City Council has the authority to pass resolutions that are not repugnant to the constitutions of the United States or of the State of Nevada or to the provisions of Chapter 266 of the Nevada Revised Statutes, necessary for good municipal government and the management of the city affairs pursuant to Ely City Code 1-5-4(B) and N.R.S. 266.105;
- WHEREAS,** the City Fire Department does not currently charge a fee to conduct fire hydrant flow tests;
- WHEREAS,** performing a fire hydrant flow test takes two City Fire Department employees away from their general duties for approximately one to two hours and requires the use of city equipment;
- WHEREAS,** persons requesting a fire hydrant flow test should pay a fee to compensate for the use of the Ely City Fire Department's equipment and personnel; and
- THEREFORE,** pursuant to the above and in the best interest of the citizens of Ely, the City Council of the City of Ely, State of Nevada, hereby resolves and orders, by way of this Resolution, that the Ely City Fire Department require a \$300.00 fee to perform fire hydrant flow tests.

VOTE:

AYES _____

NAYES _____

ABSENT _____

PROPOSED on the 8th day of June 2023, by Fire Chief Stork.

PASSED on the 8th day of June 2023.

APPROVED:

ATTESTED TO BY:

NATHAN ROBERTSON, MAYOR

JENNIFER LEE, CITY CLERK

WIRELINE CROSSING AGREEMENT

This Wireline Crossing Agreement (this "Agreement") is entered into as of June 15, 2023 ("Effective Date") by and among Nevada Northern Railway Foundation, a Nevada nonprofit corporation ("Foundation"), the City of Ely, a Nevada municipal corporation and political subdivision of the State of Nevada ("City") (the City, the Foundation, and any applicable affiliate, collectively, "Licensor"), Commnet Nevada Subco, LLC, a Delaware limited liability company ("Commnet Subco"), and Commnet of Nevada, LLC, a Delaware limited liability company ("Commnet") (Commnet Subco and Commnet, collectively, "Utility"). The parties make this Agreement with reference to the following facts:

A. Utility desires to construct, maintain, and operate an overhead fiber optic cable across and above Licensor's track and property at or near North Street in the City of Ely, White Pine County, Nevada, (the Licensor track and property, the "Premises") as indicated and shown on the legal description and the drawing(s) attached hereto as Exhibit A and incorporated by reference herein (the "Crossing").

B. For the protection of the property and rights of the parties, the parties agree to enter into this Agreement.

Accordingly, the parties agree as follows:

1. **Grant.** Licensor grants Utility a limited, non-exclusive license ("License") for the Crossing. Licensor grants this License insofar as it has the legal right, power, and authority to do so, and its present property interest permits, and subject to all existing encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's property rights in the Premises. The area covered by this License is only as large as reasonably necessary to install and maintain the Crossing.

2. **Use.**

2.1 Utility may use the License only for construction, operation, maintenance, repair, alteration, and removal (collectively, "Operation") of the Crossing. Utility shall maintain the Crossing perpendicular or nearly perpendicular to the Licensor's right-of-way.

2.2 Utility shall not permit use of the Premises by or for any other utility or other party, except with separate prior written consent of Licensor which consent may be denied, delayed, or refused for any reason or no reason and in Licensor's sole and absolute discretion.

3. **Fees.** ~~Upon execution of this Agreement and on~~ Upon execution of this Agreement, Utility shall pay the Foundation a one-time fee of \$2,500 ("Commencement Fee"). Utility and Foundation acknowledge and agree that Utility has already paid \$600 of the Commencement Fee and owes the Foundation an additional \$1,900 upon executing this Agreement. On each anniversary of the Effective Date, Utility shall pay the Foundation a non-refundable license fee ("License Fee") of \$600 provided that the License Fee due each anniversary of the Effective Date will increase by the percentage equal to the increase, if any, in the Consumer Price Index-All Urban

Consumers for the preceding 12 consecutive months for which the Consumer Price Index has been reported. The License Fee shall never decrease and shall stay the same if the Consumer Price Index declines in a given measurement period. Utility shall also pay and be responsible for all applicable flagging and other fees set forth in this Agreement. The current fees are attached hereto as Exhibit B and incorporated by reference herein (the "Fee Schedule"). ~~The fees listed on the Fee Schedule are not exhaustive, and all~~ All fees except for the License Fee are subject to change by the Foundation in its reasonable discretion. Unless otherwise provided herein, all fees on the Fee Schedule are non-refundable.

4. Required Applications for Operation Activities

4.1 Except for emergency repairs needed to correct an immediate hazard to persons or property, before commencing a major repair or alteration of the Crossing, maintenance on the Crossing involving requiring entry upon the Premises, or removal of the Crossing, Utility must submit an application ("Application") to the Foundation for and receive the Foundation's written approval of the activity in the Foundation's sole and absolute discretion. ~~Each Licensor hereby appoints the Foundation as its authorized representative and grants the Foundation the authority to review and approve any Application on its behalf.~~ For this Agreement, an alteration includes the addition of a wire, cable, conduit, pole, or other structure to the Crossing, ~~and such Application approval shall be in the Foundation's sole and absolute discretion.~~ Utility shall prohibit each of its contractors from accessing the Premises unless ~~the contractor~~ Utility has an entry license from the Foundation for the access.

4.2 Each Application that Utility submits to the Foundation must identify the Crossing, contain all plans and specifications for the proposed work, contain a drawing or map depicting the Crossing and identifying the portion of the Premises that Utility will access to perform the work, contain certificates of insurance demonstrating that Utility will have coverage for the work satisfying the requirements of Section 12 (Insurance), and be accompanied by the then-current Application fee ~~as set forth on Exhibit B (as amended from time to time by the Foundation, in accordance with Section 3)~~ which will be nonrefundable. If the Foundation rejects an Application, ~~Licensor~~ the Foundation may provide reasons for the rejection, and Utility will have 15 days after receipt of the rejection Notice to submit a revised Application addressing the reasons for the rejection.

~~4.3~~ If the Foundation approves an Application, the provisions of this Agreement will apply to the Crossing described in the Application, and the approval and Application will become part of this Agreement.

~~4.3.4~~ The Foundation will endeavor, but is not obligated, to process each Application within 30 days after receipt of the Application and Application fee. Any Application not processed within 180 days after receipt by the Foundation shall be deemed to be approved. The Foundation may offer expedited Application processing for an additional fee.

5. Notice of Work and Preparation

5.1 Utility shall give Notice to the Foundation at least 30 days in advance of any work involving the Crossing, or any proposed entry to the Premises, except for emergency situations.

The Foundation may require that the work and/or entry not be commenced for a period of up to 14 days after the time proposed by Utility. In the scheduling and conduct of this work, Utility and the Foundation shall cooperate and make reasonable efforts to avoid interference with the Foundation's operations or the operations of any railroad that Licensor permits to use the Premises.

5.2 If Utility must perform emergency work on the Crossing to address a hazard, Utility shall give Notice or telephone notice to the Foundation in advance of the work, if practicable. The parties shall cooperate to avoid any unnecessary delay in the performance of such work.

5.3 Prior to any construction pursuant to this Agreement, Utility shall locate and identify any existing cable, wire, fiber optic, or pipeline (including any appurtenances thereto) of any longitudinal or other occupier ("Occupier"), traversing or located in, on or immediately adjacent to the Crossing, at Utility's sole risk, and shall comply with any government "One Call" or "Call Before You Dig" requirements. As between the parties, Utility shall be solely responsible for any damage to (e.g., cutting, dislocating, etc.) any existing wire(s), cable(s), or pipe(s) of an Occupier, and appurtenances thereto, resulting from Utility's exercise of rights or privileges under this Agreement, and Utility shall indemnify, defend, and hold harmless Licensor ~~harmless for~~ and from any such damage.

5.4 Utility shall be responsible for paying or tendering to Licensor the fair market value for any growing crops, fruit trees, or fences cut, damaged, or destroyed in the construction, reconstruction, operation, and maintenance of the Crossing.

5.5 In advance of conducting any Operations, Utility shall ~~timely~~ obtain any necessary permit, license or approval (including zoning, health, building, construction, safety or environmental matters) from all federal, state or local public authorities having jurisdiction over the Operation of the Crossing or its intended use.

6. Construction and Maintenance Specifications

6.1 Utility shall Operate the Crossing at Utility's sole risk, cost, and expense without the imposition of any lien or charge on or against the Premises, ~~and at a time and in a manner satisfactory to the Foundation in accordance with all relevant Applications, this Agreement, and in accordance with the design approved by Licensor and the design, construction, and maintenance plans attached hereto as Exhibit C and incorporated herein by reference (the "Design, Construction, and Maintenance Plans")~~, all in a prudent and workmanlike manner and in conformity with the requirements of any applicable governmental or regulatory authority having jurisdiction over the Crossing. If any lien is filed against the Premises because of the License or Utility's activities in the area covered by the License, Utility will be in default of this Agreement, and Licensor will have the right to exercise all of its remedies pursuant to this Agreement, at law and in equity.

6.2 Utility shall comply with all applicable regulations of the Federal Railroad Administration and shall ensure that the Crossing and its Operation of the Crossing provides adequate clearances for rail operations.

6.3 Utility shall not use explosives of any type or perform or cause any blasting without the separate express written consent of the Foundation. If such consent is granted, a representative

will be assigned by the Foundation to monitor blasting, and Utility shall reimburse the Foundation for the entire cost and/or expense of furnishing said monitor.

6.4 Any repairs or maintenance to the Crossing, whether resulting from Utility's acts or omissions or from natural or weather events, that are necessary to protect or facilitate Licensor's use of the Premises, shall be made by Utility promptly, but in no event later than 30 days after Utility receives Notice from the Foundation as to the need for such repairs or maintenance. Before entering onto the Premises to conduct such needed repairs within the required time, Utility will need to make an Application to the Foundation to make such repairs.

6.5 The Foundation, to protect or safeguard its and/or the City's property, rail operations, equipment, passengers, and/or employees from damage or injury, may request immediate repair or renewal of the Crossing, and if Utility does not perform this, Licensor may make or contract to make such repairs or renewals, at the sole risk, cost, and expense of Utility.

6.6 Utility shall ensure at least 30 feet of clear space from the top of the rail to any wires and/or other aspects of the Crossing that are over the Premises.

6.7 If the Crossing involves overhead wires energized at five hundred (500) volts or more, Utility shall erect and maintain the wires at least four (4) feet over and above any existing telephone, telegraph, signal, or transmission wires at the Crossing. During construction of the Crossing, Utility shall place suitable guard structures to catch and support its wires should they break and fall across existing wires or tracks. Utility shall erect these guard structures and their necessary supports, and maintain them, at its sole cost and expense.

6.8 Utility shall Operate the Crossing in accordance with provisions of the National Electrical Safety Code (NESC) and applicable specifications of the American Railway Engineering and Maintenance-of-Way Association, as these provisions and specifications are amended from time to time and which are incorporated herein by reference, to the extent they do not conflict with applicable law.

6.9 Neither the failure of the Foundation to object to any work done, any material used, or method of construction or maintenance of the Crossing, nor any approval given or supervision exercised by the Foundation, will be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations or responsibility of Utility under this Agreement.

6.10 In the event Utility contracts for the Operation of the Crossing, Utility shall require its contractor to comply with all terms of this Agreement and to sign any joinder presented by the Foundation to such contractor to evidence that such contractor shall be bound and jointly and severally liable under this Agreement with Utility.

7. No Adverse Impact

7.1 Utility shall not permit the Crossing or Operation of the Crossing to adversely impact the Premises, Licensor's operations on the Premises, or the operations of third parties, including railroads, authorized by Licensor to use the Premises. Without limiting anything in this

Agreement, Utility shall be responsible for any damage to personal property, improvements, buildings, fences, or animals suffered by Licensor by the Operation of the Crossing.

7.2 Upon completion of work on the Crossing, Utility shall leave Licensor's Premises in a condition equal to or better than it was at the time Utility commenced the work.

7.3 Utility shall be responsible for any settlement of the track(s) or roadbed caused by Utility.

7.4 Utility shall Operate each Crossing in accordance with all rules and regulations of the Foundation and applicable governmental or regulatory authority.

8. Flagging and Entry

8.1 Utility shall be responsible for all costs associated with flagmen during construction, repair, alteration, or removal of the Crossing whenever (1) governing law requires flagmen; or (2) the Foundation reasonably requires use of flagmen. Such flagmen may be contracted or employed by a third party, unless the Foundation requires use of its flaggers. If the Foundation requires use of its flaggers, Utility shall reimburse the Foundation for the flaggers and vehicle costs incurred within thirty (30) days of receipt of bills rendered therefor.

8.2 The Foundation may reasonably require, at Utility's sole cost and expense, the placement of watchmen, inspectors, or supervisors for work related to the Crossing.

8.3 Notwithstanding anything to the contrary in this Agreement, before Utility or its contractors enter the Premises for any reason, Utility shall receive express written approval to enter and occupy the Premises from the Foundation's on-duty dispatcher, which the dispatcher may deny in its sole and absolute discretion, and in which case entry would have to be rescheduled.

9. Road Crossings. Nothing in this Agreement will be construed to permit Utility or Utility's contractors to move any vehicles over tracks owned or controlled by Licensor or any of its affiliates except at legal public or private road crossings.

10. Taxes. Utility promptly shall pay and discharge any state or local taxes, assessments, and other governmental charges levied or assessed upon Utility's infrastructure in the Crossing or the Premises solely because of Utility's infrastructure is on it.

11. Licensor Changes. If Licensor makes any changes whatsoever in or to its track or Premises at or near the Crossing, Utility shall promptly make any changes to the location or character of the Crossing that are deemed necessary or appropriate, ~~as deemed~~ by the Foundation in ~~its sole and absolute~~ the Foundation's reasonable discretion, ~~to~~ accommodate Licensor's changes, and shall endeavor to do so within 90 days of Notice from the Foundation about the changes to the Crossing. Such changes shall be made by Utility at Utility's sole cost and expense, and in accordance with plans satisfactory to the Foundation in its sole and absolute discretion.

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12. **Licensors Costs.** Licensors costs and expenses for any work performed at the cost and expense of Utility pursuant to this Agreement shall be paid by Utility within 30 days after Utility receives a bill for the costs and expenses. Except in cases of a rail emergency, Licensors shall provide Notice to Utility of any work to be performed by Licensors prior to Licensors performing or incurring cost.

13. **Insurance**

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13.1 **Coverages.** Utility shall maintain, at its sole cost and expense, at least all of the following types and amounts of insurance at all times while this Agreement is effective and for one (1) year thereafter:

(a) Commercial General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate each year for bodily injury and property damage.

(b) Business Automobile Liability covering all owned, leased, hired, and non-owned vehicles with limits no less than \$2,000,000 per occurrence.

(c) Workers Compensation with limits no less than the statutory limits for all states, provinces or other jurisdictions of operation.

(d) Employers Liability with limits no less than \$500,000 per each employee for bodily injury by accident and \$500,000 per each employee for bodily injury.

13.2 **LicensorsRailroad Protective Liability.** For each period of work involving the Crossing, Utility shall maintain ~~LicensorsRailroad~~ Protective Liability Insurance coverage in an amount not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate each year. The definition of job location and work on the declaration page of the policy for this coverage shall refer to this Agreement and describe all work or operations performed under this Agreement. If work involving the Crossing is performed by Utility's contractor, Utility shall cause the contractor to secure this coverage before commencing work on the Crossing. If offered by Licensors, Utility and its contractor may pay a construction risk fee set by Licensors in lieu of maintaining this Licensors Protective Liability coverage.

13.3 **Policy Requirements.** All insurance policies required under this Section 12 shall: be written on an occurrence basis; be issued by insurance companies reasonably satisfactory to the Foundation; shall have no railroad exclusions; be primary to any other insurance maintained by Licensors; name both the City and the Foundation as additional insureds, provided that this applies only to Commercial General Liability, Licensors Protective Liability, and Business Automobile Liability policies; and contain a waiver of subrogation of the insurers rights against Licensors, where permitted by law. Utility shall provide certificates of insurance for the coverage required under this Section 12 upon Licensors's request and before commencing construction of the Crossing; the certificate for Commercial General Liability coverage must show proof of an ISO CG 24 17 10 01 endorsement or its equivalent, and the certificate for the Business Automobile Liability coverage must show proof of an ISO CA 20 70 10 01 or equivalent endorsement. Furnishing of insurance by Utility shall not limit Utility's liability under this Agreement.

Self-Insurance. Notwithstanding the provisions of this Section 13, Utility ~~may self-assume~~ understands and or self insure in ~~agrees that, notwithstanding any amount(s) liability arising~~ other provision of this Agreement, it shall not be permitted to commence any work under this Agreement provided: (a) Utility shall furnish Officer's Certificate of such Insurance to Licensor; and (b) until it provides evidence satisfactory to the Foundation approves Utility's that all required insurance program in its sole and absolute discretion is in place.

~~13.5~~ 13.4 Adjustments. Licensor may modify the insurance coverage required under this Agreement once every five years to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

14. Condemnation or Abandonment of Premises. Should the Premises at the location of the Crossing be condemned, appropriated, or acquired by any public authority or other entity having the power of condemnation, or if the Premises at the Crossing shall be abandoned by Licensor, this Agreement shall terminate concerning the Crossing as of the date when the Premises was taken, conveyed, or abandoned.

15. Licensor Not Liable. Licensor will not be liable for any damage to, or loss of personal property or equipment sustained by Utility within the area covered by a License, whether or not it is insured, even if such loss is caused by the negligence of Licensor.

16. Indemnification. Utility and its successors and assigns shall, and shall cause any of its contractors and agents who perform work on the Crossing to, indemnify, defend, and hold harmless Licensor and its officers, employees, agents, affiliates, successors, and assigns from and against any and all losses, costs, damages, fines, liens, claims, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees, court costs, and disbursements) arising from or by reason of: the Crossing; Utility's or its employees', contractors', or agents' access to, or use of, the Premises or the License; or any injury or damage to any person or property to the extent caused by the acts or omissions of Utility or its employees, contractors, or agents in connection with the Crossing or use of the Premises or the License.

17. Duration, Termination, and Survival.

This Agreement shall become effective on the Effective Date and continue in effect for one (1) year (the "Initial Term") and automatically renew for one-year periods upon payment of the fees License Fee described in Section 3., above (each, a "Renewal Term"; the Initial Term and Renewal Terms, collectively, the "Term") thereafter unless and until terminated by either party. A party may terminate this Agreement by providing Notice of its intent that the Agreement not renew to the other party at least 90 days prior to the end of the then-current Term. If Utility breaches this Agreement and such breach is curable, Licensor may terminate this Agreement upon Notice to Utility if Utility fails to cure the breach within 15 days after receiving Notice of the breach from Licensor. The rights and obligations of the parties under this Agreement which, by their nature, should survive termination of this Agreement, will survive termination of this Agreement.

18. Discontinuance by Utility. If Utility abandons use of the Crossing, Utility shall notify Licensor in writing of the abandonment, and, unless otherwise agreed by the Foundation, shall

promptly (and in no event later than 120 days) remove the Utility's infrastructure from the Premises, and restore the Premises to a condition equal to or better than it was at the time Utility commenced construction of the Crossing, all at Utility's sole cost and expense. If Utility fails to remove and/or restore, as required by this paragraph, the Foundation may do the work, and Utility shall reimburse the Foundation for all costs and expenses incurred by the Foundation to do such work. ~~Additionally, if~~ Utility fails to remove any of Utility's property within 120 days after abandonment or termination of this Agreement, all property of the Utility shall become property of the Foundation and the City, at their election, for no consideration. If requested by the Foundation and/or the City, Utility shall execute a bill of sale conveying all such remaining property to the Foundation and the City.

