



# City of Ely Fire Department

1780 Great Basin Blvd.  
Ely, Nevada 89301

Business Phone: (775) 289 6633  
Fax: (775) 289 3122

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**Date:** June 5, 2026

**Reporting Period:** May 1 to 31, 2026

**Prepared By:** Patrick Stork, Fire Chief

## Overview of Department Activity

During the reporting period, the City of Ely Fire Department responded to a total of 113 calls for service.

## Call Distribution

- City of Ely: 69
  - White Pine County: 42
  - Nye County: 2
- (See attached report for detailed breakdown.)

## Call Type Summary

- BLS / ALS Responses/Paramedic: 70
- Life Flight Assists: 31
- Fire, Motor Vehicle Accidents, and Other Incidents: 12

## Billing

All ambulance and motor vehicle accident billing is current and up to date.

## Equipment Status

All apparatus is in proper working order and fully available for service.

## Staffing

- Career Personnel: 6
- Volunteer Personnel: 27
- Staff Changes: None

## Training

Training activities were conducted as scheduled.



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## Inspections

We provided all our records for ISO (Insurance Services Office) field representative so they could do our 5-year Fire protection Classification. In 2021 we were able to bring our classification from a 5 down to a 4 and we are thinking with some of the changes over the last 5 years we should be able to go to Class 3 this year.

Fire personnel assisted the Building Department with new business license inspections.

## Equipment Maintenance

Routine preventive maintenance and daily equipment checks are ongoing.

- Oil Changed in Command 1.
- We had our SCBA s, and all of our Extrication Equipment and our Breathing Air Compressor Serviced by Curtis tools, this has to be done annually.

Respectfully submitted,

Patrick Stork  
Fire Chief



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## MAY 2026 FIRE TRAINING REPORT

### *May 1, 2026 – Stryker Stair Chair Operations*

*The City of Ely Fire Department conducted training on the operation and use of the department's new Stryker powered stair chair. Personnel received instruction on the chair's controls, safety features, and operational procedures. Members of the Ely Volunteer Fire Department participated in the training and practiced patient packaging techniques, as well as the safe transport of patients up and down stairways. The training emphasized proper lifting techniques, patient safety, and familiarization with the new equipment.*

*May 21, 2026 – Mayday Procedures and Rapid Intervention Team (RIT) Operations*  
*Training focused on firefighter survival and Mayday procedures. Personnel reviewed department Standard Operating Procedures (SOPs) related to declaring a Mayday and discussed the importance of situational awareness and emergency communication during critical incidents. Firefighters were instructed on the use of various tools that may be utilized to assist with self-rescue or the rescue of a trapped or entangled firefighter.*

*The training also included Rapid Intervention Team (RIT) operations. Members practiced deploying and utilizing the department's RIT bag and reviewed procedures for locating, packaging, and removing a downed firefighter from a structure. Emphasis was placed on teamwork, communication, and firefighter safety.*

### *May 28, 2026 – Firefighter CPR and Emergency Medical Response*

*The final training session of the month incorporated a firefighter emergency medical scenario involving a cardiac event occurring during an emergency incident. Participants were required to recognize the emergency, declare a Mayday, and initiate rescue procedures for the affected firefighter.*

*Firefighters practiced removing personal protective equipment (PPE), packaging the patient, and performing CPR in accordance with department Standard Operating Procedures. The scenario reinforced firefighter rescue techniques, emergency medical response, teamwork, and communication under stressful conditions.*

### *Training Summary*



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*The May training schedule focused on equipment familiarization, firefighter survival, rapid intervention operations, and firefighter emergency medical response. These training sessions provided personnel with practical experience and reinforced critical skills necessary to safely and effectively respond to emergencies while maintaining the highest level of service to the citizens of Ely and White Pine County.*

Filter statement

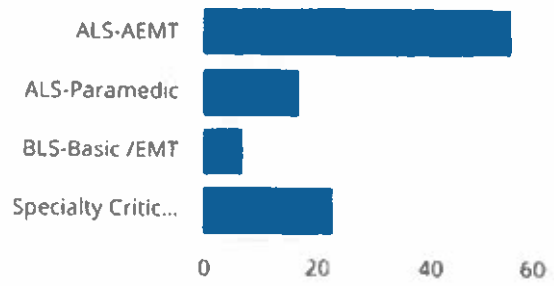
Filters: **Days in Dispatched** 5/1/26 to 5/31/26

# EMS Response Capability

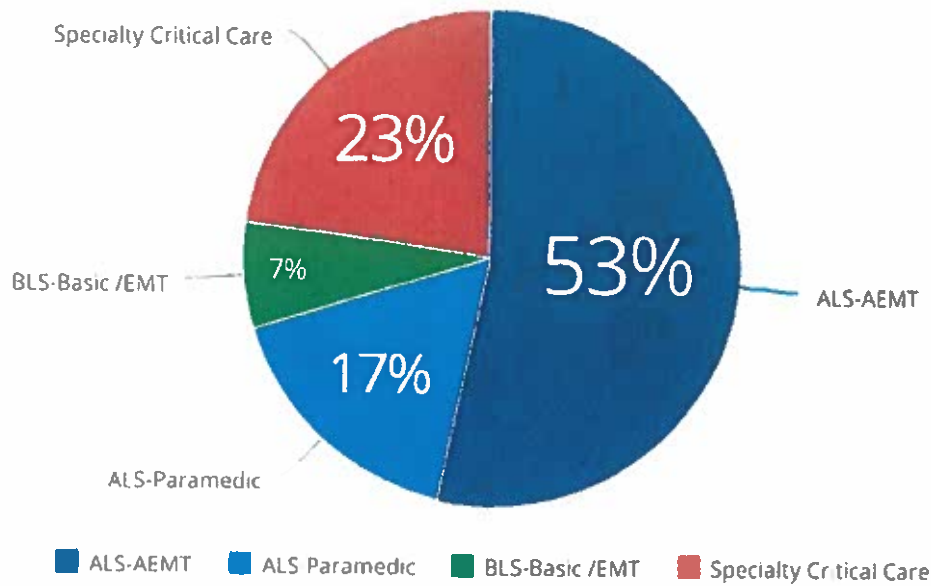
Unit Capability ALS v BLS

Unit Level of Care	Calls
ALS-AEMT	54
ALS-Paramedic	17
BLS-Basic /EMT	7
Specialty Critical Care	23

Unit Capability ALS v BLS



Unit Capability ALS v BLS



Filter statement

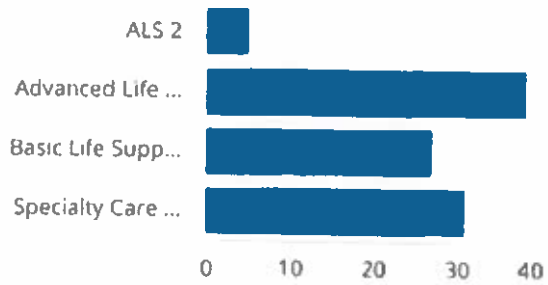
Filters: **Days in Dispatched** 5/1/26 to 5/31/26