19. Sale of Track

19.1 In the event of sale or other conveyance by Licensor of its track and/or property interest in the Premises, Licensor's conveyance shall be made expressly subject to the right of Utility to continue to occupy the Crossing, subject to all other terms of this Agreement.

19.2 In the event that the track and/or property interest of Licensor is conveyed to any party under Section 19.1, in whole or in part, Licensor reserves the right to assign and delegate, in whole or partially, its rights and corresponding duties under this Agreement; provided, however, that no assignment shall relieve Licensor of any previously accrued duty or obligation hereunder.

20. Title

20.1 Nothing herein shall be deemed to act as any warranty, guarantee, or representation of the quality of title held by Licensor and occupied or used under this Agreement.

20.2 Upon receipt of any third party claims against Licensor or Licensor's title, or against Utility's right to use, occupy, or possess the Crossing or to enjoy any rights hereunder, on the grounds that Licensor did not have sufficient rights, title, or interest in the Crossing, if Licensor elects not to contest the third party claim, then Utility may either: (1) defend such claims, at Utility's sole cost and expense, with the reasonable cooperation of Licensor; or (2) vacate the Crossing and remove the Facilities therefrom in accordance with the provisions of Section 19 above.

21. Miscellaneous Provisions

21.1 City and Foundation. For the purposes of this Agreement, the Foundation shall administer, manage, and oversee all provisions found herein and the activities of the Utility, except that the City shall receive a copy of all Applications under Section 4 and Notices given or received by Foundation and/or Utility pursuant to Section 21.2. The City and the Foundation shall make decisions involving Section 17 jointly. Any and all fees associated with this Agreement shall be paid to, received, and retained by the Foundation.

21.2 Notices. All notices, requests, consents, claims, demands, waivers, communications, or documents which are required or permitted to be given or served under this Agreement (each, a "Notice") shall be in writing and: (a) personally delivered to the party to be notified, in which instance Notice shall be deemed to have been given and received upon actual

delivery; (b) sent by certified United States mail, return receipt requested, postage prepaid, addressed to the party to be notified, in which instance Notice shall be deemed to have been given upon deposit in the mail at any postal station and received twenty-four (24) hours after such deposit or such earlier date as may be shown on the return receipt; (c) sent by a reputable national overnight commercial courier service (such as Federal Express, but not including United States Postal Service Express Mail) addressed to the party to be notified, in which instance Notice shall be deemed to have been given upon deposit with such courier service for delivery and received on the first (1st) business day after deposit; or (d) electronic mail (if a copy is sent within three (3) business days by one of the other means specified above). The addresses of the parties for Notice by any of the foregoing means shall be as follows:

The Utility

Address:
Commnet Nevada Subco, LLC
(Aerial Fiber Project)
Attn: Greg [Renio Jaramillo](#)
1562 N. Park Street
Castle Rock, Colorado. 80109

Email:
InsertLegalNotices@atni.com
Copy to:

Commnet Wireless, LLC
Attn: Legal Dept.
1562 N. Park St.
Castle Roc, CO 80109

The City

Address:
Jennifer Lee, City Clerk
City of Ely, Nevada
501 Mill Street
Ely, Nevada 89301

Email:
CityClerk@cityofelynv.gov

The Foundation

Address:
Mark Bassett, President
Nevada Northern Railway
Foundation, Inc.
1100 Avenue A
Ely, NV 89301

Email: president@nnry.com

Any party may change such party's address for Notices by giving Notice to the other parties in accordance with this Section 21.2.

21.3 Assignment and Delegation. Each party shall have the right to assign this Agreement, in whole or in part, to any wholly owned subsidiary or parent, affiliate or to any successor corporation which acquires all or substantially all of the party's capital stock, property, and/or business, by merger, acquisition, or conveyance. Otherwise, and except as set forth elsewhere in this Agreement, assignment shall only be with the written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

21.4 Waiver. No waiver of a condition, nonperformance of an obligation, right, or remedy under this agreement will be effective unless it is expressly in writing and duly executed by the party granting the waiver. 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.

21.5 Binding Effect: Voluntary Agreement. This Agreement shall be binding upon the parties hereto and upon their respective representatives, permitted successors, and permitted

assigns, and shall inure to the benefit of said parties and each of them and their representatives, executors, permitted successors, and permitted assigns. This Agreement is voluntarily entered into between the parties and not as a result of coercion, duress, or undue influence. By executing this Agreement, each party agrees that he, she, or it has read and fully understood the terms of this Agreement and has consulted with his, her, or its respective attorney prior to execution of this Agreement. Each party represents and warrants that it has the authority to enter into this Agreement, and each individual signing this Agreement on behalf of any party represents and warrants that it has the authority to do so.

21.6 Governing Law, Jurisdiction, and Venue. Except to the extent preempted by federal law, 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 submits to the exclusive jurisdiction and venue of the state courts located in White Pine County, Nevada, in any legal or equitable suit, action, or proceeding arising out of or based upon this Agreement. If for any reason the state courts of White Pine County, Nevada, are unable to adjudicate a dispute under this Agreement, then the parties irrevocably submit to the exclusive jurisdiction and venue of the state courts in Washoe County, Nevada. It is not the intent of the parties to adjudicate any dispute under this Agreement in federal court. However, should for any reason a legal or equitable suit, action, or proceeding arising out of or based upon this Agreement occur in federal court, the parties agree that the federal courts in Washoe County, Nevada, have exclusive jurisdiction and shall be the exclusive venue for any legal or equitable suit, action, or proceeding arising out of or based upon this Agreement.

21.7 Entire Agreement and Modification; No Reliance. This Agreement is the entire agreement of the parties with respect to its subject matter, and supersedes all prior proposals, agreements, memoranda, or understandings with respect to this Agreement or its subject matter. 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 any 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. This Agreement, and any provisions of this Agreement, may not be modified, amended, waived, or extended (which does not include an automatic Renewal Term pursuant to orally, but only by an agreement in writing signed by all the parties hereto. The parties specifically agree that no legal or equitable doctrine, including, but not limited to, the doctrine of promissory estoppel, shall operate for any reason to overcome this requirement of a writing.

21.8 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by any Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

21.9 Incorporation of Exhibits and Recitals. The recitals and Exhibits to this Agreement are incorporated into and made a part of this Agreement.

21.10 Counterparts. This Agreement may be executed in counterparts, and each executed counterpart shall have the efficacy and validity of a signed original and with the same effect as if

all parties hereto had signed the same document. All counterparts so executed shall be deemed to be an original, shall be construed together, and shall constitute one Agreement. Photographic or electronic copies of such executed counterparts may be used in lieu of the original for any purpose.

21.11 Time is of the Essence. Time is of the essence of this Agreement and each and every provision hereof of which time is an element.

21.12 Power and Authority; Binding Obligation. Each Party represents and warrants as follows: (i) it is duly incorporated, formed, or organized, validly existing and in good standing under the laws of the applicable state of incorporation or organization; (ii) it possess all the requisite power and authority to enter into and perform this Agreement; (iii) the execution, performance, and delivery of this Agreement has been duly and validly approved by the governing body of such Party; (iv) the signatory hereof on behalf of the Party has been duly and fully authorized to execute this Agreement on behalf of the Party; and (v) this Agreement, when executed and delivered by the Party and the other parties hereto in accordance with the terms hereof, will constitute a valid and binding obligation of the Party that is enforceable in accordance with its terms.

21.13 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.

21.14 Force Majeure. Unless specified elsewhere in this Agreement, no party is excused of nonperformance of its obligations under this Agreement because of any force majeure event, including, but not limited to, the following: (a) any epidemic, pandemic, or quarantine, such as any event connected in any way with COVID-19 or variant thereof; (b) acts of God; (c) flood, fire, earthquake, or explosion; (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) requirements of law; (f) actions, embargoes, or blockades in effect on or after the date of this Agreement; (g) action by any governmental authority; (h) national or regional emergency; (i) strikes, labor stoppages or slowdowns or other industrial disturbances; or (j) shortages of adequate power or transportation facilities. Notwithstanding the foregoing provisions of this Section 21.14, if Commnet's breaches this agreement with respect to certain performance obligations, and such breach was proximately caused by a force majeure event, the Foundation shall have no right to terminate this Agreement and shall instead be limited to damages and other remedies. Such breaches by Commnet are limited to Commnet's performance obligation relating to physical work on the Crossing or the Premises, such as the Operation of the Crossing or required repair work on the Premises.

21.15 Jury Trial Waiver. THE PARTIES WAIVE FULLY THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN EACH AND EVERY TRIAL OR OTHER PROCEEDING IN WHICH ONE OR MORE CAUSES OF ACTION OR ISSUES ARE RAISED WHICH RESULT FROM OR ARISE OUT OF THIS AGREEMENT. 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 OFFICERS, 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.

21.16 No Third-Party Beneficiaries. This Agreement solely benefits the parties to this Agreement, the parties' respective permitted successors and assigns, any affiliate of Licensor, and any party executing a joinder agreement to be bound by the terms of this Agreement. Nothing in this Agreement, express or implied, confers on any other legal person a legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

21.17 Liability Joint and Several. Commnet Subco and Commnet are jointly and severally liable for all obligations hereunder and for all breaches of this Agreement.

21.18 Attorneys' Fees and Costs. If any party brings any action or proceeding to enforce, protect, establish, or construe any right or remedy arising out of, or relating to, this Agreement in any way, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

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

The parties below execute this Agreement as of the date set forth in the Preamble above.

**NEVADA NORTHERN RAILWAY
FOUNDATION, INC.**

Dated: _____, 2023

By: _____
Mark Bassett, President

CITY OF ELY, NEVADA

Dated: _____, 2023

By: _____
Nathan Robertson, Mayor

COMMNET NEVADA SUBCO, LLC

Dated: _____, 2023

By: _____
Mary Mabey, Authorized

COMMNET OF NEVADA, LLC

Dated: _____, 2023

By: _____
Mary Mabey, Manager

EXHIBIT A
The Premises

Exhibit A to Wireline Crossing Agreement

EXHIBIT B

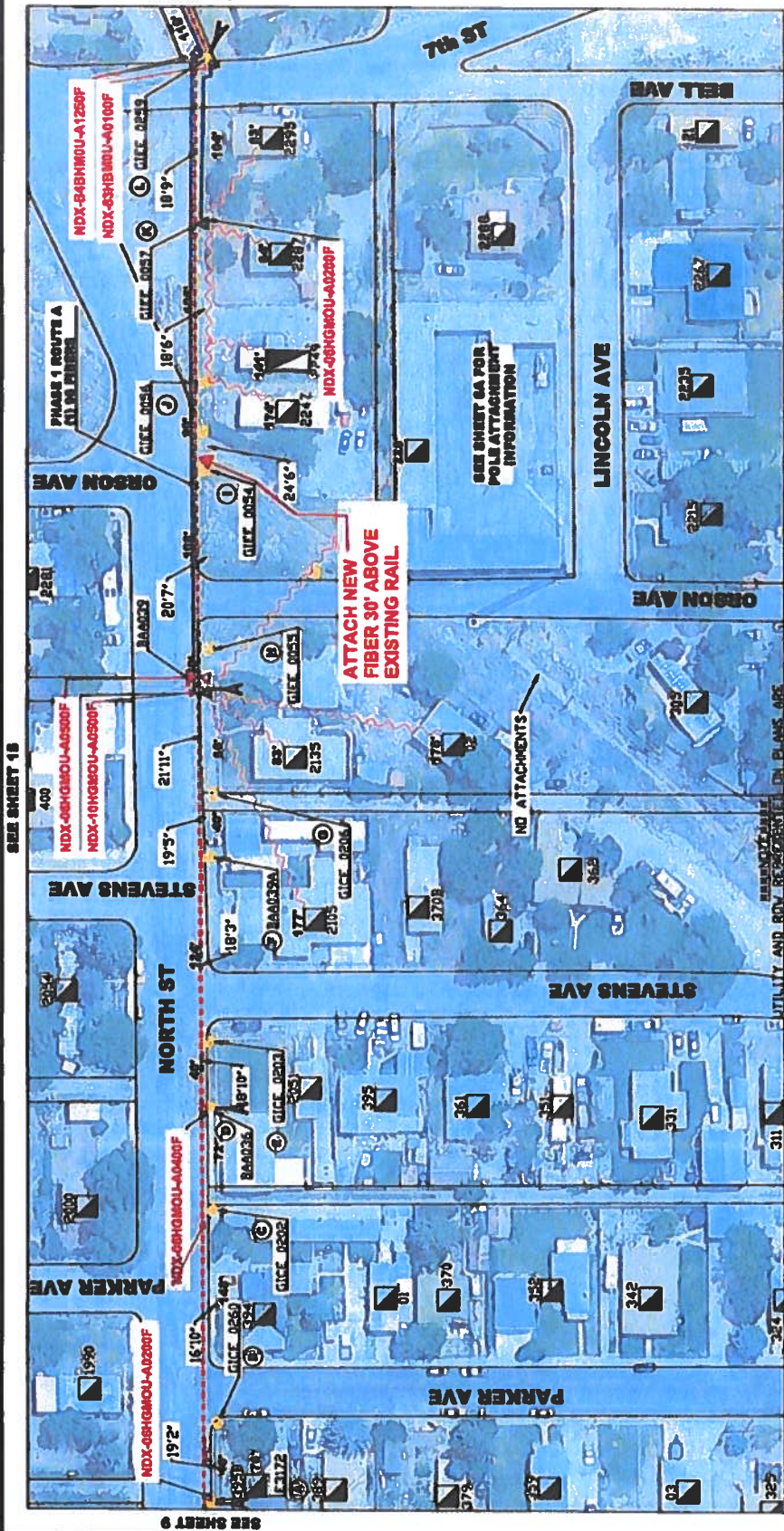
Fee Schedule

Fee Description	Fee Amount	Frequency
<u>Commencement Fee</u>	<u>\$2,500</u>	<u>One-Time</u>
Application Fee	\$1,000	<u>One-timePer</u> <u>Occurrence</u>
Engineering-Review Fee	\$1,750	<u>One-timePer</u> <u>Occurrence</u>
Right-of-Entry Fee	\$1,750	<u>Per entryEntry</u>
License Fee	\$600	Annual
<u>Environmental Assessment Fee</u>	<u>\$1,750</u>	<u>Per Occurrence</u>

EXHIBIT C

Design, Construction, and Maintenance Plans

Exhibit C to Wireline Crossing Agreement

[illegible]



LAND SURVEYING • WATER RIGHTS • DRONE MAPPING

EXHIBIT "A"

**LEGAL DESCRIPTION
WIRELINE CROSSING AGREEMENT**

BEING A PORTION OF THE NORTH HALF (N½) OF SECTION 15, TOWNSHIP 16 NORTH, RANGE 63 EAST, M.D.B. M., MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 15, THENCE SOUTH 34°23'54" EAST, 1861.97 FEET TO MT. WHEELER POWER POLE No. GIEE 0054 GENERALLY LOCATED AT THE INTERSECTION OF NORTH STREET AND ORSON AVENUE; THENCE EASTERLY ALONG THE CENTERLINE OF A 25.00 FOOT WIDE STRIP OF LAND, BEING 12.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBE LINE; THENCE NORTH 89°41'46" EAST, 98.78 FEET. THE SIDE LINES OF SAID EASEMENT SHALL COMMENCE AND TERMINATE AT THE WESTERLY AND EASTERLY (VARYING IN WIDTH) NORTHERN NEVADA RAILWAY RIGHT-OF-WAY.

**BASIS OF BEARINGS FOR THIS REAL PROPERTY DESCRIPTION IS THE GRID BEARING BETWEEN NDOT MONUMENT CONTROL POINTS NUMBERS 466006 AND 1217007, LPN 1217 AS SOUTH 73°49'26" WEST, DETERMINED FROM THE NEVADA DEPARTMENT OF TRANSPORTATION WEB SITE AND FIELD OBSERVATIONS.
[HTTPS://GIS.NEVADADOT.COM/LOIS/](https://gis.nevadadot.com/lois/)**

**NOTE: THE ABOVE LEGAL DESCRIPTION
WAS PREPARED BY GREGORY D. RIVERO,
PROFESSIONAL LAND SURVEYOR- STATE OF NEVADA,
ACTING AS AN AGENT FOR SOLARUS, LLC.**



January 18, 2023

A cross-section diagram of a bridge deck. The diagram shows a multi-lane bridge with several curved lines representing the deck's profile. Key labels include:

- HOA**: Located at the top left, pointing to the top edge of the deck.
- MID SPAN 30' MIN**: A vertical line with a label pointing to the center of the bridge span.
- CA**: Located on the right side, pointing to the centerline of the bridge.
- EOP**: Located on the right side, pointing to the edge of the pavement.
- R/W**: Located at the bottom right, pointing to the right-of-way line.



DATE	12-1-2012
BY	ATN
CHECKED	
APPROVED	

FOR REVIEW, PLS
- 85-200000-01-0000
- 85-200000-01-0000
- 85-200000-01-0000

UTILITY LOCATIONS
SHOWN ARE APPROXIMATE
IT'S THE CONTRACTOR'S
RESPONSIBILITY TO
VERIFY THE EXACT
LOCATION OF ALL
UTILITIES WITHIN THE
PROJECT AREA.

NOT TO SCALE

8 of 19

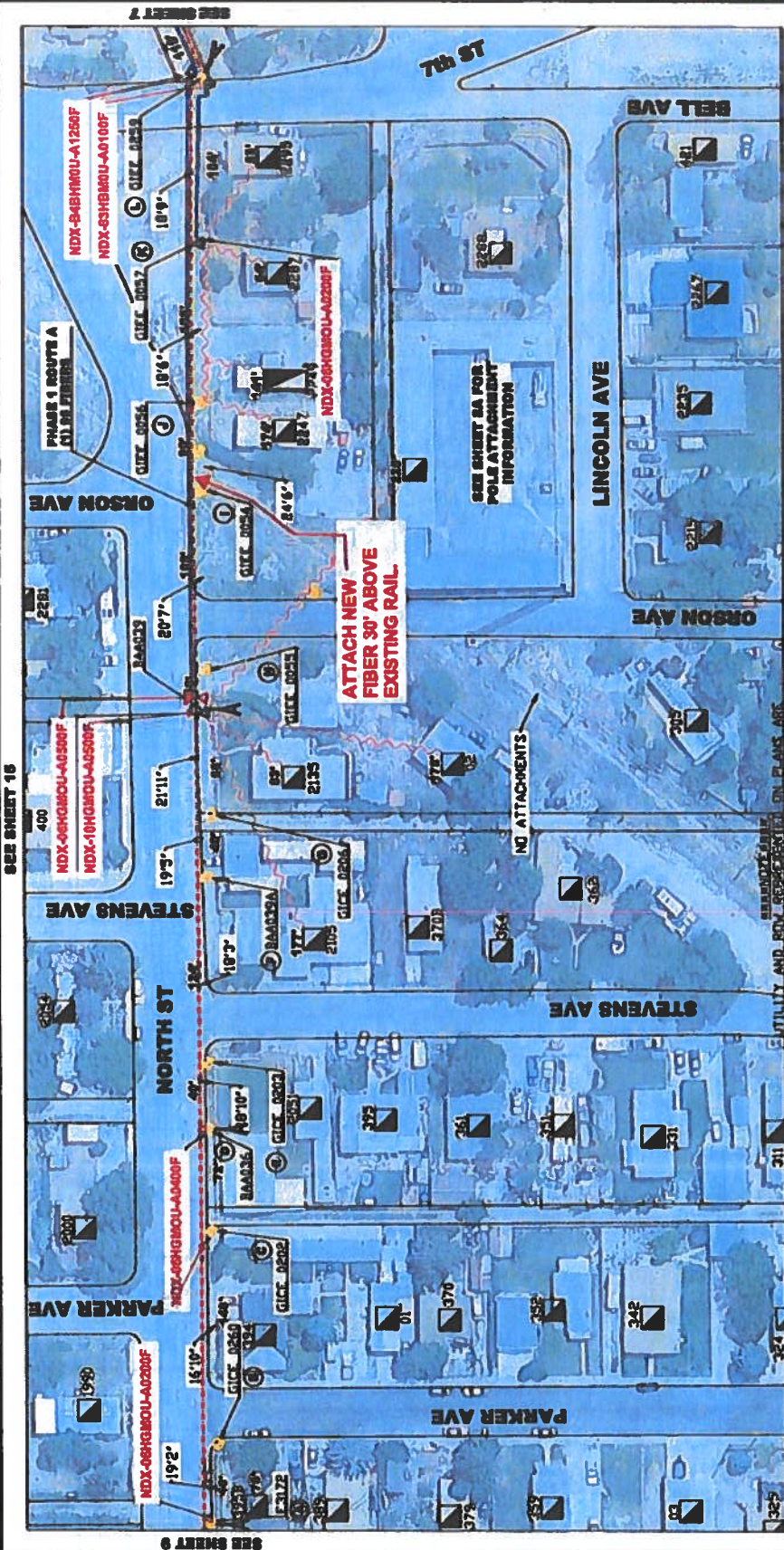
SEE SHEET 15

SEE SHEET 16

SEE SHEET 17

SEE SHEET 18

SEE SHEET 19



POLE OR UTILITY	DATE	ASST A	ASST B	ASST C	ASST D	ASST E	ASST F	ASST G	ASST H	ASST I	ASST J	ASST K	ASST L	ASST M	ASST N	ASST O	ASST P	ASST Q	ASST R	ASST S	ASST T	ASST U	ASST V	ASST W	ASST X	ASST Y	ASST Z	ASST AA	ASST AB	ASST AC	ASST AD	ASST AE	ASST AF	ASST AG	ASST AH	ASST AI	ASST AJ	ASST AK	ASST AL	ASST AM	ASST AN	ASST AO	ASST AP	ASST AQ	ASST AR	ASST AS	ASST AT	ASST AU	ASST AV	ASST AW	ASST AX	ASST AY	ASST AZ	ASST BA	ASST BB	ASST BC	ASST BD	ASST BE	ASST BF	ASST BG	ASST BH	ASST BI	ASST BJ	ASST BK	ASST BL	ASST BM	ASST BN	ASST BO	ASST BP	ASST BQ	ASST BR	ASST BS	ASST BT	ASST BU	ASST BV	ASST BW	ASST BX	ASST BY	ASST BZ	ASST CA	ASST CB	ASST CC	ASST CD	ASST CE	ASST CF	ASST CG	ASST CH	ASST CI	ASST CJ	ASST CK	ASST CL	ASST CM	ASST CN	ASST CO	ASST CP	ASST CQ	ASST CR	ASST CS	ASST CT	ASST CU	ASST CV	ASST CW	ASST CX	ASST CY	ASST CZ	ASST DA	ASST DB	ASST DC	ASST DD	ASST DE	ASST DF	ASST DG	ASST DH	ASST DI	ASST DJ	ASST DK	ASST DL	ASST DM	ASST DN	ASST DO	ASST DP	ASST DQ	ASST DR	ASST DS	ASST DT	ASST DU	ASST DV	ASST DW	ASST DX	ASST DY	ASST DZ	ASST EA	ASST EB	ASST EC	ASST ED	ASST EE	ASST EF	ASST EG	ASST EH	ASST EI	ASST EJ	ASST EK	ASST EL	ASST EM	ASST EN	ASST EO	ASST EP	ASST EQ	ASST ER	ASST ES	ASST ET	ASST EU	ASST EV	ASST EW	ASST EX	ASST EY	ASST EZ	ASST FA	ASST FB	ASST FC	ASST FD	ASST FE	ASST FF	ASST FG	ASST FH	ASST FI	ASST FJ	ASST FK	ASST FL	ASST FM	ASST FN	ASST FO	ASST FP	ASST FQ	ASST FR	ASST FS	ASST FT	ASST FU	ASST FV	ASST FW	ASST FX	ASST FY	ASST FZ	ASST GA	ASST GB	ASST GC	ASST GD	ASST GE	ASST GF	ASST GG	ASST GH	ASST GI	ASST GJ	ASST GK	ASST GL	ASST GM	ASST GN	ASST GO	ASST GP	ASST GQ	ASST GR	ASST GS	ASST GT	ASST GU	ASST GV	ASST GW	ASST GX	ASST GY	ASST GZ	ASST HA	ASST HB	ASST HC	ASST HD	ASST HE	ASST HF	ASST HG	ASST HH	ASST HI	ASST HJ	ASST HK	ASST HL	ASST HM	ASST HN	ASST HO	ASST HP	ASST HQ	ASST HR	ASST HS	ASST HT	ASST HU	ASST HV	ASST HW	ASST HX	ASST HY	ASST HZ	ASST IA	ASST IB	ASST IC	ASST ID	ASST IE	ASST IF	ASST IG	ASST IH	ASST II	ASST IJ	ASST IK	ASST IL	ASST IM	ASST IN	ASST IO	ASST IP	ASST IQ	ASST IR	ASST IS	ASST IT	ASST IU	ASST IV	ASST IW	ASST IX	ASST IY	ASST IZ	ASST JA	ASST JB	ASST JC	ASST JD	ASST JE	ASST JF	ASST JG	ASST JH	ASST JI	ASST JJ	ASST JK	ASST JL	ASST JM	ASST JN	ASST JO	ASST JP	ASST JQ	ASST JR	ASST JS	ASST JT	ASST JU	ASST JV	ASST JW	ASST JX	ASST JY	ASST JZ	ASST KA	ASST KB	ASST KC	ASST KD	ASST KE	ASST KF	ASST KG	ASST KH	ASST KI	ASST KJ	ASST KK	ASST KL	ASST KM	ASST KN	ASST KO	ASST KP	ASST KQ	ASST KR	ASST KS	ASST KT	ASST KU	ASST KV	ASST KW	ASST KX	ASST KY	ASST KZ	ASST LA	ASST LB	ASST LC	ASST LD	ASST LE	ASST LF	ASST LG	ASST LH	ASST LI	ASST LJ	ASST LK	ASST LL	ASST LM	ASST LN	ASST LO	ASST LP	ASST LQ	ASST LR	ASST LS	ASST LT	ASST LU	ASST LV	ASST LW	ASST LX	ASST LY	ASST LZ	ASST MA	ASST MB	ASST MC	ASST MD	ASST ME	ASST MF	ASST MG	ASST MH	ASST MI	ASST MJ	ASST MK	ASST ML	ASST MM	ASST MN	ASST MO	ASST MP	ASST MQ	ASST MR	ASST MS	ASST MT	ASST MU	ASST MV	ASST MW	ASST MX	ASST MY	ASST MZ	ASST NA	ASST NB	ASST NC	ASST ND	ASST NE	ASST NF	ASST NG	ASST NH	ASST NI	ASST NJ	ASST NK	ASST NL	ASST NM	ASST NN	ASST NO	ASST NP	ASST NQ	ASST NR	ASST NS	ASST NT	ASST NU	ASST NV	ASST NW	ASST NX	ASST NY	ASST NZ	ASST OA	ASST OB	ASST OC	ASST OD	ASST OE	ASST OF	ASST OG	ASST OH	ASST OI	ASST OJ	ASST OK	ASST OL	ASST OM	ASST ON	ASST OO	ASST OP	ASST OQ	ASST OR	ASST OS	ASST OT	ASST OU	ASST OV	ASST OW	ASST OX	ASST OY	ASST OZ	ASST PA	ASST PB	ASST PC	ASST PD	ASST PE	ASST PF	ASST PG	ASST PH	ASST PI	ASST PJ	ASST PK	ASST PL	ASST PM	ASST PN	ASST PO	ASST PP	ASST PQ	ASST PR	ASST PS	ASST PT	ASST PU	ASST PV	ASST PW	ASST PX	ASST PY	ASST PZ	ASST QA	ASST QB	ASST QC	ASST QD	ASST QE	ASST QF	ASST QG	ASST QH	ASST QI	ASST QJ	ASST QK	ASST QL	ASST QM	ASST QN	ASST QO	ASST QP	ASST QQ	ASST QR	ASST QS	ASST QT	ASST QU	ASST QV	ASST QW	ASST QX	ASST QY	ASST QZ	ASST RA	ASST RB	ASST RC	ASST RD	ASST RE	ASST RF	ASST RG	ASST RH	ASST RI	ASST RJ	ASST RK	ASST RL	ASST RM	ASST RN	ASST RO	ASST RP	ASST RQ	ASST RR	ASST RS	ASST RT	ASST RU	ASST RV	ASST RW	ASST RX	ASST RY	ASST RZ	ASST SA	ASST SB	ASST SC	ASST SD	ASST SE	ASST SF	ASST SG	ASST SH	ASST SI	ASST SJ	ASST SK	ASST SL	ASST SM	ASST SN	ASST SO	ASST SP	ASST SQ	ASST SR	ASST SS	ASST ST	ASST SU	ASST SV	ASST SW	ASST SX	ASST SY	ASST SZ	ASST TA	ASST TB	ASST TC	ASST TD	ASST TE	ASST TF	ASST TG	ASST TH	ASST TI	ASST TJ	ASST TK	ASST TL	ASST TM	ASST TN	ASST TO	ASST TP	ASST TQ	ASST TR	ASST TS	ASST TT	ASST TU	ASST TV	ASST TW	ASST TX	ASST TY	ASST TZ	ASST UA	ASST UB	ASST UC	ASST UD	ASST UE	ASST UF	ASST UG	ASST UH	ASST UI	ASST UJ	ASST UK	ASST UL	ASST UM	ASST UN	ASST UO	ASST UP	ASST UQ	ASST UR	ASST US	ASST UT	ASST UY	ASST UZ	ASST VA	ASST VB	ASST VC	ASST VD	ASST VE	ASST VF	ASST VG	ASST VH	ASST VI	ASST VJ	ASST VK	ASST VL	ASST VM	ASST VN	ASST VO	ASST VP	ASST VQ	ASST VR	ASST VS	ASST VT	ASST VU	ASST VV	ASST VW	ASST VX	ASST VY	ASST VZ	ASST WA	ASST WB	ASST WC	ASST WD	ASST WE	ASST WF	ASST WG	ASST WH	ASST WI	ASST WJ	ASST WK	ASST WL	ASST WM	ASST WN	ASST WO	ASST WP	ASST WQ	ASST WR	ASST WS	ASST WT	ASST WU	ASST WV	ASST WW	ASST WX	ASST WY	ASST WZ	ASST XA	ASST XB	ASST XC	ASST XD	ASST XE	ASST XF	ASST XG	ASST XH	ASST XI	ASST XJ	ASST XK	ASST XL	ASST XM	ASST XN	ASST XO	ASST XP	ASST XQ	ASST XR	ASST XS	ASST XT	ASST XU	ASST XV	ASST XW	ASST XX	ASST XY	ASST XZ	ASST YA	ASST YB	ASST YC	ASST YD	ASST YE	ASST YF	ASST YG	ASST YH	ASST YI	ASST YJ	ASST YK	ASST YL	ASST YM	ASST YN	ASST YO	ASST YP	ASST YQ	ASST YR	ASST YS	ASST YT	ASST YU	ASST YV	ASST YW	ASST YX	ASST YY	ASST YZ	ASST ZA	ASST ZB	ASST ZC	ASST ZD	ASST ZE	ASST ZF	ASST ZG	ASST ZH	ASST ZI	ASST ZJ	ASST ZK	ASST ZL	ASST ZM	ASST ZN	ASST ZO	ASST ZP	ASST ZQ	ASST ZR	ASST ZS	ASST ZT	ASST ZU	ASST ZV	ASST ZW	ASST ZX	ASST ZY	ASST ZZ
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TABLES CONTINUED ON SHEET 16

GIEE 0206 2'-45'
TRANS 29'4"
DOWN PVR 28'2"
ST LT 26'1"
DRIP LOOP 25'6"

BAA039
TOP OF POLE 23'10"
COM 22'1"
COM 21'5"

GICE 0203
TRANS 28'1"
DOWN PVR 27'4"
DRIP LOOP 26'4"
ST. LT 25'3"

BAA036
TOP OF POLE 21'4"
CON 18'6"
ATTN 1744

GICE 0202 2-45'
TOP OF POLE 36'10"
DOWN PWR 27.7'
DOWN PWR 27.3'

GICE 0260 2-45'
TRANS 27'9"
DOWN PWR 27'2"
ST LT 25'5"
DRIP LOOP 24'3"

E3172
TOP OF POLE 22'9"
COM 20'5"

GIEE 0059
X-ARM 334°

GIEE 0057 2-45'
Y-APM 33.8'

7111 MBV-A
57-2 9500 331D
GIEE 0056 2-55

GIEE 0054 1-45'
X-ARM 34'3"
DOWN PWR 28'
ST LT 26'6"

GIEE 0055 2-45'
X-ARM 34'3"
DOWN PWR 25'7"
ATTN 223'

REPRESENTATIVE SAMPLE
ACTIVITY AND ROW REPRESENTED ON PLANK ARE
BASED ON RECORDS INFORMATION NOT BASED
ON BOUNDARY SURVEY AND FIELD EXPOSURES

[illegible]

At the direction of Nevada Northern Railroad, Commnet crews will position themselves at each end of RR easement at utility pole locations. Preparation with cable and strand will be made prior to the actual installation. This preparation will provide for a quick installation of cable. Crews will be comprised of 2- two men line technicians and one coordinator that will be dedicated to Nevada Northern RR personnel maintaining communication throughout duration of install. Typical installation intervals take less than 15 minutes. Upon access two separate Aerial line trucks will be positioned at each utility pole, Strand and cable prepared will be pulled across RR raised with line truck on each end, a lasher will be placed on strand and a quick lashing of cable to attach will only take minutes up securing of lashing wire and appropriate hardware installation the cable install will be complete. Constant communication with RR personnel will be adhered to ensuring safety and integrity.

There will not be in utility poles or other Commnet property attached to the Premises. Cable maintenance will be minimal we conduct periodic surveys typically done semiannually to ensure appropriate cable sag is maintained through railroad crossing. This will not require any additional physical access. In the event of an emergency, we will follow Nevada Northern RR procedures and compliance.

WIRELINE CROSSING AGREEMENT

This Wireline Crossing Agreement (this "**Agreement**") is entered into as of June 15, 2023 ("**Effective Date**") by and among Nevada Northern Railway Foundation, a Nevada nonprofit corporation ("**Foundation**"), the City of Ely, a Nevada municipal corporation and political subdivision of the State of Nevada ("**City**") (the City, the Foundation, and any applicable affiliate, collectively, "**Licensor**"), Commnet Nevada Subco, LLC, a Delaware limited liability company ("**Commnet Subco**"), and Commnet of Nevada, LLC, a Delaware limited liability company ("**Commnet**") (Commnet Subco and Commnet, collectively, "**Utility**"). The parties make this Agreement with reference to the following facts:

A. Utility desires to construct, maintain, and operate an overhead fiber optic cable across and above Licensor's track and property at or near North Street in the City of Ely, White Pine County, Nevada, (the Licensor track and property, the "**Premises**") as indicated and shown on the legal description and the drawing(s) attached hereto as **Exhibit A** and incorporated by reference herein (the "**Crossing**").

B. For the protection of the property and rights of the parties, the parties agree to enter into this Agreement.

Accordingly, the parties agree as follows:

1. **Grant.** Licensor grants Utility a limited, non-exclusive license ("**License**") for the Crossing. Licensor grants this License insofar as it has the legal right, power, and authority to do so, and its present property interest permits, and subject to all existing encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's property rights in the Premises. The area covered by this License is only as large as reasonably necessary to install and maintain the Crossing.

2. **Use.**

2.1 Utility may use the License only for construction, operation, maintenance, repair, alteration, and removal (collectively, "**Operation**") of the Crossing. Utility shall maintain the Crossing perpendicular or nearly perpendicular to the Licensor's right-of-way.

2.2 Utility shall not permit use of the Premises by or for any other utility or other party, except with separate prior written consent of Licensor which consent may be denied, delayed, or refused for any reason or no reason and in Licensor's sole and absolute discretion.

3. **Fees.** Upon execution of this Agreement, Utility shall pay the Foundation a one-time fee of \$2,500 ("**Commencement Fee**"). Utility and Foundation acknowledge and agree that Utility has already paid \$600 of the Commencement Fee and owes the Foundation an additional \$1,900 upon executing this Agreement. On each anniversary of the Effective Date, Utility shall pay the Foundation a non-refundable license fee ("**License Fee**") of \$600 provided that the License Fee due each anniversary of the Effective Date will increase by the percentage equal to the increase, if any, in the Consumer Price Index-All Urban Consumers for the preceding 12 consecutive months for which the Consumer Price Index has been reported. The License Fee shall never decrease and shall stay the same if the Consumer Price Index declines in a given measurement period. Utility

shall also pay and be responsible for all applicable flagging and other fees set forth in this Agreement. The current fees are attached hereto as **Exhibit B** and incorporated by reference herein (the “**Fee Schedule**”). All fees except for the License Fee are subject to change by the Foundation in its reasonable discretion. Unless otherwise provided herein, all fees on the Fee Schedule are non-refundable.

4. Required Applications for Operation Activities

4.1 Except for emergency repairs needed to correct an immediate hazard to persons or property, before commencing a major repair or alteration of the Crossing, maintenance on the Crossing involving requiring entry upon the Premises, or removal of the Crossing, Utility must submit an application (“**Application**”) to the Foundation for and receive the Foundation’s written approval of the activity in the Foundation’s sole and absolute discretion. Each Licensor hereby appoints the Foundation as its authorized representative and grants the Foundation the authority to review and approve any Application on its behalf. For this Agreement, an alteration includes the addition of a wire, cable, conduit, pole, or other structure to the Crossing and such Application approval shall be in the Foundation’s sole and absolute discretion. Utility shall prohibit each of its contractors from accessing the Premises unless Utility has an entry license from the Foundation for the access.

4.2 Each Application that Utility submits to the Foundation must identify the Crossing, contain all plans and specifications for the proposed work, contain a drawing or map depicting the Crossing and identifying the portion of the Premises that Utility will access to perform the work, contain certificates of insurance demonstrating that Utility will have coverage for the work satisfying the requirements of Section 12 (Insurance), and be accompanied by the then-current Application fee as set forth on Exhibit B (as amended from time to time by the Foundation in accordance with Section 3) which will be nonrefundable. If the Foundation rejects an Application, the Foundation may provide reasons for the rejection, and Utility will have 15 days after receipt of the rejection Notice to submit a revised Application addressing the reasons for the rejection.

4.3 If the Foundation approves an Application, the provisions of this Agreement will apply to the Crossing described in the Application, and the approval and Application will become part of this Agreement.

4.4 The Foundation will endeavor, but is not obligated, to process each Application within 30 days after receipt of the Application and Application fee. Any Application not processed within 180 days after receipt by the Foundation shall be deemed to be approved. The Foundation may offer expedited Application processing for an additional fee.

5. Notice of Work and Preparation

5.1 Utility shall give Notice to the Foundation at least 30 days in advance of any work involving the Crossing, or any proposed entry to the Premises, except for emergency situations. The Foundation may require that the work and/or entry not be commenced for a period of up to 14 days after the time proposed by Utility. In the scheduling and conduct of this work, Utility and the Foundation shall cooperate and make reasonable efforts to avoid interference with the Foundation’s operations or the operations of any railroad that Licensor permits to use the Premises.