# EMS Level of Service Provided

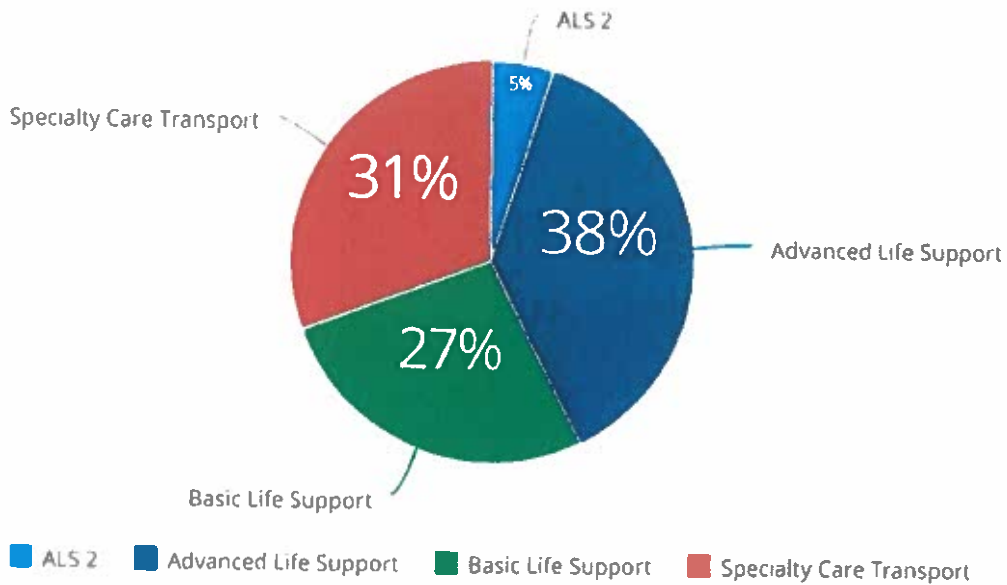
Level of Service Given ALS v BLS

Level of Service	Calls
ALS 2	5
Advanced Life Support	38
Basic Life Support	27
Specialty Care Transport	31

Level of Service Given ALS v BLS



Level of Service Given ALS v BLS



# Council Report Data (EMS) Jun 4, 2025 2:45:29 AM EMS

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Filter statement

Filters

**Days In Dispatched** 5/1/26 to 5/31/26

## Disposition Details

Disposition	Totals
Patient Refused Evaluation/Care (Without Transport)	4
Patient Treated, Released (AMA)	1
Patient Treated, Released (per protocol)	1
Transported Lights/Siren	6
Transported No Lights/Siren	88
N/A	1

## Medications Used

Treatment Category	Treatment Name	Total
Medication	Aspirin	8
	Atropine	1
	Duoneb	2
	Epinephrine 1:10	2
	Fentanyl	10
	Ketorolac	3
	Midazolam	1
	Ondansetron	9
	Thiamine	1

# Council Report Data (Fire) 5/1/26 12:30:11 AM Fire Incidents (NERIS)

Filter statement

Filters: Incident onset 5/1/26 to 5/31/26 Incident status Locked

Total # of Incidents

Total # of Incidents

**113**

Medical

Fire / Hazmat

Medical Calls

**77**

Fire / Hazmat Calls

**2**

Life Flights

Lift Assists

Jail Checks

Cancelled

Life Flights  
**32**

Lift Assists  
**1**

Jail Checks  
**0**

Cancelled Enroute  
**1**

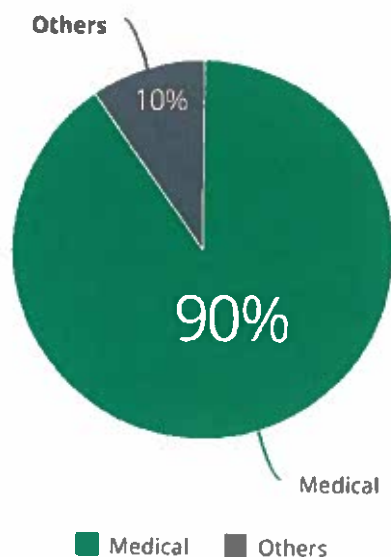
# Council Report Data (Fire) 11/5/2024 8:36 AM Fire incidents (NERIS)