5.2 If Utility must perform emergency work on the Crossing to address a hazard, Utility shall give Notice or telephone notice to the Foundation in advance of the work, if practicable. The parties shall cooperate to avoid any unnecessary delay in the performance of such work.

5.3 Prior to any construction pursuant to this Agreement, Utility shall locate and identify any existing cable, wire, fiber optic, or pipeline (including any appurtenances thereto) of any longitudinal or other occupier ("Occupier"), traversing or located in, on or immediately adjacent to the Crossing, at Utility's sole risk, and shall comply with any government "One Call" or "Call Before You Dig" requirements. As between the parties, Utility shall be solely responsible for any damage to (e.g., cutting, dislocating, etc.) any existing wire(s), cable(s), or pipe(s) of an Occupier, and appurtenances thereto, resulting from Utility's exercise of rights or privileges under this Agreement, and Utility shall indemnify, defend, and hold harmless Licensor for and from any such damage.

5.4 Utility shall be responsible for paying or tendering to Licensor the fair market value for any growing crops, fruit trees, or fences cut, damaged, or destroyed in the construction, reconstruction, operation, and maintenance of the Crossing.

5.5 In advance of conducting any Operations, Utility shall obtain any necessary permit, license or approval (including zoning, health, building, construction, safety or environmental matters) from all federal, state or local public authorities having jurisdiction over the Operation of the Crossing or its intended use.

6. Construction and Maintenance Specifications

6.1 Utility shall Operate the Crossing at Utility's sole risk, cost, and expense without the imposition of any lien or charge on or against the Premises in accordance with all relevant Applications, this Agreement, and in accordance with the design, construction, and maintenance plans attached hereto as Exhibit C and incorporated herein by reference (the "Design, Construction, and Maintenance Plans"), all in a prudent and workmanlike manner and in conformity with the requirements of any applicable governmental or regulatory authority having jurisdiction over the Crossing. If any lien is filed against the Premises because of the License or Utility's activities in the area covered by the License, Utility will be in default of this Agreement, and Licensor will have the right to exercise all of its remedies pursuant to this Agreement, at law and in equity.

6.2 Utility shall comply with all applicable regulations of the Federal Railroad Administration and shall ensure that the Crossing and its Operation of the Crossing provides adequate clearances for rail operations.

6.3 Utility shall not use explosives of any type or perform or cause any blasting without the separate express written consent of the Foundation. If such consent is granted, a representative will be assigned by the Foundation to monitor blasting, and Utility shall reimburse the Foundation for the entire cost and/or expense of furnishing said monitor.

6.4 Any repairs or maintenance to the Crossing, whether resulting from Utility's acts or omissions or from natural or weather events, that are necessary to protect or facilitate Licensor's use of the Premises, shall be made by Utility promptly, but in no event later than 30 days after

Utility receives Notice from the Foundation as to the need for such repairs or maintenance. Before entering onto the Premises to conduct such needed repairs within the required time, Utility will need to make an Application to the Foundation to make such repairs.

6.5 The Foundation, to protect or safeguard its and/or the City's property, rail operations, equipment, passengers, and/or employees from damage or injury, may request immediate repair or renewal of the Crossing, and if Utility does not perform this, Licensor may make or contract to make such repairs or renewals, at the sole risk, cost, and expense of Utility.

6.6 Utility shall ensure at least 30 feet of clear space from the top of the rail to any wires and/or other aspects of the Crossing that are over the Premises.

6.7 If the Crossing involves overhead wires energized at five hundred (500) volts or more, Utility shall erect and maintain the wires at least four (4) feet over and above any existing telephone, telegraph, signal, or transmission wires at the Crossing. During construction of the Crossing, Utility shall place suitable guard structures to catch and support its wires should they break and fall across existing wires or tracks. Utility shall erect these guard structures and their necessary supports, and maintain them, at its sole cost and expense.

6.8 Utility shall Operate the Crossing in accordance with provisions of the National Electrical Safety Code (NESC) and applicable specifications of the American Railway Engineering and Maintenance-of-Way Association, as these provisions and specifications are amended from time to time and which are incorporated herein by reference, to the extent they do not conflict with applicable law.

6.9 Neither the failure of the Foundation to object to any work done, any material used, or method of construction or maintenance of the Crossing, nor any approval given or supervision exercised by the Foundation, will be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations or responsibility of Utility under this Agreement.

6.10 In the event Utility contracts for the Operation of the Crossing, Utility shall require its contractor to comply with all terms of this Agreement and to sign any joinder presented by the Foundation to such contractor to evidence that such contractor shall be bound and jointly and severally liable under this Agreement with Utility.

7. No Adverse Impact

7.1 Utility shall not permit the Crossing or Operation of the Crossing to adversely impact the Premises, Licensor's operations on the Premises, or the operations of third parties, including railroads, authorized by Licensor to use the Premises. Without limiting anything in this Agreement, Utility shall be responsible for any damage to personal property, improvements, buildings, fences, or animals suffered by Licensor by the Operation of the Crossing.

7.2 Upon completion of work on the Crossing, Utility shall leave Licensor's Premises in a condition equal to or better than it was at the time Utility commenced the work.

7.3 Utility shall be responsible for any settlement of the track(s) or roadbed caused by Utility.

7.4 Utility shall Operate each Crossing in accordance with all rules and regulations of the Foundation and applicable governmental or regulatory authority.

8. Flagging and Entry

8.1 Utility shall be responsible for all costs associated with flagmen during construction, repair, alteration, or removal of the Crossing whenever (1) governing law requires flagmen; or (2) the Foundation reasonably requires use of flagmen. Such flagmen may be contracted or employed by a third party, unless the Foundation requires use of its flaggers. If the Foundation requires use of its flaggers, Utility shall reimburse the Foundation for the flaggers and vehicle costs incurred within thirty (30) days of receipt of bills rendered therefor.

8.2 The Foundation may reasonably require, at Utility's sole cost and expense, the placement of watchmen, inspectors, or supervisors for work related to the Crossing.

8.3 Notwithstanding anything to the contrary in this Agreement, before Utility or its contractors enter the Premises for any reason, Utility shall receive express written approval to enter and occupy the Premises from the Foundation's on-duty dispatcher, which the dispatcher may deny in its sole and absolute discretion, and in which case entry would have to be rescheduled.

9. Road Crossings. Nothing in this Agreement will be construed to permit Utility or Utility's contractors to move any vehicles over tracks owned or controlled by Licensor or any of its affiliates except at legal public or private road crossings.

10. Taxes. Utility promptly shall pay and discharge any state or local taxes, assessments, and other governmental charges levied or assessed upon Utility's infrastructure in the Crossing or the Premises solely because of Utility's infrastructure is on it.

11. Licensor Changes. If Licensor makes any changes whatsoever in or to its track or Premises at or near the Crossing, Utility shall promptly make any changes to the location or character of the Crossing that are deemed necessary or appropriate by the Foundation in the Foundation's reasonable discretion accommodate Licensor's changes, and shall endeavor to do so within 90 days of Notice from the Foundation about the changes to the Crossing. Such changes shall be made by Utility at Utility's sole cost and expense, and in accordance with plans satisfactory to the Foundation.

12. Licensor Costs. Licensor's costs and expenses for any work performed at the cost and expense of Utility pursuant to this Agreement shall be paid by Utility within 30 days after Utility receives a bill for the costs and expenses. Except in cases of a rail emergency, Licensor shall provide Notice to Utility of any work to be performed by Licensor prior to Licensor performing or incurring cost.

13. Insurance

13.1 Coverages. Utility shall maintain, at its sole cost and expense, at least all of the following types and amounts of insurance at all times while this Agreement is effective and for one (1) year thereafter:

(a) Commercial General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate each year for bodily injury and property damage.

(b) Business Automobile Liability covering all owned, leased, hired, and non-owned vehicles with limits no less than \$2,000,000 per occurrence.

(c) Workers Compensation with limits no less than the statutory limits for all states, provinces or other jurisdictions of operation.

(d) Employers Liability with limits no less than \$500,000 per each employee for bodily injury by accident and \$500,000 per each employee for bodily injury.

13.2 Railroad Protective Liability. For each period of work involving the Crossing, Utility shall maintain Railroad Protective Liability Insurance coverage in an amount not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate each year. The definition of job location and work on the declaration page of the policy for this coverage shall refer to this Agreement and describe all work or operations performed under this Agreement. If work involving the Crossing is performed by Utility's contractor, Utility shall cause the contractor to secure this coverage before commencing work on the Crossing. If offered by Licensor, Utility and its contractor may pay a construction risk fee set by Licensor in lieu of maintaining this Licensor Protective Liability coverage.

13.3 Policy Requirements. All insurance policies required under this Section 12 shall: be written on an occurrence basis; be issued by insurance companies reasonably satisfactory to the Foundation; shall have no railroad exclusions; be primary to any other insurance maintained by Licensor; name both the City and the Foundation as additional insureds, provided that this applies only to Commercial General Liability, Licensor Protective Liability, and Business Automobile Liability policies; and contain a waiver of subrogation of the insurers rights against Licensor, where permitted by law. Utility shall provide certificates of insurance for the coverage required under this Section 12 upon Licensor's request and before commencing construction of the Crossing; the certificate for Commercial General Liability coverage must show proof of an ISO CG 24 17 10 01 endorsement or its equivalent, and the certificate for the Business Automobile Liability coverage must show proof of an ISO CA 20 70 10 01 or equivalent endorsement. Furnishing of insurance by Utility shall not limit Utility's liability under this Agreement.

Utility understands and agrees that, notwithstanding any other provision of this Agreement, it shall not be permitted to commence any work under this Agreement until it provides evidence satisfactory to the Foundation that all required insurance is in place.

13.4 **Adjustments.** Licensor may modify the insurance coverage required under this Agreement once every five years to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

14. **Condemnation or Abandonment of Premises.** Should the Premises at the location of the Crossing be condemned, appropriated, or acquired by any public authority or other entity having the power of condemnation, or if the Premises at the Crossing shall be abandoned by Licensor, this Agreement shall terminate concerning the Crossing as of the date when the Premises was taken, conveyed, or abandoned.

15. **Licensor Not Liable.** Licensor will not be liable for any damage to, or loss of personal property or equipment sustained by Utility within the area covered by a License, whether or not it is insured, even if such loss is caused by the negligence of Licensor.

16. **Indemnification.** Utility and its successors and assigns shall, and shall cause any of its contractors and agents who perform work on the Crossing to, indemnify, defend, and hold harmless Licensor and its officers, employees, agents, affiliates, successors, and assigns from and against any and all losses, costs, damages, fines, liens, claims, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees, court costs, and disbursements) arising from or by reason of: the Crossing; Utility's or its employees', contractors', or agents' access to, or use of, the Premises or the License or any injury or damage to any person or property to the extent caused by the acts or omissions of Utility or its employees, contractors, or agents in connection with the Crossing or use of the Premises or the License.

17. **Duration, Termination, and Survival.**

This Agreement shall become effective on the Effective Date and continue in effect for one (1) year (the "Initial Term") and automatically renew for one-year periods upon payment of the License Fee described in Section 3., above (each, a "Renewal Term"; the Initial Term and Renewal Terms, collectively, the "Term") thereafter unless and until terminated by either party. A party may terminate this Agreement by providing Notice of its intent that the Agreement not renew to the other party at least 90 days prior to the end of the then-current Term. If Utility breaches this Agreement and such breach is curable, Licensor may terminate this Agreement upon Notice to Utility if Utility fails to cure the breach within 15 days after receiving Notice of the breach from Licensor. The rights and obligations of the parties under this Agreement which, by their nature, should survive termination of this Agreement, will survive termination of this Agreement.

18. **Discontinuance by Utility.** If Utility abandons use of the Crossing, Utility shall notify Licensor in writing of the abandonment, and, unless otherwise agreed by the Foundation, shall promptly (and in no event later than 120 days) remove the Utility's infrastructure from the Premises, and restore the Premises to a condition equal to or better than it was at the time Utility commenced construction of the Crossing, all at Utility's sole cost and expense. If Utility fails to

remove and/or restore, as required by this paragraph, the Foundation may do the work, and Utility shall reimburse the Foundation for all costs and expenses incurred by the Foundation to do such work. If Utility fails to remove any of Utility's property within 120 days after abandonment or termination of this Agreement, all property of the Utility shall become property of the Foundation and the City, at their election, for no consideration. If requested by the Foundation and/or the City, Utility shall execute a bill of sale conveying all such remaining property to the Foundation and the City.

19. Sale of Track

19.1 In the event of sale or other conveyance by Licensor of its track and/or property interest in the Premises, Licensor's conveyance shall be made expressly subject to the right of Utility to continue to occupy the Crossing, subject to all other terms of this Agreement.

19.2 In the event that the track and/or property interest of Licensor is conveyed to any party under Section 19.1, in whole or in part, Licensor reserves the right to assign and delegate, in whole or partially, its rights and corresponding duties under this Agreement; provided, however, that no assignment shall relieve Licensor of any previously accrued duty or obligation hereunder.

20. Title

20.1 Nothing herein shall be deemed to act as any warranty, guarantee, or representation of the quality of title held by Licensor and occupied or used under this Agreement.

20.2 Upon receipt of any third party claims against Licensor or Licensor's title, or against Utility's right to use, occupy, or possess the Crossing or to enjoy any rights hereunder, on the grounds that Licensor did not have sufficient rights, title, or interest in the Crossing, if Licensor elects not to contest the third party claim, then Utility may either: (1) defend such claims, at Utility's sole cost and expense, with the reasonable cooperation of Licensor; or (2) vacate the Crossing and remove the Facilities therefrom in accordance with the provisions of Section 19 above.

21. Miscellaneous Provisions

21.1 City and Foundation. For the purposes of this Agreement, the Foundation shall administer, manage, and oversee all provisions found herein and the activities of the Utility, except that the City shall receive a copy of all Applications under Section 4 and Notices given or received by Foundation and/or Utility pursuant to Section 21.2. The City and the Foundation shall make decisions involving Section 17 jointly. Any and all fees associated with this Agreement shall be paid to, received, and retained by the Foundation.

21.2 Notices. All notices, requests, consents, claims, demands, waivers, communications, or documents which are required or permitted to be given or served under this Agreement (each, a "Notice") shall be in writing and: (a) personally delivered to the party to be notified, in which instance Notice shall be deemed to have been given and received upon actual delivery; (b) sent by certified United States mail, return receipt requested, postage prepaid, addressed to the party to be notified, in which instance Notice shall be deemed to have been given upon deposit in the mail at any postal station and received twenty-four (24) hours after such deposit

or such earlier date as may be shown on the return receipt; (c) sent by a reputable national overnight commercial courier service (such as Federal Express, but not including United States Postal Service Express Mail) addressed to the party to be notified, in which instance Notice shall be deemed to have been given upon deposit with such courier service for delivery and received on the first (1st) business day after deposit; or (d) electronic mail (if a copy is sent within three (3) business days by one of the other means specified above). The addresses of the parties for Notice by any of the foregoing means shall be as follows:

The Utility

Address:
Commnet Nevada Subco, LLC
(Aerial Fiber Project)
Attn: Greg Jaramillo
1562 N. Park Street
Castle Rock, Colorado, 80109

Email: legalnotices@atni.com

The City

Address:
Jennifer Lee, City Clerk
City of Ely, Nevada
501 Mill Street
Ely, Nevada 89301

Email:
CityClerk@cityofelynv.gov

The Foundation

Address:
Mark Bassett, President
Nevada Northern Railway
Foundation, Inc.
1100 Avenue A
Ely, NV 89301

Email: president@nnry.com

Copy to:

Commnet Wireless, LLC
Attn: Legal Dept.
1562 N. Park St.
Castle Roc, CO 80109

Any party may change such party's address for Notices by giving Notice to the other parties in accordance with this Section 21.2.

21.3 **Assignment and Delegation.** Each party shall have the right to assign this Agreement, in whole or in part, to any wholly owned subsidiary or parent, affiliate or to any successor corporation which acquires all or substantially all of the party's capital stock, property, and/or business, by merger, acquisition, or conveyance. Otherwise, and except as set forth elsewhere in this Agreement, assignment shall only be with the written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

21.4 **Waiver.** No waiver of a condition, nonperformance of an obligation, right, or remedy under this agreement will be effective unless it is expressly in writing and duly executed by the party granting the waiver. 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.

21.5 **Binding Effect; Voluntary Agreement.** This Agreement shall be binding upon the parties hereto and upon their respective representatives, permitted successors, and permitted assigns, and shall inure to the benefit of said parties and each of them and their representatives, executors, permitted successors, and permitted assigns. This Agreement is voluntarily entered into between the parties and not as a result of coercion, duress, or undue influence. By executing this

Agreement, each party agrees that he, she, or it has read and fully understood the terms of this Agreement and has consulted with his, her, or its respective attorney prior to execution of this Agreement. Each party represents and warrants that it has the authority to enter into this Agreement, and each individual signing this Agreement on behalf of any party represents and warrants that it has the authority to do so.

21.6 Governing Law, Jurisdiction, and Venue. Except to the extent preempted by federal law, 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 submits to the exclusive jurisdiction and venue of the state courts located in White Pine County, Nevada, in any legal or equitable suit, action, or proceeding arising out of or based upon this Agreement. If for any reason the state courts of White Pine County, Nevada, are unable to adjudicate a dispute under this Agreement, then the parties irrevocably submit to the exclusive jurisdiction and venue of the state courts in Washoe County, Nevada. It is not the intent of the parties to adjudicate any dispute under this Agreement in federal court. However, should for any reason a legal or equitable suit, action, or proceeding arising out of or based upon this Agreement occur in federal court, the parties agree that the federal courts in Washoe County, Nevada, have exclusive jurisdiction and shall be the exclusive venue for any legal or equitable suit, action, or proceeding arising out of or based upon this Agreement.

21.7 Entire Agreement and Modification; No Reliance. This Agreement is the entire agreement of the parties with respect to its subject matter, and supersedes all prior proposals, agreements, memoranda, or understandings with respect to this Agreement or its subject matter. 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 any 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. This Agreement, and any provisions of this Agreement, may not be modified, amended, waived, or extended (which does not include an automatic Renewal Term pursuant to orally, but only by an agreement in writing signed by all the parties hereto. The parties specifically agree that no legal or equitable doctrine, including, but not limited to, the doctrine of promissory estoppel, shall operate for any reason to overcome this requirement of a writing.

21.8 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by any Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

21.9 Incorporation of Exhibits and Recitals. The recitals and Exhibits to this Agreement are incorporated into and made a part of this Agreement.

21.10 Counterparts. This Agreement may be executed in counterparts, and each executed counterpart shall have the efficacy and validity of a signed original and with the same effect as if all parties hereto had signed the same document. All counterparts so executed shall be deemed to be an original, shall be construed together, and shall constitute one Agreement. Photographic or electronic copies of such executed counterparts may be used in lieu of the original for any purpose.

21.11 Time is of the Essence. Time is of the essence of this Agreement and each and every provision hereof of which time is an element.

21.12 Power and Authority; Binding Obligation. Each Party represents and warrants as follows: (i) it is duly incorporated, formed, or organized, validly existing and in good standing under the laws of the applicable state of incorporation or organization; (ii) it possess all the requisite power and authority to enter into and perform this Agreement; (iii) the execution, performance, and delivery of this Agreement has been duly and validly approved by the governing body of such Party; (iv) the signatory hereof on behalf of the Party has been duly and fully authorized to execute this Agreement on behalf of the Party; and (v) this Agreement, when executed and delivered by the Party and the other parties hereto in accordance with the terms hereof, will constitute a valid and binding obligation of the Party that is enforceable in accordance with its terms.

21.13 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.

21.14 Force Majeure. Unless specified elsewhere in this Agreement, no party is excused of nonperformance of its obligations under this Agreement because of any force majeure event, including, but not limited to, the following: (a) any epidemic, pandemic, or quarantine, such as any event connected in any way with COVID-19 or variant thereof; (b) acts of God; (c) flood, fire, earthquake, or explosion; (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) requirements of law; (f) actions, embargoes, or blockades in effect on or after the date of this Agreement; (g) action by any governmental authority; (h) national or regional emergency; (i) strikes, labor stoppages or slowdowns or other industrial disturbances; or (j) shortages of adequate power or transportation facilities. Notwithstanding the foregoing provisions of this Section 21.14, if Commnet's breaches this agreement with respect to certain performance obligations, and such breach was proximately caused by a force majeure event, the Foundation shall have no right to terminate this Agreement and shall instead be limited to damages and other remedies. Such breaches by Commnet are limited to Commnet's performance obligation relating to physical work on the Crossing or the Premises, such as the Operation of the Crossing or required repair work on the Premises.

21.15 Jury Trial Waiver. THE PARTIES WAIVE FULLY THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN EACH AND EVERY TRIAL OR OTHER PROCEEDING IN WHICH ONE OR MORE CAUSES OF ACTION OR ISSUES ARE RAISED WHICH RESULT FROM OR ARISE OUT OF THIS AGREEMENT. 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 OFFICERS, 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.

21.16 No Third-Party Beneficiaries. This Agreement solely benefits the parties to this Agreement, the parties' respective permitted successors and assigns, any affiliate of Licensor, and any party executing a joinder agreement to be bound by the terms of this Agreement. Nothing in this Agreement, express or implied, confers on any other legal person a legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

21.17 Liability Joint and Several. Commnet Subco and Commnet are jointly and severally liable for all obligations hereunder and for all breaches of this Agreement.

21.18 Attorneys' Fees and Costs. If any party brings any action or proceeding to enforce, protect, establish, or construe any right or remedy arising out of, or relating to, this Agreement in any way, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

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

The parties below execute this Agreement as of the date set forth in the Preamble above.

**NEVADA NORTHERN RAILWAY
FOUNDATION, INC.**

Dated: _____, 2023

By: _____
Mark Bassett, President

CITY OF ELY, NEVADA

Dated: _____, 2023

By: _____
Nathan Robertson, Mayor

COMMNET NEVADA SUBCO, LLC

Dated: _____, 2023

By: _____
Mary Mabey, Authorized

COMMNET OF NEVADA, LLC

Dated: _____, 2023

By: _____
Mary Mabey, Manager

EXHIBIT A

The Premises

EXHIBIT B

Fee Schedule

Fee Description	Fee Amount	Frequency
Commencement Fee	\$2,500	One-Time
Application Fee	\$1,000	Per Occurrence
Engineering-Review Fee	\$1,750	Per Occurrence
Right-of-Entry Fee	\$1,750	Per Entry
License Fee	\$600	Annual
Environmental Assessment Fee	\$1,750	Per Occurrence

EXHIBIT C

Design, Construction, and Maintenance Plans

~~Wireline Crossing Agreement~~

WIRELINE CROSSING AGREEMENT

This Wireline Crossing Agreement (this "Agreement") is entered into as of June 15, 2023 ("Effective Date") by and among Nevada Northern Railway Foundation, a Nevada nonprofit corporation ("Foundation"), the City of Ely, a Nevada municipal corporation and political subdivision of the State of Nevada ("City") (the City, the Foundation, and any applicable affiliate, collectively, "Licensor"), Beehive Telephone Co., Inc., Nevada, a Nevada corporation ("Beehive Nevada"), and Beehive Telephone Company, Inc., a Utah corporation ("Beehive") (Beehive Nevada and Beehive, collectively, "Utility"). The parties make this Agreement with reference to the following facts:

A. Utility desires to construct, maintain, and operate a fiber optic cable across and under Licensor's track and property at or near Nevada Northern Railway Track Mile Post 7, Elko County (the Licensor track and property, the "Premises") as indicated and shown on the legal description and the drawing(s) attached hereto as Exhibit A and incorporated by reference herein (the "Crossing").

B. For the protection of the property and rights of the parties, the parties agree to enter into this Agreement.

Accordingly, the parties agree as follows:

1. **Grant.** Licensor grants Utility a limited, non-exclusive license ("License") for the Crossing. Licensor grants this License insofar as it has the legal right, power, and authority to do so, and its present property interest permits, and subject to all existing encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's property rights in the Premises. The area covered by this License is only as large as reasonably necessary to install and maintain the Crossing.

2. **Use.**

2.1 Utility may use the License only for construction, operation, maintenance, repair, alteration, and removal (collectively, "Operation") of the Crossing. Utility shall maintain the Crossing perpendicular or nearly perpendicular to the Licensor's right-of-way.

2.2 Utility shall not permit use of the Premises by or for any other utility or other party, except with separate prior written consent of Licensor which consent may be denied, delayed, or refused for any reason or no reason and in Licensor's sole and absolute discretion.

3. **Fees.** ~~Upon execution of this Agreement and on~~Upon execution of this Agreement, Utility shall pay the Foundation a one-time fee of \$2,500 ("Commencement Fee"). Utility and Licensor acknowledge and agree that Utility has already paid \$600 of the Commencement Fee and owes the Foundation an additional \$1,900 upon executing this Agreement. On each anniversary of the Effective Date, Utility shall pay the Foundation a non-refundable license fee ("License Fee") of \$600 provided that the License Fee due each anniversary of the Effective Date will increase by the percentage equal to the increase, if any, in the Consumer Price Index-All Urban Consumers for

the preceding 12 consecutive months for which the Consumer Price Index has been reported. The License Fee shall never decrease and shall stay the same if the Consumer Price Index declines in a given measurement period. Utility shall also pay and be responsible for all applicable flagging and other fees set forth in this Agreement. The current fees are attached hereto as Exhibit B and incorporated by reference herein (the "Fee Schedule"). ~~The fees listed on the Fee Schedule are not exhaustive, and all~~ All fees except for the License Fee are subject to change by the Foundation in its reasonable discretion. Unless otherwise provided herein, all fees on the Fee Schedule are non-refundable.

4. Required Applications for Operation Activities

4.1 Except for emergency repairs needed to correct an immediate hazard to persons or property, before commencing a major repair or alteration of the Crossing, maintenance on the Crossing involving requiring entry upon the Premises, or removal of the Crossing, Utility must submit an application ("Application") to the Foundation for and receive the Foundation's written approval of the activity in the Foundation's sole and absolute discretion. Each Licensor hereby appoints the Foundation as its authorized representative and grants the Foundation the authority to review and approve any Application on its behalf. For this Agreement, an alteration includes the addition of a wire, cable, conduit, pole, or other structure to the Crossing, and such Application approval shall be in the Foundation's sole and absolute discretion. Utility shall prohibit each of its contractors from accessing the Premises unless ~~the contractor~~ Utility has an entry license from the Foundation for the access.

4.2 Each Application that Utility submits to the Foundation must identify the Crossing, contain all plans and specifications for the proposed work, contain a drawing or map depicting the Crossing and identifying the portion of the Premises that Utility will access to perform the work, contain certificates of insurance demonstrating that Utility will have coverage for the work satisfying the requirements of Section 12 (Insurance), and be accompanied by the then-current Application fee as set forth on Exhibit B (as amended from time to time by the Foundation in accordance with Section 3), which will be nonrefundable. If the Foundation rejects an Application, ~~Licensor~~ the Foundation may provide reasons for the rejection, and Utility will have 15 days after receipt of the rejection Notice to submit a revised Application addressing the reasons for the rejection.

4.3 If the Foundation approves an Application, the provisions of this Agreement will apply to the Crossing described in the Application, and the approval and Application will become part of this Agreement.

~~4.3.4~~ 4.4 The Foundation will endeavor, but is not obligated, to process each Application within 30 days after receipt of the Application and Application fee. Any Application not processed within 180 days after receipt by the Foundation shall be deemed to be approved. The Foundation may offer expedited Application processing for an additional fee.

5. Notice of Work and Preparation

5.1 Utility shall give Notice to the Foundation at least 30 days in advance of any work involving the Crossing, or any proposed entry to the Premises, except for emergency situations.

The Foundation may require that the work and/or entry not be commenced for a period of up to 14 days after the time proposed by Utility. In the scheduling and conduct of this work, Utility and the Foundation shall cooperate and make reasonable efforts to avoid interference with the Foundation's operations or the operations of any railroad that Licensor permits to use the Premises.

5.2 If Utility must perform emergency work on the Crossing to address a hazard, Utility shall give Notice or telephone notice to the Foundation in advance of the work, if practicable. The parties shall cooperate to avoid any unnecessary delay in the performance of such work.

5.3 Prior to any construction pursuant to this Agreement, Utility shall locate and identify any existing cable, wire, fiber optic, or pipeline (including any appurtenances thereto) of any longitudinal or other occupier ("Occupier"), traversing or located in, on or immediately adjacent to the Crossing, at Utility's sole risk, and shall comply with any government "One Call" or "Call Before You Dig" requirements. As between the parties, Utility shall be solely responsible for any damage to (e.g., cutting, dislocating, etc.) any existing wire(s), cable(s), or pipe(s) of an Occupier, and appurtenances thereto, resulting from Utility's exercise of rights or privileges under this Agreement, and Utility shall indemnify, defend, and hold harmless Licensor ~~harmless for and from~~ any such damage.

5.4 Utility shall be responsible for paying or tendering to Licensor the fair market value for any growing crops, fruit trees, or fences cut, damaged, or destroyed in the construction, reconstruction, operation, and maintenance of the Crossing.

5.5 In advance of conducting any Operations, Utility shall ~~timely~~ obtain any necessary permit, license or approval (including zoning, health, building, construction, safety or environmental matters) from all federal, state or local public authorities having jurisdiction over the Operation of the Crossing or its intended use.

6. Construction and Maintenance Specifications

6.1 Utility shall Operate the Crossing at Utility's sole risk, cost, and expense without the imposition of any lien or charge on or against the Premises, ~~and at a time and in a manner satisfactory to the Foundation in accordance with all relevant Applications, this Agreement~~, and in accordance with the design approved by Licensor and the design, construction, and maintenance plans attached hereto as Exhibit C and incorporated herein by reference (the "Design, Construction, and Maintenance Plans"), all in a prudent and workmanlike manner and in conformity with the requirements of any applicable governmental or regulatory authority having jurisdiction over the Crossing. If any lien is filed against the Premises because of the License or Utility's activities in the area covered by the License, Utility will be in default of this Agreement, and Licensor will have the right to exercise all of its remedies pursuant to this Agreement, at law and in equity.

6.2 Utility shall comply with all applicable regulations of the Federal Railroad Administration and shall ensure that the Crossing and its Operation of the Crossing provides adequate clearances for rail operations.

6.3 Utility shall not use explosives of any type or perform or cause any blasting without the separate express written consent of the Foundation. If such consent is granted, a representative

will be assigned by the Foundation to monitor blasting, and Utility shall reimburse the Foundation for the entire cost and/or expense of furnishing said monitor.

6.4 Any repairs or maintenance to the Crossing, whether resulting from Utility's acts or omissions or from natural or weather events, that are necessary to protect or facilitate Licensor's use of the Premises, shall be made by Utility promptly, but in no event later than 30 days after Utility receives Notice from the Foundation as to the need for such repairs or maintenance. Before entering onto the Premises to conduct such needed repairs within the required time, Utility will need to make an Application to the Foundation to make such repairs.

6.5 The Foundation, to protect or safeguard its and/or the City's property, rail operations, equipment, passengers, and/or employees from damage or injury, may request immediate repair or renewal of the Crossing, and if Utility does not perform this, Licensor may make or contract to make such repairs or renewals, at the sole risk, cost, and expense of Utility.

6.6 Utility shall ensure at least 30 feet of clear space from the top of the rail to any wires and/or other aspects of the Crossing that are over the Premises.

6.7 If the Crossing involves overhead wires energized at five hundred (500) volts or more, Utility shall erect and maintain the wires at least four (4) feet over and above any existing telephone, telegraph, signal, or transmission wires at the Crossing. During construction of the Crossing, Utility shall place suitable guard structures to catch and support its wires should they break and fall across existing wires or tracks. Utility shall erect these guard structures and their necessary supports, and maintain them, at its sole cost and expense.

6.8 Utility shall Operate the Crossing in accordance with provisions of the National Electrical Safety Code (NESC) and applicable specifications of the American Railway Engineering and Maintenance-of-Way Association, as these provisions and specifications are amended from time to time and which are incorporated herein by reference, to the extent they do not conflict with applicable law.

6.9 Neither the failure of the Foundation to object to any work done, any material used, or method of construction or maintenance of the Crossing, nor any approval given or supervision exercised by the Foundation, will be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations or responsibility of Utility under this Agreement.

6.10 In the event Utility contracts for the Operation of the Crossing, Utility shall require its contractor to comply with all terms of this Agreement and to sign any joinder presented by the Foundation to such contractor to evidence that such contractor shall be bound and jointly and severally liable under this Agreement with Utility.

7. No Adverse Impact

7.1 Utility shall not permit the Crossing or Operation of the Crossing to adversely impact the Premises, Licensor's operations on the Premises, or the operations of third parties, including railroads, authorized by Licensor to use the Premises. Without limiting anything in this

Agreement. Utility shall be responsible for any damage to personal property, improvements, buildings, fences, or animals suffered by Licensor by the Operation of the Crossing.

7.2 Upon completion of work on the Crossing, Utility shall leave Licensor's Premises in a condition equal to or better than it was at the time Utility commenced the work.

7.3 Utility shall be responsible for any settlement of the track(s) or roadbed caused by Utility.

7.4 Utility shall Operate each Crossing in accordance with all rules and regulations of the Foundation and applicable governmental or regulatory authority.

8. Flagging and Entry

8.1 Utility shall be responsible for all costs associated with flagmen during construction, repair, alteration, or removal of the Crossing whenever (1) governing law requires flagmen; or (2) the Foundation reasonably requires use of flagmen. Such flagmen may be contracted or employed by a third party, unless the Foundation requires use of its flaggers. If the Foundation requires use of its flaggers, Utility shall reimburse the Foundation for the flaggers and vehicle costs incurred within thirty (30) days of receipt of bills rendered therefor.

8.2 The Foundation may reasonably require, at Utility's sole cost and expense, the placement of watchmen, inspectors, or supervisors for work related to the Crossing.

8.3 Notwithstanding anything to the contrary in this Agreement, before Utility or its contractors enter the Premises for any reason, Utility shall receive express written approval to enter and occupy the Premises from the Foundation's on-duty dispatcher, which the dispatcher may deny in its sole and absolute discretion.

9. Road Crossings. Nothing in this Agreement will be construed to permit Utility or Utility's contractors to move any vehicles over tracks owned or controlled by Licensor or any of its affiliates except at legal public or private road crossings.

10. Taxes. Utility promptly shall pay and discharge any state or local taxes, assessments, and other governmental charges levied or assessed upon Utility's infrastructure in the Crossing or the Premises solely because of Utility's infrastructure is on it.

11. Licensor Changes. If Licensor makes any changes whatsoever in or to its track or Premises at or near the Crossing, Utility shall promptly make any changes to the location or character of the Crossing that are deemed necessary or appropriate as deemed by the Foundation in its sole and absolute discretion, to accommodate Licensor's changes, and shall endeavor to do so within 90 days of Notice from the Foundation about the changes to the Crossing. Such changes shall be made by Utility at Utility's sole cost and expense, and in accordance with plans satisfactory to the Foundation in its sole and absolute discretion.

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12. **Licensor Costs.** Licensor's costs and expenses for any work performed at the cost and expense of Utility pursuant to this Agreement shall be paid by Utility within 30 days after Utility receives a bill for the costs and expenses. Except in cases of a rail emergency, Licensor shall provide Notice to Utility of any work to be performed by Licensor prior to Licensor performing or incurring cost.

13. Insurance

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13.1 **Coverages.** Utility shall maintain, at its sole cost and expense, at least all of the following types and amounts of insurance at all times while this Agreement is effective and for one (1) year thereafter:

(a) Commercial General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate each year for bodily injury and property damage.

(b) Business Automobile Liability covering all owned, leased, hired, and non-owned vehicles with limits no less than \$2,000,000 per occurrence.

(c) Workers Compensation with limits no less than the statutory limits for all states, provinces or other jurisdictions of operation.

(d) Employers Liability with limits no less than \$500,000 per each employee for bodily injury by accident and \$500,000 per each employee for bodily injury.

13.2 **LicensorRailroad Protective Liability.** For each period of work involving the Crossing, Utility shall maintain ~~LicensorRailroad~~ Protective Liability Insurance coverage in an amount not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate each year. The definition of job location and work on the declaration page of the policy for this coverage shall refer to this Agreement and describe all work or operations performed under this Agreement. If work involving the Crossing is performed by Utility's contractor, Utility shall cause the contractor to secure this coverage before commencing work on the Crossing. If offered by Licensor, Utility and its contractor may pay a construction risk fee set by Licensor in lieu of maintaining this Licensor Protective Liability coverage.

13.3 **Policy Requirements.** All insurance policies required under this Section 12 shall: be written on an occurrence basis; be issued by insurance companies reasonably satisfactory to the Foundation; shall have no railroad exclusions; be primary to any other insurance maintained by Licensor; name both the City and the Foundation as additional insureds, provided that this applies only to Commercial General Liability, Licensor Protective Liability, and Business Automobile Liability policies; and contain a waiver of subrogation of the insurers rights against Licensor, where permitted by law. Utility shall provide certificates of insurance for the coverage required under this Section 12 upon Licensor's request and before commencing construction of the Crossing; the certificate for Commercial General Liability coverage must show proof of an ISO CG 24 17 10 01 endorsement or its equivalent, and the certificate for the Business Automobile Liability coverage must show proof of an ISO CA 20 70 10 01 or equivalent endorsement. Furnishing of insurance by Utility shall not limit Utility's liability under this Agreement.

~~13.4 Self Insurance. Notwithstanding the provisions of this Section 13, Utility may self-assume, understands and/or self-insure in, agrees that, notwithstanding any amount(s) liability arising under other provision of this Agreement, it shall not be permitted to commence any work under this Agreement provided: (a) Utility shall furnish Officer's Certificate of such Insurance to Licensor; and (b) until it provides evidence satisfactory to the Foundation approves Utility's that all required insurance program in its sole and absolute discretion is in place.~~

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~~13.5 13.4 Adjustments.~~ Licensor may modify the insurance coverage required under this Agreement once every five years to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

14. Condemnation or Abandonment of Premises. Should the Premises at the location of the Crossing be condemned, appropriated, or acquired by any public authority or other entity having the power of condemnation, or if the Premises at the Crossing shall be abandoned by Licensor, this Agreement shall terminate concerning the Crossing as of the date when the Premises was taken, conveyed, or abandoned.

15. Licensor Not Liable. Licensor will not be liable for any damage to, or loss of personal property or equipment sustained by Utility within the area covered by a License, whether or not it is insured, even if such loss is caused by the negligence of Licensor.

16. Indemnification. Utility and its successors and assigns shall, and shall cause any of its contractors and agents who perform work on the Crossing to, indemnify, defend, and hold harmless Licensor and its officers, employees, agents, affiliates, successors, and assigns from and against any and all losses, costs, damages, fines, liens, claims, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees, court costs, and disbursements) arising from or by reason of: the Crossing; Utility's or its employees', contractors', or agents' access to, or use of, the Premises or the License; or any injury or damage to any person or property to the extent caused by the acts or omissions of Utility or its employees, contractors, or agents in connection with the Crossing or use of the Premises or the License.