Filter statement

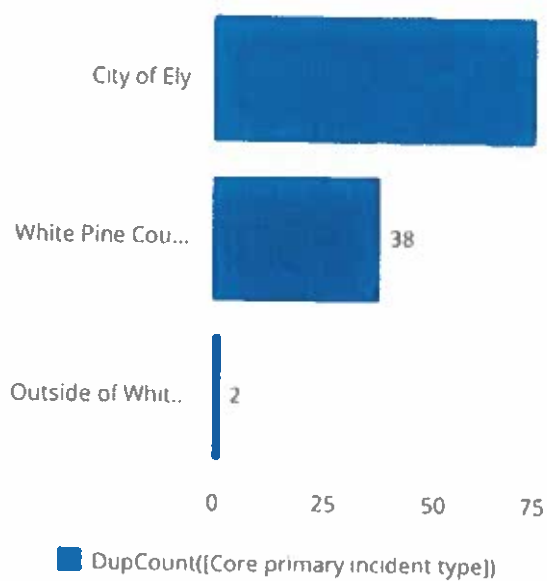
Filters

Incident onset: 5/1/26 to 5/31/26

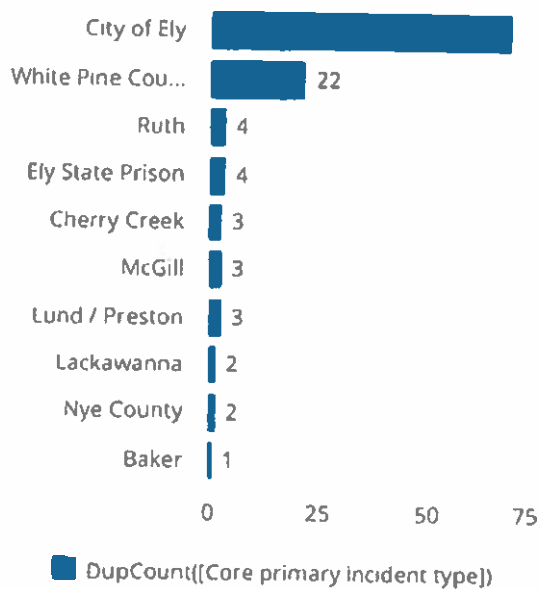
Incident status: Locked



Calls in Each Zone



Calls in Each District



# Council Report Data (Fire) Jan 8, 2026 9:36:10 AM Fire Incidents (NERIS)

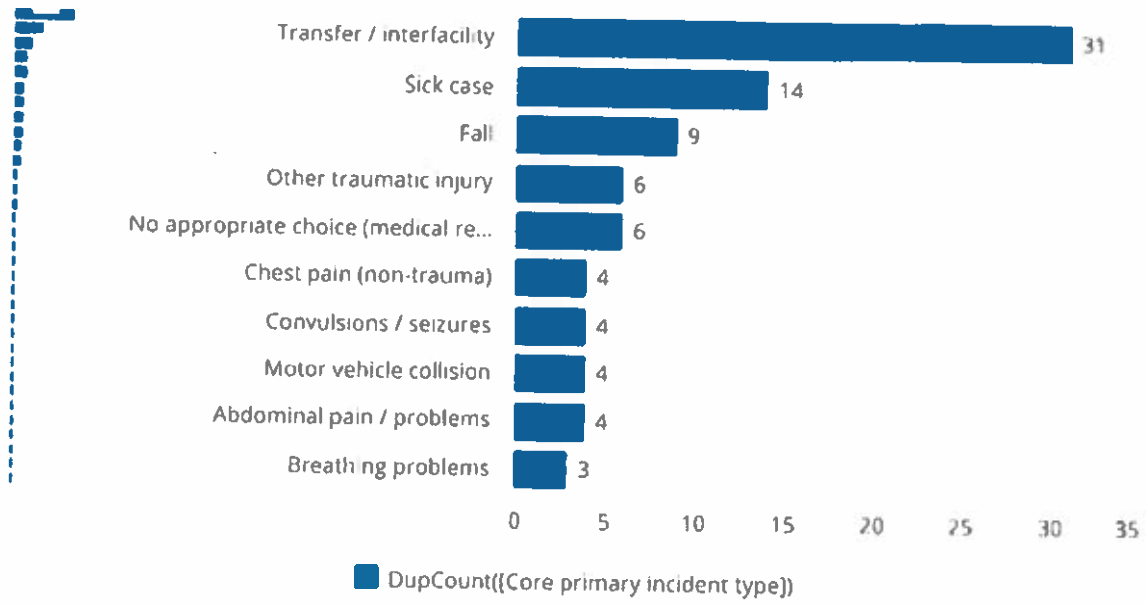
Filter statement



Incident onset 5/1/26 to 5/31/26

Incident status Locked

## Calls in Each District



Council Report Data (Fire) 2020-08-30 10:00 AM Fire Incidents (NERIS)

Filter statement

Incident onset 5/1/26 to 5/31/26 Incident status Locked

Incidents

Core incident number	Core primary incident type	Core additional incident type
260531102208-ELYEMS	Well person check	N/A
260531-1844-ELYEMS	Sick case	N/A
260531-1235-ELYEMS	Sick case	N/A
260531-102244-ELYEMS	Fuel spill / fuel odor	N/A
260530-1753-ELYEMS	Transfer / interfacility	Airmedical transport
260530-1321-ELYEMS	Sick case	N/A
260530-0739-ELYEMS	Sick case	N/A
260530-0348-ELYEMS	Transfer / interfacility	Airmedical transport
260529-1705-ELYEMS	Chest pain (non-trauma)	N/A
260529-1422-ELYEMS	Stroke / CVA	N/A
260529-1414-ELYEMS	Fall	N/A
260529-1320-ELYEMS	Breathing problems	N/A
260528-2151-ELYEMS	Transfer / interfacility	Airmedical transport
260528-2025-ELYEMS	Unconscious victim	N/A
260528-1934-ELYEMS	Unknown problem (medical)	N/A
260528-1857-ELYEMS	Transfer / interfacility	Airmedical transport
260528-1655-ELYEMS	Other traumatic injury	N/A
260528-1617-ELYEMS	Fall	N/A
260528-1551-ELYEMS	Breathing problems	N/A
260528-1523-ELYEMS	Fall	N/A
260528-0850-ELYEMS	Fall	N/A
260528-0114-ELYEMS	Transfer / interfacility	Airmedical transport
260527-1539-ELYEMS	Motor vehicle collision	N/A
260526-1137-ELYEMS	No appropriate choice (medical response)	N/A
260526-0943-ELYEMS	No appropriate choice (medical response)	N/A

1-25 of 113 Results

1 2 3 4 5 >

Rows per page 25



# CITY OF ELY

501 Mill Street Ely, Nevada 89301  
City Hall (775) 289-2430  
[www.cityofelynv.gov](http://www.cityofelynv.gov)

**Date: June 5, 2026**

**To: Mayor Robertson  
City Council Members  
Utility Board Members**

**From: Robert Armijo Landfill Leadman**

**Subject: Landfill monthly report**

**The tonnage report for the month of May, 2026 is as follows.**

**--Class I year to date total tons: 2,929.45  
--Class I year to date daily average: 21.51**

**--Class III year to date total tons 3,751.95  
--Class III year to date daily average: 24.63**

**For the month of May 2026, we replaced the starter on our grader and it is up and running. We also changed u joints on the drive lines of our 938m loader, it is also up and running.**

**Safety topics for the month were proper walk around before running any equipment and proper footing while working on uneven surfaces.**

**Respectfully,**

**Robert Armijo**

## **TRACKAGE RIGHTS AGREEMENT**

**THIS TRACKAGE RIGHTS AGREEMENT** (the “Agreement”), dated as of the *Effective Date* (defined below) is entered into by and among Nevada Northern Railway Foundation, Inc., a Nevada nonprofit corporation (the “Foundation”), the City of Ely, Nevada, a Nevada municipal corporation, (the “City”), and Great Basin & Northern Railroad, Inc. (“GB&NRR”) (collectively, the “Parties” and each, a “Party”).

### **RECITALS:**

**WHEREAS**, the Foundation and the City jointly own a portion of a line of rail commonly referred to as the “Northern Line of the Nevada Northern Railway” or the “Northern Line[.]” extending between Cobre, Nevada, and slightly north of McGill Junction, Nevada, as more fully-described below (collectively the “Line”);

**WHEREAS**, the Foundation, a nonprofit corporation, has incorporated GB&NRR as a for-profit wholly-owned subsidiary under the laws of the State of Nevada;

**WHEREAS**, pursuant to its Notices of Exemption filed with the Surface Transportation Board (“STB”) on May 12, 2004 (STB Finance Docket No. 34506) and November 13, 2020 (STB Finance Docket No. 36459), GB&NRR currently possesses STB authority to operate as a rail common carrier on and over the portion of the Nevada Northern Railway from: (i) just north of McGill Junction (Mile Post (“MP”) 127.0) to Keystone (MP 146.1), a distance of approximately 19.1 miles; (ii) Hilina (MP 135.3) to Adverse (MP H-8), a distance of approximately 8 miles; and (iii) McGill Junction (MP 127.9) to McGill (MP MB-2.6), a distance of approximately 2.6 miles (collectively, the “Historical Line”);

**WHEREAS**, the terms and conditions of GB&NRR’s non-exclusive lease and common carrier operator rights are more fully described in the December 2020 Trackage Rights Agreement by and among the Parties;

**WHEREAS**, as a common carrier railroad in Nevada, GB&NRR is a “public utility” under Nevada law pursuant to NRS § 704.020(1)(a);

**WHEREAS**, the parties agree to work cooperatively to jointly develop and rehabilitate the Northern Line for achieving the public purpose of opening the Nevada Northern Railway for commercial rail activities and expanding the Foundation’s excursion trains

**WHEREAS**, in furtherance of such public purpose, the City and Foundation agree to provide GB&NRR with the non-exclusive lease and common carrier operator rights described herein;

**NOW, THEREFORE**, in consideration of the promises and covenants hereinafter expressed, the Parties, intending to be legally bound, agree, as follows:

## **TERMS AND CONDITIONS:**

### **Section 1. Grant of Non-Exclusive Trackage and Lease Rights**

(a) The Foundation and the City hereby jointly grant non-exclusive trackage and lease rights over the Line to GB&NRR for the purpose of operating on and over the Line as a rail common carrier. Pursuant to this grant, GB&NRR shall have the right to serve any shippers that are presently, or in the future, located on the Line. GB&NRR shall also have the right to interchange traffic with other rail carriers and to transport such traffic on or over the Line, to the extent such needs or circumstances arise during the term of this Agreement.

(b) The foregoing grant of non-exclusive trackage and lease rights is more fully described as follows: Cobre (MP 0.00) to slightly north of McGill Junction (MP 127.00), a distance of approximately 127 miles. The map attached hereto as Exhibit A, and made part hereof and incorporated by reference herein, depicts the Line.