17. Duration, Termination, and Survival.

This Agreement shall become effective on the Effective Date and continue in effect for one (1) year (the "Initial Term") and automatically renew for one-year periods upon payment of the ~~fees~~ License Fee described in Section 3., above (each, a "Renewal Term"; the Initial Term and Renewal Terms, collectively, the "Term") thereafter unless and until terminated by either party. A party may terminate this Agreement by providing Notice of its intent that the Agreement not renew to the other party at least 90 days prior to the end of the then-current Term. If Utility breaches this Agreement and such breach is curable, Licensor may terminate this Agreement upon Notice to Utility if Utility fails to cure the breach within 15 days after receiving Notice of the breach from Licensor. The rights and obligations of the parties under this Agreement which, by their nature, should survive termination of this Agreement, will survive termination of this Agreement.

18. Discontinuance by Utility. If Utility abandons use of the Crossing, Utility shall notify Licensor in writing of the abandonment, and, unless otherwise agreed by the Foundation, shall

promptly (and in no event later than 120 days) remove the Utility's infrastructure from the Premises, and restore the Premises to a condition equal to or better than it was at the time Utility commenced construction of the Crossing, all at Utility's sole cost and expense. If Utility fails to remove and/or restore, as required by this paragraph, the Foundation may do the work, and Utility shall reimburse the Foundation for all costs and expenses incurred by the Foundation to do such work. ~~Additionally, if~~ Utility fails to remove any of Utility's property within 120 days after abandonment or termination of this Agreement, all property of the Utility shall become property of the Foundation and the City, at their election, for no consideration. If requested by the Foundation and/or the City, Utility shall execute a bill of sale conveying all such remaining property to the Foundation and the City.

19. Sale of Track

19.1 In the event of sale or other conveyance by Licensor of its track and/or property interest in the Premises, Licensor's conveyance shall be made expressly subject to the right of Utility to continue to occupy the Crossing, subject to all other terms of this Agreement.

19.2 In the event that the track and/or property interest of Licensor is conveyed to any party under Section 19.1, in whole or in part, Licensor reserves the right to assign and delegate, in whole or partially, its rights and corresponding duties under this Agreement; provided, however, that no assignment shall relieve Licensor of any previously accrued duty or obligation hereunder.

20. Title

20.1 Nothing herein shall be deemed to act as any warranty, guarantee, or representation of the quality of title held by Licensor and occupied or used under this Agreement.

20.2 Upon receipt of any third party claims against Licensor or Licensor's title, or against Utility's right to use, occupy, or possess the Crossing or to enjoy any rights hereunder, on the grounds that Licensor did not have sufficient rights, title, or interest in the Crossing, if Licensor elects not to contest the third party claim, then Utility may either: (1) defend such claims, at Utility's sole cost and expense, with the reasonable cooperation of Licensor; or (2) vacate the Crossing and remove the Facilities therefrom in accordance with the provisions of Section 19 above.

21. Miscellaneous Provisions

21.1 City and Foundation. For the purposes of this Agreement, the Foundation shall administer, manage, and oversee all provisions found herein and the activities of the Utility, except that the City shall receive a copy of all Applications under Section 4 and Notices given or received by Foundation and/or Utility pursuant to Section 21.2. The City and the Foundation shall make decisions involving Section 17 jointly. Any and all fees associated with this Agreement shall be paid to the Foundation and shall thereafter be split equally between the Foundation and the City.

21.2 Notices. All notices, requests, consents, claims, demands, waivers, communications, or documents which are required or permitted to be given or served under this Agreement (each, a "Notice") shall be in writing and: (a) personally delivered to the party to be notified, in which instance Notice shall be deemed to have been given and received upon actual

delivery; (b) sent by certified United States mail, return receipt requested, postage prepaid, addressed to the party to be notified, in which instance Notice shall be deemed to have been given upon deposit in the mail at any postal station and received twenty-four (24) hours after such deposit or such earlier date as may be shown on the return receipt; (c) sent by a reputable national overnight commercial courier service (such as Federal Express, but not including United States Postal Service Express Mail) addressed to the party to be notified, in which instance Notice shall be deemed to have been given upon deposit with such courier service for delivery and received on the first (1st) business day after deposit; or (d) electronic mail (if a copy is sent within three (3) business days by one of the other means specified above). The addresses of the parties for Notice by any of the foregoing means shall be as follows:

The Utility

Address:
Beehive Telephone Company.
Inc. (Buried Fiber Project)
Attn: Cameron Francis
200 Sunset Rd
Lake Point, Utah 84074

Email:
cameron.francis@beehive.net

The City

Address:
Jennifer Lee, City Clerk
City of Ely, Nevada
501 Mill Street
Ely, Nevada 89301

Email:
CityClerk@cityofelynv.gov

The Foundation

Address:
Mark Bassett, President
Nevada Northern Railway
Foundation, Inc.
1100 Avenue A
Ely, NV 89301

Email: president@nnry.com

Any party may change such party's address for Notices by giving Notice to the other parties in accordance with this Section 21.2.

21.3 **Assignment and Delegation.** Each party shall have the right to assign this Agreement, in whole or in part, to any wholly owned subsidiary or parent, affiliate or to any successor corporation which acquires all or substantially all of the party's capital stock, property, and/or business, by merger, acquisition, or conveyance. Otherwise, and except as set forth elsewhere in this Agreement, assignment shall only be with the written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

21.4 **Waiver.** No waiver of a condition, nonperformance of an obligation, right, or remedy under this agreement will be effective unless it is expressly in writing and duly executed by the party granting the waiver. 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.

21.5 **Binding Effect: Voluntary Agreement.** This Agreement shall be binding upon the parties hereto and upon their respective representatives, permitted successors, and permitted assigns, and shall inure to the benefit of said parties and each of them and their representatives, executors, permitted successors, and permitted assigns. This Agreement is voluntarily entered into between the parties and not as a result of coercion, duress, or undue influence. By executing this Agreement, each party agrees that he, she, or it has read and fully understood the terms of this Agreement and has consulted with his, her, or its respective attorney prior to execution of this

Agreement. Each party represents and warrants that it has the authority to enter into this Agreement, and each individual signing this Agreement on behalf of any party represents and warrants that it has the authority to do so.

21.6 Governing Law, Jurisdiction, and Venue. Except to the extent preempted by federal law, 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 submits to the exclusive jurisdiction and venue of the state courts located in White Pine County, Nevada, in any legal or equitable suit, action, or proceeding arising out of or based upon this Agreement. If for any reason the state courts of White Pine County, Nevada, are unable to adjudicate a dispute under this Agreement, then the parties irrevocably submit to the exclusive jurisdiction and venue of the state courts in Washoe County, Nevada. It is not the intent of the parties to adjudicate any dispute under this Agreement in federal court. However, should for any reason a legal or equitable suit, action, or proceeding arising out of or based upon this Agreement occur in federal court, the parties agree that the federal courts in Washoe County, Nevada, have exclusive jurisdiction and shall be the exclusive venue for any legal or equitable suit, action, or proceeding arising out of or based upon this Agreement.

21.7 Entire Agreement and Modification; No Reliance. This Agreement is the entire agreement of the parties with respect to its subject matter, and supersedes all prior proposals, agreements, memoranda, or understandings with respect to this Agreement or its subject matter. 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 any 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. This Agreement, and any provisions of this Agreement, may not be modified, amended, waived, or extended (which does not include an automatic Renewal Term pursuant to orally, but only by an agreement in writing signed by all the parties hereto. The parties specifically agree that no legal or equitable doctrine, including, but not limited to, the doctrine of promissory estoppel, shall operate for any reason to overcome this requirement of a writing.

21.8 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by any Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

21.9 Incorporation of Exhibits and Recitals. The recitals and Exhibits to this Agreement are incorporated into and made a part of this Agreement.

21.10 Counterparts. This Agreement may be executed in counterparts, and each executed counterpart shall have the efficacy and validity of a signed original and with the same effect as if all parties hereto had signed the same document. All counterparts so executed shall be deemed to be an original, shall be construed together, and shall constitute one Agreement. Photographic or electronic copies of such executed counterparts may be used in lieu of the original for any purpose.

21.11 Time is of the Essence. Time is of the essence of this Agreement and each and every provision hereof of which time is an element.

21.12 Power and Authority, Binding Obligation. Each Party represents and warrants as follows: (i) it is duly incorporated, formed, or organized, validly existing and in good standing under the laws of the applicable state of incorporation or organization; (ii) it possess all the requisite power and authority to enter into and perform this Agreement; (iii) the execution, performance, and delivery of this Agreement has been duly and validly approved by the governing body of such Party; (iv) the signatory hereof on behalf of the Party has been duly and fully authorized to execute this Agreement on behalf of the Party; and (v) this Agreement, when executed and delivered by the Party and the other parties hereto in accordance with the terms hereof, will constitute a valid and binding obligation of the Party that is enforceable in accordance with its terms.

21.13 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.

21.14 Force Majeure. Unless specified elsewhere in this Agreement, no party is excused of nonperformance of its obligations under this Agreement because of any force majeure event, including, but not limited to, the following: (a) any epidemic, pandemic, or quarantine, such as any event connected in any way with COVID-19 or variant thereof; (b) acts of God; (c) flood, fire, earthquake, or explosion; (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) requirements of law; (f) actions, embargoes, or blockades in effect on or after the date of this Agreement; (g) action by any governmental authority; (h) national or regional emergency; (i) strikes, labor stoppages or slowdowns or other industrial disturbances; or (j) shortages of adequate power or transportation facilities. Notwithstanding the foregoing provisions of this Section 21.14, if Commnet's breaches this agreement with respect to certain performance obligations, and such breach was proximately caused by a force majeure event, the Foundation shall have no right to terminate this Agreement and shall instead be limited to damages and other remedies. Such breaches by Commnet are limited to Commnet's performance obligation relating to physical work on the Crossing or the Premises, such as the Operation of the Crossing or required repair work on the Premises.

21.15 Jury Trial Waiver. THE PARTIES WAIVE FULLY THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN EACH AND EVERY TRIAL OR OTHER PROCEEDING IN WHICH ONE OR MORE CAUSES OF ACTION OR ISSUES ARE RAISED WHICH RESULT FROM OR ARISE OUT OF THIS AGREEMENT. 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 OFFICERS, 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.

21.16 No Third-Party Beneficiaries. This Agreement solely benefits the parties to this Agreement, the parties' respective permitted successors and assigns, any affiliate of Licensor, and any party executing a joinder agreement to be bound by the terms of this Agreement. Nothing in this Agreement, express or implied, confers on any other legal person a legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

21.17 Liability Joint and Several. Bechive Nevada and Bechive are jointly and severally liable for all obligations hereunder and for all breaches of this Agreement.

21.18 Attorneys' Fees and Costs. If any party brings any action or proceeding to enforce, protect, establish, or construe any right or remedy arising out of, or relating to, this Agreement in any way, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

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

The parties below execute this Agreement as of the date set forth in the Preamble above.

**NEVADA NORTHERN RAILWAY
FOUNDATION, INC.**

Dated: _____, 2023

By: _____
Mark Bassett, President

CITY OF ELY, NEVADA

Dated: _____, 2023

By: _____
Nathan Robertson, Mayor

**BEEHIVE TELEPHONE CO.,
INC., NEVADA**

Dated: _____, 2023

By: _____
Cameron Francis, President

**BEEHIVE TELEPHONE COMPANY,
INC.**

Dated: _____, 2023

By: _____
[Insert Name and Title]

EXHIBIT A
The Premises

EXHIBIT B

Fee Schedule

Fee Description	Fee Amount	Frequency
Commencement Fee	\$2,500	One-Time
Application Fee	\$1,000	One-time Per Occurrence
Engineering-Review Fee	\$1,750	One-time Per Occurrence
Right-of-Entry Fee	\$1,750	Per entry Entry
License Fee	\$600	Annual
Environmental Assessment Fee	\$1,750	Per Occurrence

EXHIBIT C

Design, Construction, and Maintenance Plans

Exhibit C to Wireline Crossing Agreement



295 N 200 E
Mona UT 84845
Phone: 435.660.0816
Email: Cory@cislps.com

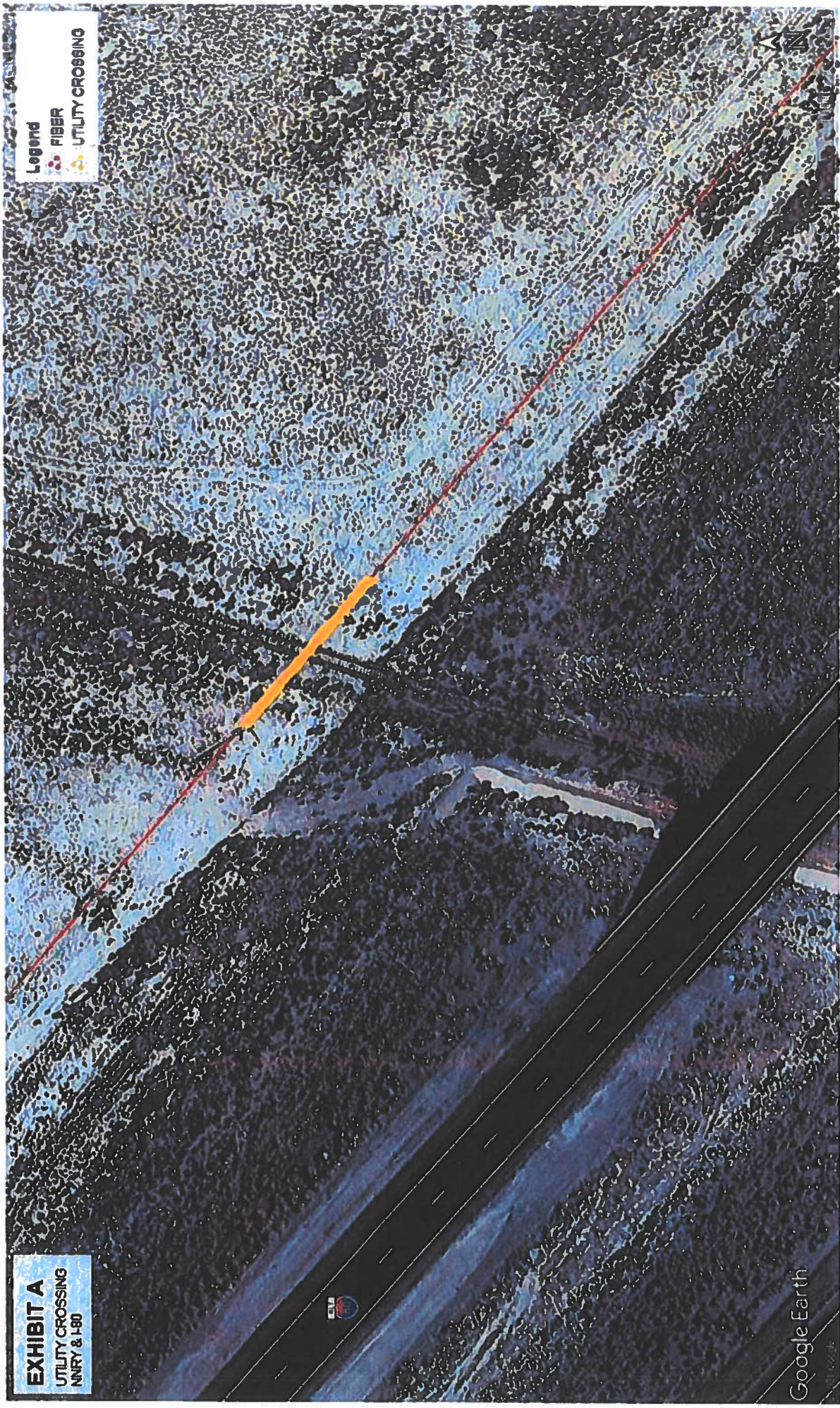
Exhibit "A"

The following Legal Description is based on the Nevada Coordinate System 1983 (NAD83) East Zone, distances are "GRID" in US Survey Feet.

A 10-foot-wide strip of land within Lot 15, Section 18, Township 36 North, Range 67 East Mount Diablo Meridian. The Centerline of said strip of land is described as follows:
Beginning at the intersection of the Easterly boundary of the Northern Nevada Railroad AND a Fiber Optic Cable running line, said intersection lies 1352.17 feet North and 3833.84 feet West of a 1978 Bureau of Land Management Survey monument marking the Southeast Corner of Section 18, Township 36 North, Range 67 East, Mount Diablo Meridian; thence along said Fiber Optic Cable Running line, N 49°15'31" W 109.58 feet to the point of terminus of said centerline.

EXHIBIT A
UTILITY CROSSING
NNRY & I-80

Legend
FIBER
UTILITY CROSSING



BEEHIVE TELEPHONE CO.
2000 Sunset
Lake Point, Utah 84074
UTAH

CONTRACTOR'S CERTIFICATE
- THIS DRAWING, SPECIFICATIONS, AND NOTES SHALL BE THE BASIS FOR THE CONTRACT.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION OF ALL UTILITIES LOCATED WITHIN THE PROJECT AREA.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION OF ALL UTILITIES LOCATED WITHIN THE PROJECT AREA.

PROJECT INFORMATION
PROJECT NO. 60-0172
SHEET NO. 012
DATE 04/23

SEE SHEET 01

SEE SHEET 02

SEE SHEET 03

811

DIRT RD.