**Section 2. Transportation.** The Foundation and the City shall have no obligation to provide locomotives, railcars, other rail equipment, crews, or other rail personnel for GB&NRR's operations on and over the Line. GB&NRR shall be responsible for obtaining locomotives, railcars, and other rail equipment necessary for its operations. Additionally, GB&NRR shall be responsible for engaging, employing, supervising, and/or terminating all crew and other rail personnel necessary for its operations.

**Section 3. Trackage Rights Charges.** The City and the Foundation shall not assess any trackage rights charges against GB&NRR for the grant of non-exclusive trackage and lease rights over the Line, as provided herein. Instead, and in lieu of such charges, GB&NRR shall be responsible for the repair, upkeep, and maintenance of the Line as provided in Section 5.

**Section 4. Dispatching.** Upon commencing commercial freight service on the Line, GB&NRR shall obtain control and supervision of the Line, dispatch trains, and coordinate all rail activities on and over the Line. GB&NRR shall fully accommodate excursion trains sponsored, scheduled, dispatched, and/or operated by the Foundation. From time to time, as necessary for their mutual benefit and convenience, representatives of GB&NRR shall meet and confer with representatives of the Foundation for the purpose of coordinating common carrier and excursion train operations. GB&NRR shall observe and obey any and all rules and regulations established by the Foundation for rail operations on or over the Line.

**Section 5. Maintenance.** At all times commercial freight traffic is active on the Line, GB&NRR shall have responsibility for the repair, upkeep, and maintenance of the Line to Class 1 standards prescribed by the Federal Railroad Administration and shall bear the costs and expenses related thereto. The Foundation and the City shall have no such responsibility and no obligation for such costs and expenses. Moreover, the Foundation and the City shall not be liable for any loss, damage, injury, harm, death, claim, cost or expense related to maintenance of the Line, and

GB&NRR agrees to indemnify, defend, and hold harmless the Foundation and the City from any loss, damage, injury, harm, death, claim, cost or expense related to such maintenance.

**Section 6. Tax Credits.** GB&NRR shall have the right to all Internal Revenue Code Section 45G ("45G") tax credits and related assignments. As rent for the non-exclusive trackage and lease rights provided to GB&NRR herein, GB&NRR shall pay the net amount it receives from any assignment of 45G tax credits to the City and the Foundation, who shall each be entitled to one-half (1/2) of such amount from GB&NRR. As used herein, the "net amount" GB&NRR receives from any assignment of 45G tax credits is the gross amount of 45G tax credit assignment revenue less all commissions and similar payments paid to third parties. The City and the Foundation shall each pay one-half (1/2) of all legal and accounting fees associated in any way with GB&NRR's 45G tax credits.

**Section 7. Joint Development.** The Parties shall use their good faith and commercially reasonable efforts to work cooperatively to jointly develop and rehabilitate the Line for achieving the public purpose of opening the Nevada Northern Railway for commercial rail activities and expanding the Foundation's excursion trains. Such good faith, commercially reasonable efforts, include, but are not limited to, joint efforts to obtain government grants and other sources of funds for the rehabilitation of the Line and communication between the Parties on cooperative work in furtherance of this Section 7. Nothing herein is intended to nor shall create a partnership for federal tax purposes.

**Section 8. Liability.**

(a) GB&NRR shall indemnify, defend, and hold harmless the Foundation and the City from and against any loss, damage, injury, harm, death, claim, cost or expense, arising in connection with its negligent performance of rail operations on or over the Line pursuant to this Agreement, except to the extent that such loss, damage, injury, harm, death, claim, cost or expense arises from the negligence or the willful misconduct of the City and/or the Foundation.

(b) GB&NRR shall provide immediate written notice to both the Foundation and the City of any claim or demand for loss, damage, injury, harm, death, claim, cost or expense, arising in connection with its rail operations on or over the Line.

**Section 9. Insurance.** At its sole cost and expense, GB&NRR shall procure and maintain, at all times commercial freight traffic is active on the Line during the term of this Agreement, comprehensive general liability insurance and all other forms of insurance necessary or appropriate to cover risks, liabilities, and casualties arising in connection with its rail operations on or over the Line. The limit for GB&NRR's comprehensive general liability insurance shall be an amount not less than \$2,000,000. Additionally, GB&NRR shall maintain all insurance required by federal and state laws, rules, and regulations. If any insurance policy required herein is terminated, cancelled, or ceases to be effective, GB&NRR shall provide immediate written notice to both the City and the Foundation.

**Section 10. Compliance with Laws.** GB&NRR shall comply with the safety regulations of the Federal Railroad Administration of the U.S. Department of Transportation and any other applicable federal or state laws, regulations, or rules pertaining to the operation, condition, inspection and safety of the Line, trains, locomotives, railcars, equipment, crews, and railroad personnel. GB&NRR shall be fully responsible for any charges, fines, fees, penalties, costs, and expenses arising from its failure to comply with applicable laws, rules, and regulations. GB&NRR shall also be responsible for all reporting, accounting, and document-retention requirements related to its operations as a rail common carrier.

**Section 11. Taxes.** GB&NRR shall be responsible for all applicable federal, state, and local government taxes that relate to its locomotives, railcars, other rail equipment, crews, train personnel, and operations over the Line.

**Section 12. STB Approvals.** At its own expense, GB&NRR shall obtain and maintain all necessary and proper federal authority to operate as a rail common carrier. However, both the City and the Foundation shall cooperate with GB&NRR in securing required regulatory approval(s), including but not limited to furnishing information to such government authorities, and shall bear all reasonable costs arising from such cooperation.

**Section 13. Force Majeure.** Each Party shall be relieved of its respective obligations under this Agreement for the duration of any *force majeure*, which shall include but not be limited to acts of God, flood, pandemic (including COVID-19), earthquake, hurricane, tornado, acts of a public enemy, war, insurrection, sabotage, labor disturbance, governmental order or decree, or similar events beyond the control of the Party. The Party experiencing a *force majeure* shall provide written notice to the other Parties within five (5) days of the onset of such event and again within five (5) days of the termination of such event. The initial notice shall fully describe the *force majeure*, including its cause and likely duration.

**Section 14. Effective Date.** After all Parties have executed this Agreement, this Agreement shall become binding, and terms herein shall become effective as of the Effective Date. As used herein, the "Effective Date" is the date that GB&NRR becomes the common carrier rail operator of the Line pursuant to: (i) the Settlement and Mutual Release of All Claims Agreement, dated as of March 1, 2022, by and among the Foundation, the City, S & S Shortline Leasing, LLC, a Utah limited liability company, Michael Williams, and individual residing in Missouri, and Avory Beggs, an individual residing in Kansas (the "Settlement Agreement"); (ii) GB&NRR's Notice of Exemption filed with the STB on March 29, 2022 (STB Finance Docket No. 36601); or (iii) any other documents related to the foregoing.

**Section 15. Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate on June 30, 2024.

**Section 16. Disputes.**

(a) **Mediation.** The Parties shall use their best, good faith efforts to endeavor to resolve any dispute arising under this Agreement through negotiations by their senior level management representatives. If a dispute or conflict cannot be resolved through such negotiations within thirty (30) days, or if senior level management representatives fail to meet within thirty (30) days, any Party may issue a statement of the dispute or conflict (collectively, the "conflict") to the other Parties, and each other Party shall have the opportunity to respond, in writing, to such statement of the conflict. The Parties shall then meet and confer to select a third-party mediator to resolve the issues presented for conflict resolution by the Parties. The Parties shall endeavor in good faith to mutually agree upon the selection of such third-party mediator. In the event the Parties cannot mutually agree on the selection of a third-party mediator, each Party shall submit to the other Parties a list of three acceptable third-party mediators on a date that is mutually agreed to at 9.00 a.m. on that day. To the extent those lists identify any of the same mediators, the Parties shall select the first identical mediator using any additional identical mediators as alternative mediators. To the extent there are no identical mediators chosen, each Party shall designate a representative of its choosing to select a third-party neutral mediator and the committee of such three such persons shall meet to select a mediator, whose selection must be unanimous by the three-person committee.

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

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

i. **Scope, Governing Rules.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, that is submitted to arbitration under this Section 16.b. shall be determined by final and binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and Mediation Procedures ("Commercial Rules"). The Parties acknowledge and agree that the City's approval of any settlement arising out of binding arbitration is subject to Chapters 241 and 268 of the Nevada Revised Statutes and any other applicable law.

ii. **Authority of Tribunal, Judicial Review.** The award rendered by the arbitrator shall be final, non-reviewable, non-appealable, and binding on the Parties and may be entered and enforced in any court having jurisdiction; provided, however, that nothing in this Section 16.b.ii

shall prohibit a Party from attempting to vacate, modify, or appeal an award if otherwise allowed pursuant to Chapter 38 of the Nevada Revised Statutes. Notwithstanding any other provision of this Agreement, the arbitrator shall have no jurisdiction over matters exclusively within the jurisdiction of the Surface Transportation Board of the United States.

iii. Selection of Tribunal. There shall be one arbitrator agreed to by the Parties within twenty (20) days of receipt by respondent[s] of the request for arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules.

iv. Consolidation, Joinder. If more than one arbitration is commenced under this Agreement and any Party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator selected in the first-filed proceeding shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator.

v. Seat of Arbitration, Languages. The seat or place of arbitration shall be Ely, Nevada. The arbitration shall be conducted and the award shall be rendered in the English language.

vi. Remedies. The arbitrator will have no authority to award punitive damages.

vii. Attorneys' Fees and Costs. The prevailing Party(ies) in the arbitration shall be entitled to receive, in addition to all other damages which it(they) may be entitled, the costs incurred by such Party(ies) in conducting the arbitration, including reasonable attorneys' fees and reasonable expenses and costs.

viii. Specific Intent to Be Bound. The Parties further acknowledge and agree that they are granting the specific authorization required pursuant to Nevada Revised Statutes Section 597.995 and affirmatively acknowledge, consent to, and agree to the inclusion of the dispute-resolution provisions provided for in this Agreement, and agree to execute any other documentation necessary or appropriate to evidence their intent to be bound by these provision as may, now or in the future, be required pursuant to Section 597.995.

  
City's Initials

  
Foundation's Initials

  
GB&NRR's Initials

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

**Section 17. Waiver.** The failure of any Party to enforce any right, privilege, or obligation established by this Agreement on any occasion, or number of occasions, shall not constitute, or be deemed to constitute, a waiver or relinquishment of such right, privilege, or obligation. To the fullest extent allowed by law, all rights, privileges, and obligations shall remain effective and enforceable by the Parties.

**Section 18. No Third-Party Benefit.** This Agreement is for the sole and exclusive benefit of the Parties, hereto. It does not confer, and shall not be deemed to confer, any rights, benefits, or privileges upon any other person.

**Section 19. Assignment & Delegation.** The rights in this Agreement may be assigned, and the duties in this Agreement may be delegated, only upon the express written consent of all the Parties, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, GB&NRR may assign its rights or delegate its duties to the Foundation or another entity wholly owned by the Foundation at any time, subject to obtaining applicable regulatory approvals. If any rights or duties are assigned or delegated pursuant to the terms of this Section, then this Agreement shall inure to the benefit and be binding upon the assignee. Any assignment or delegation that is not in full conformity with this Section shall be null and void.

**Section 20. Notices.** Except for routine communications, which may be transmitted in accordance with the agreement or acquiescence of the Parties, all notices under this Agreement shall be in writing and delivered by electronic mail, certified mail, or overnight courier. Notices transmitted by electronic mail shall be deemed to be received as of the date and time of electronic transmission. Notices transmitted by either certified mail or overnight courier shall be deemed received as of the date and time signed for by the recipient. Notices shall be transmitted to the electronic and physical addresses of the Parties as follows:

<b><u>Great Basin &amp; Northern Railroad, Inc.</u></b>	<b><u>The City</u></b>	<b><u>The Foundation</u></b>
<b>Address:</b> John Gianoli, President Great Basin & Northern Railroad, Inc. PO Box 150040 Ely, NV 89315	<b>Address:</b> Jennifer Lee, City Clerk City of Ely, Nevada 501 Mill Street Ely, Nevada 89301	<b>Address:</b> Mark Bassett, President Nevada Northern Railway Foundation, Inc. 1100 Avenue A Ely, NV 89301
<b>Email:</b> jgianoli@fmbely.com	<b>Email:</b> jlee@elycity.com	<b>Email:</b> president@nnry.com

**Section 21. Severability.** In the event that the operation of any part of this Agreement is determined to result in a violation of any federal, state or local law or regulation, the Parties agree that such part shall be severable as to the jurisdiction in which the operation would result in a violation and that the remaining Sections of this Agreement shall continue in full force and effect.

**Section 22. Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by the laws of the State of Nevada and federal law (regarding matters of rail operations) without regard to conflicts of laws. To the extent any dispute cannot be resolved by the Rules of Commercial Arbitration of the American Arbitration Association as described in Section 16 above, then 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 that cannot be resolved via Section 16 above, then the Parties irrevocably submit to the exclusive jurisdiction and venue of the state courts in Washoe County, Nevada.

**Section 23. Agreement.** This Agreement, together with all Exhibits, constitutes the entire and complete agreement concerning the Foundation's and the City's joint grant of non-exclusive trackage and lease rights to the GB&NRR and supersedes any and all the Parties' prior offers, discussions, negotiations, understandings, or agreements. 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 their respective attorney prior to execution of this Agreement. This Agreement may be modified, supplemented, or amended only through a writing executed and agreed to by all the Parties.

**Section 24. 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.

**Section 25. Incorporation of Recitals and Exhibits.** The recitals to this Agreement and all Exhibits to this Agreement are incorporated into and made a part of this Agreement.