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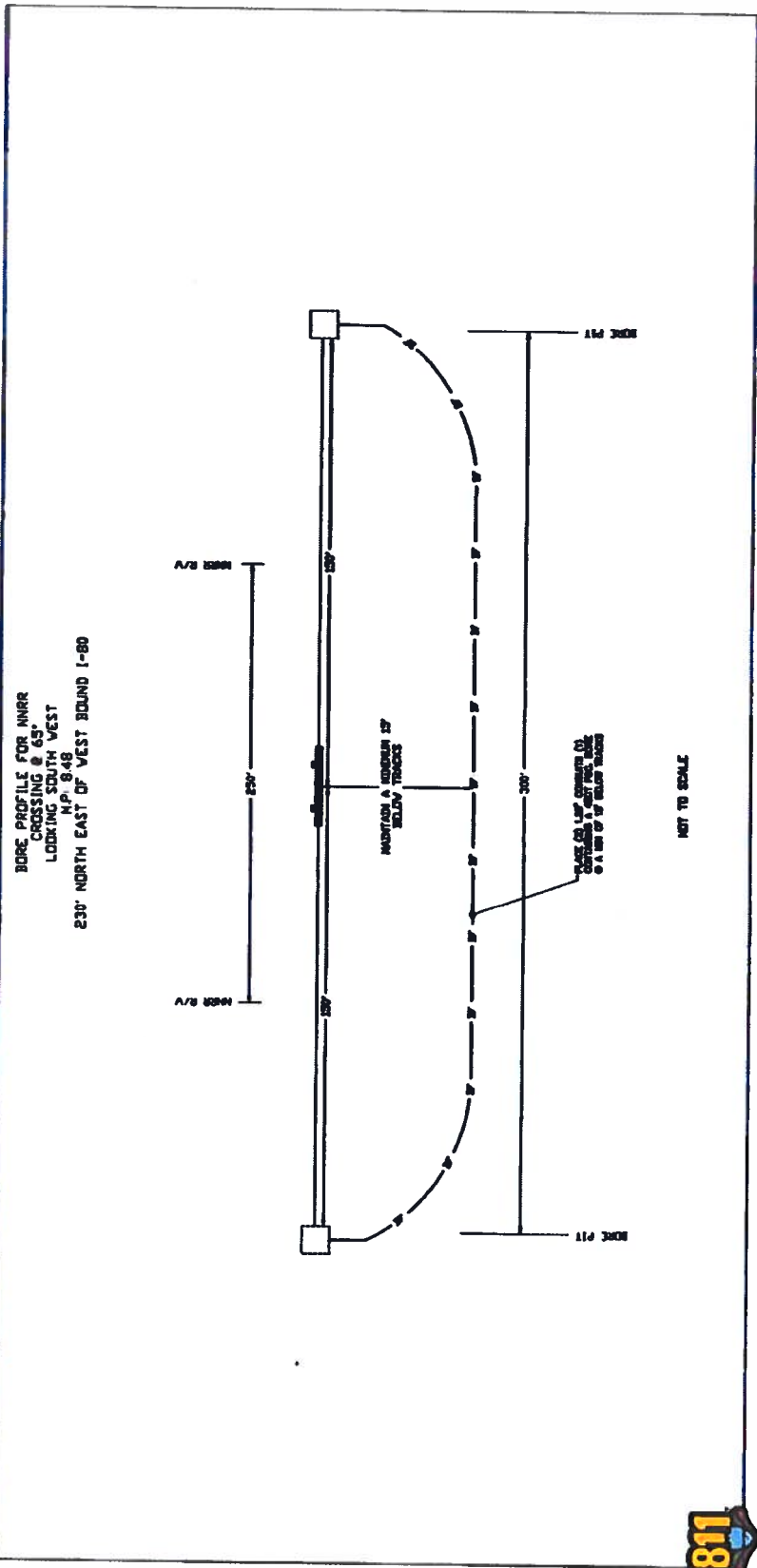
NORTH DIRECTION



POST DATE 06/23

ISS NUMBER RM20-313

IDENT NUMBER 80A or 172

[illegible]

WIRELINE CROSSING AGREEMENT

This Wireline Crossing Agreement (this "**Agreement**") is entered into as of June 15, 2023 ("**Effective Date**") by and among Nevada Northern Railway Foundation, a Nevada nonprofit corporation ("**Foundation**"), the City of Ely, a Nevada municipal corporation and political subdivision of the State of Nevada ("**City**") (the City, the Foundation, and any applicable affiliate, collectively, "**Licensor**"), Beehive Telephone Co., Inc., Nevada, a Nevada corporation ("**Beehive Nevada**"), and Beehive Telephone Company, Inc., a Utah corporation ("**Beehive**") (Beehive Nevada and Beehive, collectively, "**Utility**"). The parties make this Agreement with reference to the following facts:

A. Utility desires to construct, maintain, and operate a fiber optic cable across and under Licensor's track and property at or near Nevada Northern Railway Track Mile Post 7, Elko County (the Licensor track and property, the "**Premises**") as indicated and shown on the legal description and the drawing(s) attached hereto as **Exhibit A** and incorporated by reference herein (the "**Crossing**").

B. For the protection of the property and rights of the parties, the parties agree to enter into this Agreement.

Accordingly, the parties agree as follows:

1. **Grant.** Licensor grants Utility a limited, non-exclusive license ("**License**") for the Crossing. Licensor grants this License insofar as it has the legal right, power, and authority to do so, and its present property interest permits, and subject to all existing encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's property rights in the Premises. The area covered by this License is only as large as reasonably necessary to install and maintain the Crossing.

2. **Use.**

2.1 Utility may use the License only for construction, operation, maintenance, repair, alteration, and removal (collectively, "**Operation**") of the Crossing. Utility shall maintain the Crossing perpendicular or nearly perpendicular to the Licensor's right-of-way.

2.2 Utility shall not permit use of the Premises by or for any other utility or other party, except with separate prior written consent of Licensor which consent may be denied, delayed, or refused for any reason or no reason and in Licensor's sole and absolute discretion.

3. **Fees.** Upon execution of this Agreement, Utility shall pay the Foundation a one-time fee of \$2,500 ("**Commencement Fee**"). Utility and Licensor acknowledge and agree that Utility has already paid \$600 of the Commencement Fee and owes the Foundation an additional \$1,900 upon executing this Agreement. On each anniversary of the Effective Date, Utility shall pay the Foundation a non-refundable license fee ("**License Fee**") of \$600 provided that the License Fee due each anniversary of the Effective Date will increase by the percentage equal to the increase, if any, in the Consumer Price Index-All Urban Consumers for the preceding 12 consecutive months for which the Consumer Price Index has been reported. The License Fee shall never decrease and shall stay the same if the Consumer Price Index declines in a given measurement period. Utility

shall also pay and be responsible for all applicable flagging and other fees set forth in this Agreement. The current fees are attached hereto as **Exhibit B** and incorporated by reference herein (the "Fee Schedule"). All fees except for the License Fee are subject to change by the Foundation in its reasonable discretion. Unless otherwise provided herein, all fees on the Fee Schedule are non-refundable.

4. Required Applications for Operation Activities

4.1 Except for emergency repairs needed to correct an immediate hazard to persons or property, before commencing a major repair or alteration of the Crossing, maintenance on the Crossing involving requiring entry upon the Premises, or removal of the Crossing, Utility must submit an application ("Application") to the Foundation for and receive the Foundation's written approval of the activity in the Foundation's sole and absolute discretion. Each Licensor hereby appoints the Foundation as its authorized representative and grants the Foundation the authority to review and approve any Application on its behalf. For this Agreement, an alteration includes the addition of a wire, cable, conduit, pole, or other structure to the Crossing and such Application approval shall be in the Foundation's sole and absolute discretion. Utility shall prohibit each of its contractors from accessing the Premises unless Utility has an entry license from the Foundation for the access.

4.2 Each Application that Utility submits to the Foundation must identify the Crossing, contain all plans and specifications for the proposed work, contain a drawing or map depicting the Crossing and identifying the portion of the Premises that Utility will access to perform the work, contain certificates of insurance demonstrating that Utility will have coverage for the work satisfying the requirements of Section 12 (Insurance), and be accompanied by the then-current Application fee as set forth on Exhibit B (as amended from time to time by the Foundation in accordance with Section 3), which will be nonrefundable. If the Foundation rejects an Application, the Foundation may provide reasons for the rejection, and Utility will have 15 days after receipt of the rejection Notice to submit a revised Application addressing the reasons for the rejection.

4.3 If the Foundation approves an Application, the provisions of this Agreement will apply to the Crossing described in the Application, and the approval and Application will become part of this Agreement.

4.4 The Foundation will endeavor, but is not obligated, to process each Application within 30 days after receipt of the Application and Application fee. Any Application not processed within 180 days after receipt by the Foundation shall be deemed to be approved. The Foundation may offer expedited Application processing for an additional fee.

5. Notice of Work and Preparation

5.1 Utility shall give Notice to the Foundation at least 30 days in advance of any work involving the Crossing, or any proposed entry to the Premises, except for emergency situations. The Foundation may require that the work and/or entry not be commenced for a period of up to 14 days after the time proposed by Utility. In the scheduling and conduct of this work, Utility and the Foundation shall cooperate and make reasonable efforts to avoid interference with the Foundation's operations or the operations of any railroad that Licensor permits to use the Premises.

5.2 If Utility must perform emergency work on the Crossing to address a hazard, Utility shall give Notice or telephone notice to the Foundation in advance of the work, if practicable. The parties shall cooperate to avoid any unnecessary delay in the performance of such work.

5.3 Prior to any construction pursuant to this Agreement, Utility shall locate and identify any existing cable, wire, fiber optic, or pipeline (including any appurtenances thereto) of any longitudinal or other occupier ("Occupier"), traversing or located in, on or immediately adjacent to the Crossing, at Utility's sole risk, and shall comply with any government "One Call" or "Call Before You Dig" requirements. As between the parties, Utility shall be solely responsible for any damage to (e.g., cutting, dislocating, etc.) any existing wire(s), cable(s), or pipe(s) of an Occupier, and appurtenances thereto, resulting from Utility's exercise of rights or privileges under this Agreement, and Utility shall indemnify, defend, and hold harmless Licensor for and from any such damage.

5.4 Utility shall be responsible for paying or tendering to Licensor the fair market value for any growing crops, fruit trees, or fences cut, damaged, or destroyed in the construction, reconstruction, operation, and maintenance of the Crossing.

5.5 In advance of conducting any Operations, Utility shall obtain any necessary permit, license or approval (including zoning, health, building, construction, safety or environmental matters) from all federal, state or local public authorities having jurisdiction over the Operation of the Crossing or its intended use.

6. Construction and Maintenance Specifications

6.1 Utility shall Operate the Crossing at Utility's sole risk, cost, and expense without the imposition of any lien or charge on or against the Premises in accordance with all relevant Applications, this Agreement, and in accordance with the design approved by Licensor and the design, construction, and maintenance plans attached hereto as **Exhibit C** and incorporated herein by reference (the "**Design, Construction, and Maintenance Plans**"), all in a prudent and workmanlike manner and in conformity with the requirements of any applicable governmental or regulatory authority having jurisdiction over the Crossing. If any lien is filed against the Premises because of the License or Utility's activities in the area covered by the License, Utility will be in default of this Agreement, and Licensor will have the right to exercise all of its remedies pursuant to this Agreement, at law and in equity.

6.2 Utility shall comply with all applicable regulations of the Federal Railroad Administration and shall ensure that the Crossing and its Operation of the Crossing provides adequate clearances for rail operations.

6.3 Utility shall not use explosives of any type or perform or cause any blasting without the separate express written consent of the Foundation. If such consent is granted, a representative will be assigned by the Foundation to monitor blasting, and Utility shall reimburse the Foundation for the entire cost and/or expense of furnishing said monitor.

6.4 Any repairs or maintenance to the Crossing, whether resulting from Utility's acts or omissions or from natural or weather events, that are necessary to protect or facilitate Licensor's use of the Premises, shall be made by Utility promptly, but in no event later than 30 days after

Utility receives Notice from the Foundation as to the need for such repairs or maintenance. Before entering onto the Premises to conduct such needed repairs within the required time, Utility will need to make an Application to the Foundation to make such repairs.

6.5 The Foundation, to protect or safeguard its and/or the City's property, rail operations, equipment, passengers, and/or employees from damage or injury, may request immediate repair or renewal of the Crossing, and if Utility does not perform this, Licensor may make or contract to make such repairs or renewals, at the sole risk, cost, and expense of Utility.

6.6 Utility shall ensure at least 30 feet of clear space from the top of the rail to any wires and/or other aspects of the Crossing that are over the Premises.

6.7 If the Crossing involves overhead wires energized at five hundred (500) volts or more, Utility shall erect and maintain the wires at least four (4) feet over and above any existing telephone, telegraph, signal, or transmission wires at the Crossing. During construction of the Crossing, Utility shall place suitable guard structures to catch and support its wires should they break and fall across existing wires or tracks. Utility shall erect these guard structures and their necessary supports, and maintain them, at its sole cost and expense.

6.8 Utility shall Operate the Crossing in accordance with provisions of the National Electrical Safety Code (NESC) and applicable specifications of the American Railway Engineering and Maintenance-of-Way Association, as these provisions and specifications are amended from time to time and which are incorporated herein by reference, to the extent they do not conflict with applicable law.

6.9 Neither the failure of the Foundation to object to any work done, any material used, or method of construction or maintenance of the Crossing, nor any approval given or supervision exercised by the Foundation, will be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations or responsibility of Utility under this Agreement.

6.10 In the event Utility contracts for the Operation of the Crossing, Utility shall require its contractor to comply with all terms of this Agreement and to sign any joinder presented by the Foundation to such contractor to evidence that such contractor shall be bound and jointly and severally liable under this Agreement with Utility.

7. No Adverse Impact

7.1 Utility shall not permit the Crossing or Operation of the Crossing to adversely impact the Premises, Licensor's operations on the Premises, or the operations of third parties, including railroads, authorized by Licensor to use the Premises. Without limiting anything in this Agreement, Utility shall be responsible for any damage to personal property, improvements, buildings, fences, or animals suffered by Licensor by the Operation of the Crossing.

7.2 Upon completion of work on the Crossing, Utility shall leave Licensor's Premises in a condition equal to or better than it was at the time Utility commenced the work.

7.3 Utility shall be responsible for any settlement of the track(s) or roadbed caused by Utility.

7.4 Utility shall Operate each Crossing in accordance with all rules and regulations of the Foundation and applicable governmental or regulatory authority.

8. Flagging and Entry

8.1 Utility shall be responsible for all costs associated with flagmen during construction, repair, alteration, or removal of the Crossing whenever (1) governing law requires flagmen; or (2) the Foundation reasonably requires use of flagmen. Such flagmen may be contracted or employed by a third party, unless the Foundation requires use of its flaggers. If the Foundation requires use of its flaggers, Utility shall reimburse the Foundation for the flaggers and vehicle costs incurred within thirty (30) days of receipt of bills rendered therefor.

8.2 The Foundation may reasonably require, at Utility's sole cost and expense, the placement of watchmen, inspectors, or supervisors for work related to the Crossing.

8.3 Notwithstanding anything to the contrary in this Agreement, before Utility or its contractors enter the Premises for any reason, Utility shall receive express written approval to enter and occupy the Premises from the Foundation's on-duty dispatcher, which the dispatcher may deny in its sole and absolute discretion.

9. Road Crossings. Nothing in this Agreement will be construed to permit Utility or Utility's contractors to move any vehicles over tracks owned or controlled by Licensor or any of its affiliates except at legal public or private road crossings.

10. Taxes. Utility promptly shall pay and discharge any state or local taxes, assessments, and other governmental charges levied or assessed upon Utility's infrastructure in the Crossing or the Premises solely because of Utility's infrastructure is on it.

11. Licensor Changes. If Licensor makes any changes whatsoever in or to its track or Premises at or near the Crossing, Utility shall promptly make any changes to the location or character of the Crossing that are deemed necessary or appropriate by the Foundation in the Foundation's reasonable discretion accommodate Licensor's changes, and shall endeavor to do so within 90 days of Notice from the Foundation about the changes to the Crossing. Such changes shall be made by Utility at Utility's sole cost and expense, and in accordance with plans satisfactory to the Foundation.

12. Licensor Costs. Licensor's costs and expenses for any work performed at the cost and expense of Utility pursuant to this Agreement shall be paid by Utility within 30 days after Utility receives a bill for the costs and expenses. Except in cases of a rail emergency, Licensor shall provide Notice to Utility of any work to be performed by Licensor prior to Licensor performing or incurring cost.

13. Insurance

13.1 Coverages. Utility shall maintain, at its sole cost and expense, at least all of the following types and amounts of insurance at all times while this Agreement is effective and for one (1) year thereafter:

(a) Commercial General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate each year for bodily injury and property damage.

(b) Business Automobile Liability covering all owned, leased, hired, and non-owned vehicles with limits no less than \$2,000,000 per occurrence.

(c) Workers Compensation with limits no less than the statutory limits for all states, provinces or other jurisdictions of operation.

(d) Employers Liability with limits no less than \$500,000 per each employee for bodily injury by accident and \$500,000 per each employee for bodily injury.

13.2 Railroad Protective Liability. For each period of work involving the Crossing, Utility shall maintain Railroad Protective Liability Insurance coverage in an amount not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate each year. The definition of job location and work on the declaration page of the policy for this coverage shall refer to this Agreement and describe all work or operations performed under this Agreement. If work involving the Crossing is performed by Utility's contractor, Utility shall cause the contractor to secure this coverage before commencing work on the Crossing. If offered by Licensor, Utility and its contractor may pay a construction risk fee set by Licensor in lieu of maintaining this Licensor Protective Liability coverage.

13.3 Policy Requirements. All insurance policies required under this Section 12 shall: be written on an occurrence basis; be issued by insurance companies reasonably satisfactory to the Foundation; shall have no railroad exclusions; be primary to any other insurance maintained by Licensor; name both the City and the Foundation as additional insureds, provided that this applies only to Commercial General Liability, Licensor Protective Liability, and Business Automobile Liability policies; and contain a waiver of subrogation of the insurers rights against Licensor, where permitted by law. Utility shall provide certificates of insurance for the coverage required under this Section 12 upon Licensor's request and before commencing construction of the Crossing; the certificate for Commercial General Liability coverage must show proof of an ISO CG 24 17 10 01 endorsement or its equivalent, and the certificate for the Business Automobile Liability coverage must show proof of an ISO CA 20 70 10 01 or equivalent endorsement. Furnishing of insurance by Utility shall not limit Utility's liability under this Agreement.

Utility understands and agrees that, notwithstanding any other provision of this Agreement, it shall not be permitted to commence any work under this Agreement until it provides evidence satisfactory to the Foundation that all required insurance is in place.

13.4 **Adjustments.** Licensor may modify the insurance coverage required under this Agreement once every five years to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

14. **Condemnation or Abandonment of Premises.** Should the Premises at the location of the Crossing be condemned, appropriated, or acquired by any public authority or other entity having the power of condemnation, or if the Premises at the Crossing shall be abandoned by Licensor, this Agreement shall terminate concerning the Crossing as of the date when the Premises was taken, conveyed, or abandoned.

15. **Licensor Not Liable.** Licensor will not be liable for any damage to, or loss of personal property or equipment sustained by Utility within the area covered by a License, whether or not it is insured, even if such loss is caused by the negligence of Licensor.

16. **Indemnification.** Utility and its successors and assigns shall, and shall cause any of its contractors and agents who perform work on the Crossing to, indemnify, defend, and hold harmless Licensor and its officers, employees, agents, affiliates, successors, and assigns from and against any and all losses, costs, damages, fines, liens, claims, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees, court costs, and disbursements) arising from or by reason of: the Crossing; Utility's or its employees', contractors', or agents' access to, or use of, the Premises or the License; or any injury or damage to any person or property to the extent caused by the acts or omissions of Utility or its employees, contractors, or agents in connection with the Crossing or use of the Premises or the License.

17. **Duration, Termination, and Survival.**

This Agreement shall become effective on the Effective Date and continue in effect for one (1) year (the "Initial Term") and automatically renew for one-year periods upon payment of the License Fee described in Section 3., above (each, a "Renewal Term"; the Initial Term and Renewal Terms, collectively, the "Term") thereafter unless and until terminated by either party. A party may terminate this Agreement by providing Notice of its intent that the Agreement not renew to the other party at least 90 days prior to the end of the then-current Term. If Utility breaches this Agreement and such breach is curable, Licensor may terminate this Agreement upon Notice to Utility if Utility fails to cure the breach within 15 days after receiving Notice of the breach from Licensor. The rights and obligations of the parties under this Agreement which, by their nature, should survive termination of this Agreement, will survive termination of this Agreement.

18. **Discontinuance by Utility.** If Utility abandons use of the Crossing, Utility shall notify Licensor in writing of the abandonment, and, unless otherwise agreed by the Foundation, shall promptly (and in no event later than 120 days) remove the Utility's infrastructure from the Premises, and restore the Premises to a condition equal to or better than it was at the time Utility commenced construction of the Crossing, all at Utility's sole cost and expense. If Utility fails to

remove and/or restore, as required by this paragraph, the Foundation may do the work, and Utility shall reimburse the Foundation for all costs and expenses incurred by the Foundation to do such work. If Utility fails to remove any of Utility's property within 120 days after abandonment or termination of this Agreement, all property of the Utility shall become property of the Foundation and the City, at their election, for no consideration. If requested by the Foundation and/or the City, Utility shall execute a bill of sale conveying all such remaining property to the Foundation and the City.

19. Sale of Track

19.1 In the event of sale or other conveyance by Licensor of its track and/or property interest in the Premises, Licensor's conveyance shall be made expressly subject to the right of Utility to continue to occupy the Crossing, subject to all other terms of this Agreement.