**Section 26. WAIVER OF JURY TRIAL.** NOTWITHSTANDING ANY OTHER PORTION OF THIS AGREEMENT, IN CONNECTION WITH ANY ACTION PROPERLY BEFORE A COURT, THE PARTIES HEREBY EXPRESSLY WAIVE AND FORGO ANY RIGHT TO HAVE THE FACTUAL ISSUES DETERMINED BY A JURY IN CONNECTION WITH ANY ACTION OR PROCEEDING SEEKING TO ENFORCE ANY PROVISION OF, OR BASED ON ANY RIGHTS ARISING OUT OF, THIS AGREEMENT, AND THE PARTIES AGREE THAT ALL ISSUES, WHETHER LEGAL OR FACTUAL, MAY BE FINALLY DECIDED AND DETERMINED BY THE JUDGE OR ARBITRATOR, AS THE CASE MAY BE, ALONE. EACH PARTY REPRESENTS THAT THIS AGREEMENT IS EXECUTED, KNOWINGLY, FREELY, AND VOLUNTARILY AFTER HAVING BEEN FULLY AND COMPLETELY READ AND UNDERSTOOD BY THE PARTY OR ITS AUTHORIZED REPRESENTATIVES, AND THAT THE PARTY UNDERSTANDS THE NATURE OF THE

**RIGHT BEING WAIVED AND THAT IT HAS HAD THE ADEQUATE OPPORTUNITY TO DISCUSS THIS WAIVER WITH ITS COUNSEL.**

**Section 27. Full Cooperation in Execution of Agreement.** The Parties agree to fully cooperate with each other in the execution and performance of this Agreement, to execute any and all supplementary documents necessary to fulfill the intent of this Agreement, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

**Section 28. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument. A facsimile or electronic copy of this Agreement or its signature page shall be accepted as an original. It shall not be necessary for each party to execute the same counterpart. The words "execution," "signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including, without limitation, the Federal Electronic Signatures in Global and National Commerce Act, Title 59 of the Nevada Revised Statutes – Electronic Records and Transactions, and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

**Section 29. Time of Essence.** Time is of the essence of this Agreement whenever time limits are imposed herein, for the performance of any obligation by any person, or whenever the accrual of rights to any of the parties hereto depends upon the passage of time.

**Section 30. Attorneys' Fees.** If any Party brings any action or proceeding to enforce, protect, or establish any right or remedy under this terms of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs.

**Section 31. LEGAL REPRESENTATION, CONSENT, AND WAIVERS OF CONFLICT.** THE FOUNDATION AND THE CITY HAVE BEEN ADVISED AND REPRESENTED IN THIS MATTER BY THE LAW FIRM OF THOMPSON HINE, THE LAW FIRM OF MAUPIN, COX & LeGOY, AND BY THE ELY CITY ATTORNEY. GB&NRR HAS BEEN ADVISED AND REPRESENTED BY THE LAW FIRM OF THOMPSON HINE AND THE LAW FIRM OF MAUPIN, COX & LeGOY. THE PARTIES TO THIS AGREEMENT HEREBY CONSENT TO THE AFOREMENTIONED LEGAL REPRESENTATIONS OF EACH PARTY AND WAIVE ANY CURRENT OR FUTURE CONFLICTS OF INTEREST ARISING FROM SUCH REPRESENTATION. THE PARTIES BELIEVE AND REPRESENT TO EACH OTHER AND TO THE LAW FIRM OF

THOMPSON HINE, THE LAW FIRM OF MAUPIN, COX & LeGOY, AND THE ELY CITY ATTORNEY THAT THE REPRESENTATION DESCRIBED IN THIS PARAGRAPH WILL NOT ADVERSELY AFFECT THEIR RELATIONSHIP WITH EACH OTHER OR WITH THE LAW FIRMS/CITY ATTORNEY. EACH OF THE PARTIES REPRESENTS IT HAS BEEN ADVISED AND GIVEN ADEQUATE OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL WITH RESPECT TO THESE CONSENTS AND WAIVERS, AND, IF IT HAS NOT CONSULTED WITH INDEPENDENT LEGAL COUNSEL, IT HAS VOLUNTARILY WAIVED THE RIGHT AND OPPORTUNITY TO DO SO.

NEVADA NORTHERN RAILWAY  
FOUNDATION, INC.

GREAT BASIN & NORTHERN  
RAILROAD, INC.

Dated: 4/25, 2022.  
By: [Signature]  
Mark Bassett

Dated: 4/25, 2022.  
By: [Signature]  
John Girotoli

Its: President

Its: President

CITY OF ELY, NEVADA

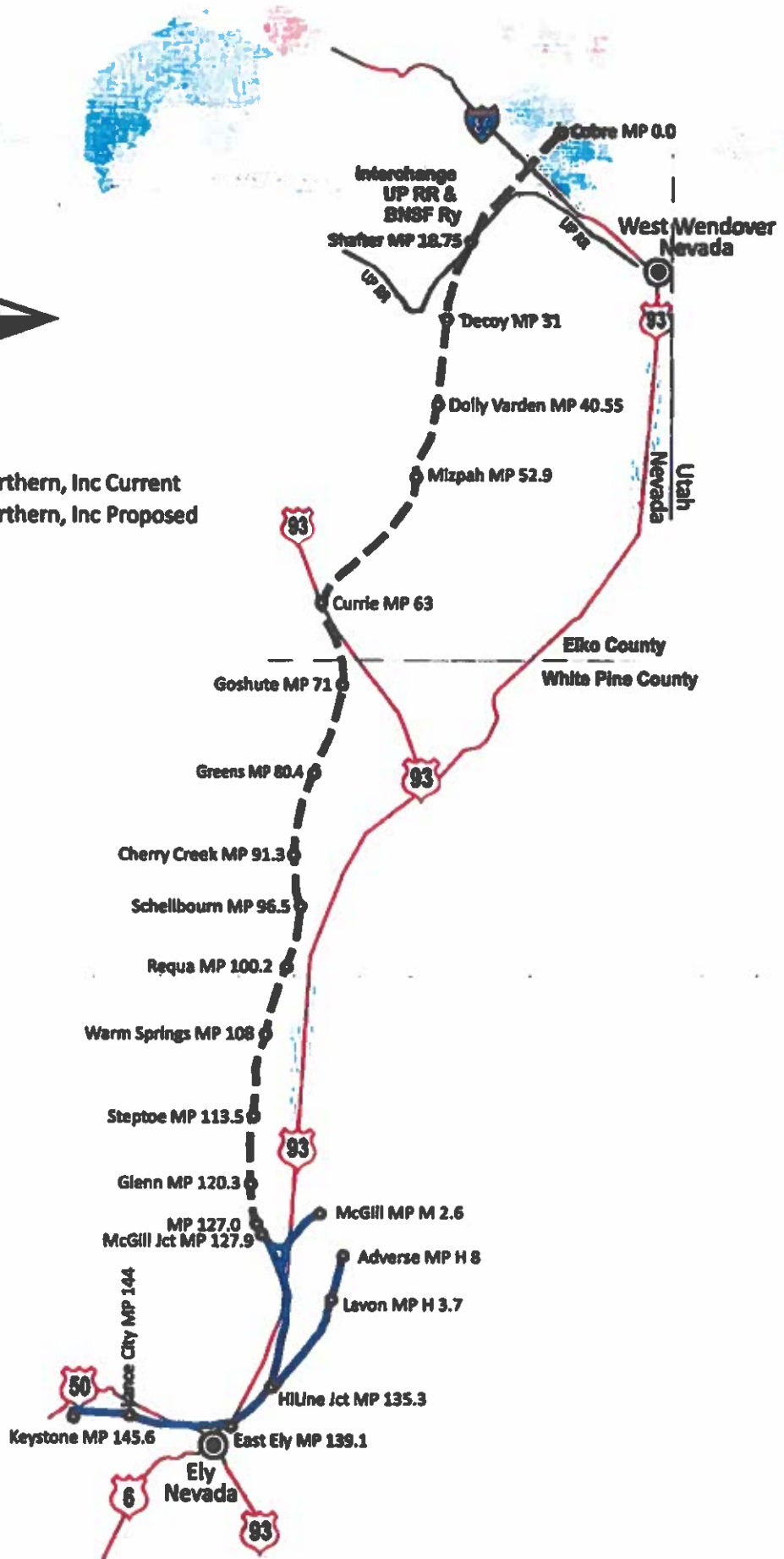
Dated: 4/14, 2022.  
By: [Signature]  
Jerri-Lynn Williams-Harper

Its: Mayor Pro Tem

**EXHIBIT A**



- Great Basin & Northern, Inc Current
- Great Basin & Northern, Inc Proposed
- Station
- City
- US Highway
- Interstate Highway



## **TRACKAGE RIGHTS AGREEMENT**

**THIS AGREEMENT** (the "Agreement") is entered into by and among Nevada Northern Railway Foundation, Inc., a Nevada nonprofit corporation (the "Foundation"), the City of Ely, Nevada, a Nevada municipal corporation, (the "City"), and Great Basin & Northern Railroad, Inc. ("GB&NRR") (collectively, the "Parties" and each, a "Party").