19.2 In the event that the track and/or property interest of Licensor is conveyed to any party under Section 19.1, in whole or in part, Licensor reserves the right to assign and delegate, in whole or partially, its rights and corresponding duties under this Agreement; provided, however, that no assignment shall relieve Licensor of any previously accrued duty or obligation hereunder.

20. Title

20.1 Nothing herein shall be deemed to act as any warranty, guarantee, or representation of the quality of title held by Licensor and occupied or used under this Agreement.

20.2 Upon receipt of any third party claims against Licensor or Licensor's title, or against Utility's right to use, occupy, or possess the Crossing or to enjoy any rights hereunder, on the grounds that Licensor did not have sufficient rights, title, or interest in the Crossing, if Licensor elects not to contest the third party claim, then Utility may either: (1) defend such claims, at Utility's sole cost and expense, with the reasonable cooperation of Licensor; or (2) vacate the Crossing and remove the Facilities therefrom in accordance with the provisions of Section 19 above.

21. Miscellaneous Provisions

21.1 City and Foundation. For the purposes of this Agreement, the Foundation shall administer, manage, and oversee all provisions found herein and the activities of the Utility, except that the City shall receive a copy of all Applications under Section 4 and Notices given or received by Foundation and/or Utility pursuant to Section 21.2. The City and the Foundation shall make decisions involving Section 17 jointly. Any and all fees associated with this Agreement shall be paid to the Foundation and shall thereafter be split equally between the Foundation and the City.

21.2 Notices. All notices, requests, consents, claims, demands, waivers, communications, or documents which are required or permitted to be given or served under this Agreement (each, a "Notice") shall be in writing and: (a) personally delivered to the party to be notified, in which instance Notice shall be deemed to have been given and received upon actual delivery; (b) sent by certified United States mail, return receipt requested, postage prepaid, addressed to the party to be notified, in which instance Notice shall be deemed to have been given upon deposit in the mail at any postal station and received twenty-four (24) hours after such deposit

or such earlier date as may be shown on the return receipt; (c) sent by a reputable national overnight commercial courier service (such as Federal Express, but not including United States Postal Service Express Mail) addressed to the party to be notified, in which instance Notice shall be deemed to have been given upon deposit with such courier service for delivery and received on the first (1st) business day after deposit; or (d) electronic mail (if a copy is sent within three (3) business days by one of the other means specified above). The addresses of the parties for Notice by any of the foregoing means shall be as follows:

The Utility

Address:
Beehive Telephone Company,
Inc. (Buried Fiber Project)
Attn: Cameron Francis
200 Sunset Rd
Lake Point, Utah 84074

Email:
cameron.francis@beehive.net

The City

Address:
Jennifer Lee, City Clerk
City of Ely, Nevada
501 Mill Street
Ely, Nevada 89301

Email:
CityClerk@cityofelynv.gov

The Foundation

Address:
Mark Bassett, President
Nevada Northern Railway
Foundation, Inc.
1100 Avenue A
Ely, NV 89301

Email: president@nnry.com

Any party may change such party's address for Notices by giving Notice to the other parties in accordance with this Section 21.2.

21.3 **Assignment and Delegation.** Each party shall have the right to assign this Agreement, in whole or in part, to any wholly owned subsidiary or parent, affiliate or to any successor corporation which acquires all or substantially all of the party's capital stock, property, and/or business, by merger, acquisition, or conveyance. Otherwise, and except as set forth elsewhere in this Agreement, assignment shall only be with the written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

21.4 **Waiver.** No waiver of a condition, nonperformance of an obligation, right, or remedy under this agreement will be effective unless it is expressly in writing and duly executed by the party granting the waiver. 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.

21.5 **Binding Effect; Voluntary Agreement.** This Agreement shall be binding upon the parties hereto and upon their respective representatives, permitted successors, and permitted assigns, and shall inure to the benefit of said parties and each of them and their representatives, executors, permitted successors, and permitted assigns. This Agreement is voluntarily entered into between the parties and not as a result of coercion, duress, or undue influence. By executing this Agreement, each party agrees that he, she, or it has read and fully understood the terms of this Agreement and has consulted with his, her, or its respective attorney prior to execution of this Agreement. Each party represents and warrants that it has the authority to enter into this Agreement, and each individual signing this Agreement on behalf of any party represents and warrants that it has the authority to do so.

21.6 Governing Law, Jurisdiction, and Venue. Except to the extent preempted by federal law, 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 submits to the exclusive jurisdiction and venue of the state courts located in White Pine County, Nevada, in any legal or equitable suit, action, or proceeding arising out of or based upon this Agreement. If for any reason the state courts of White Pine County, Nevada, are unable to adjudicate a dispute under this Agreement, then the parties irrevocably submit to the exclusive jurisdiction and venue of the state courts in Washoe County, Nevada. It is not the intent of the parties to adjudicate any dispute under this Agreement in federal court. However, should for any reason a legal or equitable suit, action, or proceeding arising out of or based upon this Agreement occur in federal court, the parties agree that the federal courts in Washoe County, Nevada, have exclusive jurisdiction and shall be the exclusive venue for any legal or equitable suit, action, or proceeding arising out of or based upon this Agreement.

21.7 Entire Agreement and Modification; No Reliance. This Agreement is the entire agreement of the parties with respect to its subject matter, and supersedes all prior proposals, agreements, memoranda, or understandings with respect to this Agreement or its subject matter. 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 any 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. This Agreement, and any provisions of this Agreement, may not be modified, amended, waived, or extended (which does not include an automatic Renewal Term pursuant to orally, but only by an agreement in writing signed by all the parties hereto. The parties specifically agree that no legal or equitable doctrine, including, but not limited to, the doctrine of promissory estoppel, shall operate for any reason to overcome this requirement of a writing.

21.8 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by any Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

21.9 Incorporation of Exhibits and Recitals. The recitals and Exhibits to this Agreement are incorporated into and made a part of this Agreement.

21.10 Counterparts. This Agreement may be executed in counterparts, and each executed counterpart shall have the efficacy and validity of a signed original and with the same effect as if all parties hereto had signed the same document. All counterparts so executed shall be deemed to be an original, shall be construed together, and shall constitute one Agreement. Photographic or electronic copies of such executed counterparts may be used in lieu of the original for any purpose.

21.11 Time is of the Essence. Time is of the essence of this Agreement and each and every provision hereof of which time is an element.

21.12 Power and Authority; Binding Obligation. Each Party represents and warrants as follows: (i) it is duly incorporated, formed, or organized, validly existing and in good standing

under the laws of the applicable state of incorporation or organization; (ii) it possess all the requisite power and authority to enter into and perform this Agreement; (iii) the execution, performance, and delivery of this Agreement has been duly and validly approved by the governing body of such Party; (iv) the signatory hereof on behalf of the Party has been duly and fully authorized to execute this Agreement on behalf of the Party; and (v) this Agreement, when executed and delivered by the Party and the other parties hereto in accordance with the terms hereof, will constitute a valid and binding obligation of the Party that is enforceable in accordance with its terms.

21.13 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.

21.14 Force Majeure. Unless specified elsewhere in this Agreement, no party is excused of nonperformance of its obligations under this Agreement because of any force majeure event, including, but not limited to, the following: (a) any epidemic, pandemic, or quarantine, such as any event connected in any way with COVID-19 or variant thereof; (b) acts of God; (c) flood, fire, earthquake, or explosion; (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) requirements of law; (f) actions, embargoes, or blockades in effect on or after the date of this Agreement; (g) action by any governmental authority; (h) national or regional emergency; (i) strikes, labor stoppages or slowdowns or other industrial disturbances; or (j) shortages of adequate power or transportation facilities. Notwithstanding the foregoing provisions of this Section 21.14, if Commnet's breaches this agreement with respect to certain performance obligations, and such breach was proximately caused by a force majeure event, the Foundation shall have no right to terminate this Agreement and shall instead be limited to damages and other remedies. Such breaches by Commnet are limited to Commnet's performance obligation relating to physical work on the Crossing or the Premises, such as the Operation of the Crossing or required repair work on the Premises.

21.15 Jury Trial Waiver. THE PARTIES WAIVE FULLY THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN EACH AND EVERY TRIAL OR OTHER PROCEEDING IN WHICH ONE OR MORE CAUSES OF ACTION OR ISSUES ARE RAISED WHICH RESULT FROM OR ARISE OUT OF THIS AGREEMENT. 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 OFFICERS, 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.

21.16 No Third-Party Beneficiaries. This Agreement solely benefits the parties to this Agreement, the parties' respective permitted successors and assigns, any affiliate of Licensor, and any party executing a joinder agreement to be bound by the terms of this Agreement. Nothing in

this Agreement, express or implied, confers on any other legal person a legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

21.17 Liability Joint and Several. Beehive Nevada and Beehive are jointly and severally liable for all obligations hereunder and for all breaches of this Agreement.

21.18 Attorneys' Fees and Costs. If any party brings any action or proceeding to enforce, protect, establish, or construe any right or remedy arising out of, or relating to, this Agreement in any way, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

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

The parties below execute this Agreement as of the date set forth in the Preamble above.

**NEVADA NORTHERN RAILWAY
FOUNDATION, INC.**

Dated: _____, 2023

By: _____
Mark Bassett, President

CITY OF ELY, NEVADA

Dated: _____, 2023

By: _____
Nathan Robertson, Mayor

**BEEHIVE TELEPHONE CO.,
INC., NEVADA**

Dated: _____, 2023

By: _____
Cameron Francis, President

**BEEHIVE TELEPHONE COMPANY,
INC.**

Dated: _____, 2023

By: _____
[Insert Name and Title]

EXHIBIT A

The Premises

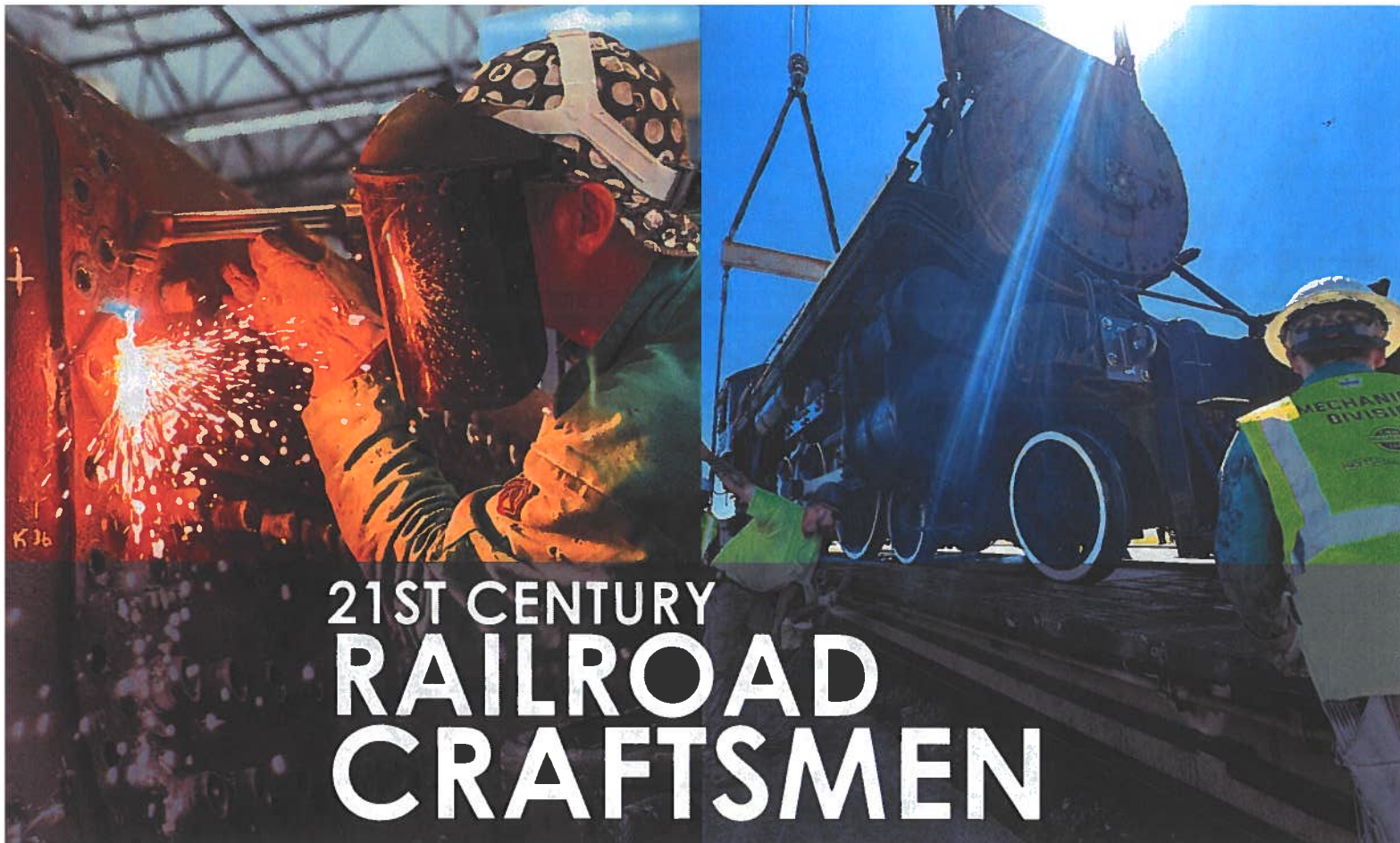
EXHIBIT B

Fee Schedule

Fee Description	Fee Amount	Frequency
Commencement Fee	\$2,500	One-Time
Application Fee	\$1,000	Per Occurrence
Engineering-Review Fee	\$1,750	Per Occurrence
Right-of-Entry Fee	\$1,750	Per Entry
License Fee	\$600	Annual
Environmental Assessment Fee	\$1,750	Per Occurrence

EXHIBIT C

Design, Construction, and Maintenance Plans



With more than 250 years of combined experience in Class I and short line railroad operations and expertise in steam, diesel, passenger, and freight, FMW SOLUTIONS is your industry partner for best-in-class services – including locomotive overhaul and repair, engineering, mechanical work, operations, strategic planning, and more for regional railroads, tourist operations, non-profits, and beyond.

SHORT LINE RAILROADING

Industry veterans offering short line, intermodal, terminal, and switching railroad operations; training, certification, due diligence support; business plan and strategic planning, customer service, and appraisal services.

LOCOMOTIVE REPAIR

Qualified locomotive mechanics offering diagnostics, repairs, and maintenance for GE, EMD, and Alco diesel electric locomotives. From air brakes, prime movers, and electrical systems, to truck rebuilds to field machining worn wheels, our motive power experts have experience ready to tackle projects of any size.

RAIL OPERATIONS

Industrial switching services, flexible hours, multiple daily switches, emergency switches, 24/7 service, plus locomotive and rail car repair.

SAFETY ASSESSMENTS

Our former FRA and DOT team members offer safety and compliance consultation, evaluation of operations, practices, and programs to create a safety-conscious culture. Rail regulation expertise, performance reviews, and FRA audits are all within reach.

HERITAGE

Our machine shop and restoration experts have restored steam and diesel locomotives, freight cars, and passenger cars, we know the importance of budgeting, accountability, and project management. We can forecast costs, contingencies, timelines, and lend a helping hand through the duration of short and long-term preservation efforts.

VISIT US AT FMWSOLUTIONS.COM



21ST CENTURY RAILROAD CRAFTSMEN



NATIONAL RAIL
CONSULTING GROUP

The National Rail Consulting Group, an affiliate of FMW Solutions, is a collective of railroad professionals specializing in railroad strategic planning, passenger rail, market analysis, engineering, risk management, marketing, and railroad public relations. Every day, our team of experts assists freight and short line railroads, passenger agencies, and non-profit organizations across the United States to optimize their railroads, plans, and operations.

GRANT WRITING

Our efforts have earned clients over \$40 million in funding from CRISI, FRA, and other federal sources and have included federal grants for transload or expansion, bridge repair, crossing replacement, and other infrastructure and expansion projects.

Recent clients have included short line freight railroads (more than \$5 million awarded); government-owned railroad entities (\$15 million awarded); and not-for-profit freight / tourist rail entities (\$16 million awarded). In addition, we have worked as a strategic partner and capital campaign advisor to help raise money for a number of rail preservation entities, such as Nashville Steam (\$3.2 million raised).

LEARN MORE AT NATIONALRAILCONSULTING.COM

DAVIDSON WARD, PRESIDENT

Expanded FMW Solutions from its three founding partners into a firm employing over 30 rail professionals who specialize in dozens of crafts. 17 years of experience in the industry, Davidson has helped hundreds of clients and multi-million dollar projects in over 30 states. Chairman of the National Academies of Science Transportation Research Board Committee on Rail Rolling Stock and Motive Power. He graduated from the University of Minnesota summa cum laude with a BS in Architecture.

BRUCE CRAWFORD, DIRECTOR OF SHORT LINE SERVICES

A qualified Designated Supervisor of Locomotive Engineers, Hazmat Trainer, a Track Inspector, a Locomotive Mechanical Inspector, and a Track Signal Inspector. Former Operations Manager of the Huntsville & Madison County Railroad, co-founder of the Tishomingo Railroad in Luka, Mississippi.



Loss Control Overview

According to the Bureau of Labor Statistics, nearly 12 workers are killed on the job every day. In U.S. workplaces more than 3.3 million men and women suffer a serious workplace injury or illness. Many standards promulgated by the Occupational Safety and Health Administration (OSHA) explicitly require the employer to train employees in the safety and health aspects of their jobs. Other OSHA standards make it the employer's responsibility to limit certain job assignments to employees who are "certified," "competent," or "qualified"—meaning that they have had special previous training, in or out of the workplace. These requirements reflect OSHA's belief that training is an essential part of every employer's safety and health program for protecting workers from injuries and illnesses. At L/P Insurance, we are committed to a comprehensive year round risk management approach to your Risk Control exposure. An approach that reduces loss, enhances employee knowledge, promotes favorable e-mod calculations by NCCI and results in a net reduction of your overall insurance rates.

Attached is a detailed listing of Loss Control Services & Employee training LPINS currently perform for our clients.

<u>Loss Control</u>	<u>Approved Training</u>	<u>Approved Training</u>	<u>Other Services</u>
Design and implement site specific safety programs.	Trenching & Excavating	Confined Space Training	Perform market surveys
In-house training utilizing up to date tailgate topics specific to state jurisdiction.	Live-Fire Extinguisher	Forklift Operator Training	Industrial Hygienist***
	Blood borne Pathogens	Mine Safety Training (MSHA) 8-hour refresher and 24-hour new miner training	Ergonomics Specialist***
	Hazardous Communications	OSHA approved classes	Fire Suppression Specialist ***
Conduct OSHA and MSHA approved training.	Accident Investigation	10- & 30-hour Construction 10- & 30-hour General Industry	ISNetWorld Compliance & RAV's Program Development
Implement site specific Incentive & accountability Programs.	Security Procedures	American Red Cross First Aid, CPR & AED Training	Avetta Compliance & Program Development (Formally Browz)
	Emergency Evacuation Planning	Hazmat 172 Training	OSHA-300 log Training & Assistance
Site inspections and reporting for regulating safety programs and Insurance renewal.	General Workplace Safety	Scaffolding Erection/Safety Training* Scaffolding Awareness/ Competent Person Fall Protection Training	MSHA 7002 Training & Assistance
Audit existing safety programs and provide recommended changes	Lock Out/Tag Out	Hazwoper Training 40 hour training 24 hour training 8 hour Annual Refresher	
	FMCSA Assistance		
	Respiratory Protection	CNG Safety Awareness Training	
	Defensive/Distracted Driving	COVID-19 Safety Programs & Training	
	Man-lift/Scissor-lift Training (MEWP)		