### **RECITALS:**

**WHEREAS**, the Foundation and the City jointly own a line of rail, extending between Mile Post 127.00 of the Nevada Northern Railway north of McGill Junction and Keystone, Nevada, and certain branch lines of rail extending, respectively, between McGill Junction and McGill, Nevada, and Hiline and Adverse, Nevada, as more fully-described below (collectively the "Lines");

**WHEREAS**, the Foundation, a nonprofit corporation, has incorporated GB&NRR as a for-profit wholly-owned subsidiary under the laws of the State of Nevada;

**WHEREAS**, GB&NRR currently operates as a rail common carrier on and over the Lines, subject to authorization from the Surface Transportation Board of the United States and the terms and conditions of a Trackage Rights Agreement previously entered into by the Parties in 2004 ("2004 Agreement") that granted GB&NRR non-exclusive trackage rights to operate on and over the Lines;

**WHEREAS**, the Parties desire to terminate the 2004 Agreement and replace it with this Agreement to permit GB&NRR to operate on and over the Lines;

**NOW, THEREFORE**, in consideration of the promises and covenants hereinafter expressed, the Parties, intending to be legally bound, agree, as follows:

### **TERMS AND CONDITIONS:**

#### **Section 1. Grant of Trackage Rights.**

(a) The Foundation and the City hereby jointly grant non-exclusive trackage rights over the Lines to GB&NRR for the purpose of operating on and over the Lines as a rail common carrier. Pursuant to this grant, GB&NRR shall have the right to serve any shippers that are presently, or in the future, located on the Lines. GB&NRR shall also have the right to interchange traffic with other rail carriers and to transport such traffic on or over the Lines, to the extent such needs or circumstances arise during the term of this Agreement.

(b) The foregoing grant of non-exclusive trackage rights is more fully described as follows:  
(i) McGill Junction (MP 127.00) to Keystone (MP 146.1), a distance of approximately 19.1 miles;  
(ii) Hiline (MP 135.3) to Adverse (MP H-8), a distance of approximately 8 miles; and (iii) McGill

Junction (MP127.9) to McGill (MP MB-2.6), a distance of approximately 2.6 miles. The map attached hereto as **Exhibit A**, and made part hereof and incorporated by reference herein, depicts the Lines.

(c) This Agreement terminates and supersedes the 2004 Agreement.

**Section 2. Transportation.** The Foundation and the City shall have no obligation to provide locomotives, railcars, other rail equipment, crews, or other rail personnel for GB&NRR's operations on and over the Lines. GB&NRR shall be responsible for obtaining locomotives, railcars, and other rail equipment necessary for its operations. Additionally, GB&NRR shall be responsible for engaging, employing, supervising, and/or terminating all crew and other rail personnel necessary for its operations.

**Section 3. Trackage Rights Charges.** The City and the Foundation shall not assess any trackage rights charges against GB&NRR for the grant of non-exclusive trackage rights over the Lines, as provided herein. Instead, and in lieu of such charges, GB&NRR shall be responsible for the repair, upkeep, and maintenance of the Lines at all times that commercial rail traffic is active on the lines, and shall bear the costs and expenses related thereto. At all times commercial rail traffic is active on the lines, GB&NRR shall maintain the Lines, at a minimum, in accordance with the Class 1 standards prescribed by the Federal Railroad Administration. Additionally, GB&NRR shall have the right to all Internal Revenue Code Section 45G tax credits and related assignments; provided, however, that GB&NRR shall reimburse the Foundation for all costs related to maintenance of the track incurred by the Foundation while rail traffic is not active on the Lines.

**Section 4. Dispatching.** Upon active rail traffic commencing on the Lines, GB&NRR shall obtain control and supervision of the Lines, dispatch trains, and coordinate all rail activities on and over the Lines. GB&NRR shall fully accommodate excursion trains sponsored, scheduled, dispatched, and/or operated by the Foundation. From time to time, as necessary for their mutual benefit and convenience, representatives of GB&NRR shall meet and confer with representatives of the Foundation for the purpose of coordinating common carrier and excursion train operations. GB&NRR shall observe and obey any and all rules and regulations established by the Foundation for rail operations on or over the Lines.

**Section 5. Maintenance.** At all times commercial rail traffic is active on the Lines, GB&NRR shall have responsibility for the repair, upkeep, and maintenance of the Lines and shall bear the costs and expenses related thereto. The Foundation and the City shall have no such responsibility and no obligation for such costs and expenses. Moreover, the Foundation and the City shall not be liable for any loss, damage, injury, harm, death, claim, cost or expense related to maintenance of the Lines, and GB&NRR agrees to indemnify, defend, and hold harmless the Foundation and the City from any loss, damage, injury, harm, death, claim, cost or expense related to such maintenance.

**Section 6. Liability.**

(a) GB&NRR shall indemnify, defend, and hold harmless the Foundation and the City from and against any loss, damage, injury, harm, death, claim, cost or expense, arising in connection with its negligent performance of rail operations on or over the Lines pursuant to this Agreement, except to the extent that such loss, damage, injury, harm, death, claim, cost or expense arises from the negligence or the willful misconduct of the City and/or the Foundation.

(b) GB&NRR shall provide immediate written notice to both the Foundation and the City of any claim or demand for loss, damage, injury, harm, death, claim, cost or expense, arising in connection with its rail operations on or over the Lines.

**Section 7. Insurance.** At its sole cost and expense, GB&NRR shall procure and maintain, at all times commercial rail traffic is active on the Lines during the term of this Agreement, comprehensive general liability insurance and all other forms of insurance necessary or appropriate to cover risks, liabilities, and casualties arising in connection with its rail operations on or over the Lines. The limit for GB&NRR's comprehensive general liability insurance shall be an amount not less than \$2,000,000. Additionally, GB&NRR shall maintain all insurance required by federal and state laws, rules, and regulations. If any insurance policy required herein is terminated, cancelled, or ceases to be effective, GB&NRR shall provide immediate written notice to both the City and the Foundation.

**Section 8. Compliance with Laws.** GB&NRR shall comply with the safety regulations of the Federal Railroad Administration of the U.S. Department of Transportation and any other applicable Federal or state laws, regulations, or rules pertaining to the operation, condition, inspection and safety of the Lines, trains, locomotives, railcars, equipment, crews, and railroad personnel. GB&NRR shall be fully responsible for any charges, fines, fees, penalties, costs, and expenses arising from its failure to comply with applicable laws, rules, and regulations. GB&NRR shall also be responsible for all reporting, accounting, and document-retention requirements related to its operations as a rail common carrier.

**Section 9. Taxes.** GB&NRR shall be responsible for all applicable federal, state, and local government taxes that relate to its locomotives, railcars, other rail equipment, crews, train personnel, and operations over the Lines.

**Section 10. STB Approvals.** At its own expense, GB&NRR shall obtain and maintain all necessary and proper federal authority to operate as a rail common carrier. However, both the City and the Foundation shall cooperate with GB&NRR in securing required regulatory approval(s), including but not limited to furnishing information to such government authorities, and shall bear all reasonable costs arising from such cooperation.

**Section 11. Force Majeure.** Each Party shall be relieved of its respective obligations under this Agreement for the duration of any *force majeure*, which shall include but not be limited

to acts of God, flood, pandemic (including COVID-19), earthquake, hurricane, tornado, acts of a public enemy, war, insurrection, sabotage, labor disturbance, governmental order or decree, or similar events beyond the control of the Party. The Party experiencing a *force majeure* shall provide written notice to the other Parties within five (5) days of the onset of such event and again within five (5) days of the termination of such event. The initial notice shall fully describe the *force majeure*, including its cause and likely duration.

**Section 12. Term.** This Agreement shall become effective upon execution by all Parties and shall remain in full force and effect for a term of twenty (20) years from that date.

**Section 13. Disputes.**

(a) **Mediation.** The Parties shall use their best, good faith efforts to endeavor to resolve any dispute arising under this Agreement through negotiations by their senior level management representatives. If a dispute or conflict cannot be resolved through such negotiations within thirty (30) days, or if senior level management representatives fail to meet within thirty (30) days, any Party may issue a statement of the dispute or conflict (collectively, the “conflict”) to the other Parties, and each other Party shall have the opportunity to respond, in writing, to such statement of the conflict. The Parties shall then meet and confer to select a third-party mediator to resolve the issues presented for conflict resolution by the Parties. The Parties shall endeavor in good faith to mutually agree upon the selection of such third-party mediator. In the event the Parties cannot mutually agree on the selection of a third party mediator, each Party shall submit to the other Parties a list of three acceptable third-party mediators on a date that is mutually agreed to at 9.00 a.m. on that day. To the extent those lists identify any of the same mediators, the Parties shall select the first identical mediator using any additional identical mediators as alternative mediators. To the extent there are no identical mediators chosen, each Party shall designate a representative of its choosing to select a third-party neutral mediator and the committee of such three such persons shall meet to select a mediator, whose selection must be unanimous by the three-person committee.

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

(b) **Binding Arbitration.** To the extent the conflict certified pursuant to this Section 13 cannot be resolved by the Parties through mediation, the Parties shall submit their issues to a binding arbitration conducted pursuant to the following terms:

i. **Scope, Governing Rules.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, that is submitted to arbitration under this Section 13.b. shall be determined by final and binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and Mediation Procedures ("Commercial Rules"). The Parties acknowledge and agree that the City's approval of any settlement arising out of binding arbitration is subject to Chapters 241 and 268 of the Nevada Revised Statutes and any other applicable law.

ii. **Authority of Tribunal, Judicial Review.** The award rendered by the arbitrator shall be final, non-reviewable, non-appealable, and binding on the Parties and may be entered and enforced in any court having jurisdiction; provided, however, that nothing in this Section 13.b.ii shall prohibit a Party from attempting to vacate, modify, or appeal an award if otherwise allowed pursuant to Chapter 38 of the Nevada Revised Statutes. Notwithstanding any other provision of this Agreement, the arbitrator shall have no jurisdiction over matters exclusively within the jurisdiction of the Surface Transportation Board of the United States.

iii. **Selection of Tribunal.** There shall be one arbitrator agreed to by the Parties within twenty (20) days of receipt by respondent[s] of the request for arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules.

iv. **Consolidation, Joinder.** If more than one arbitration is commenced under this Agreement and any Party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator selected in the first-filed proceeding shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator.

v. **Seat of Arbitration, Languages.** The seat or place of arbitration shall be Ely, Nevada. The arbitration shall be conducted and the award shall be rendered in the English language.

vi. **Remedies.** The arbitrator will have no authority to award punitive damages.

vii. **Attorneys' Fees and Costs.** The prevailing Party(ies) in the arbitration shall be entitled to receive, in addition to all other damages which it(they) may be entitled, the costs incurred by such Party(ies) in conducting the arbitration, including reasonable attorneys' fees and reasonable expenses and costs.

viii. **Specific Intent to Be Bound.** The Parties further acknowledge and agree that they are granting the specific authorization required pursuant to Nevada Revised Statutes Section 597.995 and affirmatively acknowledge, consent to, and agree to the inclusion of the dispute-resolution provisions provided for in this Agreement, and agree to execute any other documentation necessary or appropriate to evidence their intent to be bound by these provision as may, now or in the future, be required pursuant to Section 597.995.

MA  
City's Initials

\_\_\_\_\_  
Foundation's Initials

\_\_\_\_\_  
GB&NRR's Initials

(c) **Suits for Equitable Relief.** Notwithstanding the foregoing, conflicts which cannot properly be resolved by arbitration under applicable law (such as the enforcement of temporary restraining orders, preliminary injunctions, permanent injunctions, and other equitable relief), shall be resolved by a court of competent jurisdiction, consistent with the jurisdiction and venue provisions in Section 19 below. The prevailing Party(ies) in such an action shall be entitled to receive the costs incurred by such party(ies) as a result of the action, including reasonable attorneys' fees and reasonable expenses and costs.

**Section 14. Waiver.** The failure of any Party to enforce any right, privilege, or obligation established by this Agreement on any occasion, or number of occasions, shall not constitute, or be deemed to constitute, a waiver or relinquishment of such right, privilege, or obligation. To the fullest extent allowed by law, all rights, privileges, and obligations shall remain effective and enforceable by the Parties.

**Section 15. Benefit.** This Agreement is for the sole and exclusive benefit of the Parties, hereto. It does not confer, and shall not be deemed to confer, any rights, benefits, or privileges upon any other person.

**Section 16. Assignment & Delegation.** The rights in this Agreement may be assigned, and the duties in this Agreement may be delegated, only upon the express written consent of all the Parties, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, GB&NRR may assign its rights or delegate its duties to the Foundation or another entity wholly owned by the Foundation at any time, subject to obtaining applicable regulator, subject to obtaining applicable regulatory approvals. If any rights or duties are assigned or delegated pursuant to the terms of this Section, then this Agreement shall inure to the benefit and be binding upon the assignee. Any assignment or delegation that is not in full conformity with this Section shall be null and void.

**Section 17. Notices.** Except for routine communications, which may be transmitted in accordance with the agreement or acquiescence of the Parties, all notices under this Agreement shall be in writing and delivered by electronic mail, certified mail, or overnight courier. Notices transmitted by electronic mail shall be deemed to be received as of the date and time of electronic transmission. Notices transmitted by either certified mail or overnight courier shall be deemed received as of the date and time signed for by the recipient. Notices shall be transmitted to the electronic and physical addresses of the Parties as follows:

[Remainder of page intentionally left blank.]

**Great Basin & Northern Railroad, Inc.**

Address:  
John Gianoli, President  
Great Basin & Northern  
Railroad, Inc.  
PO Box 150040  
Ely, NV 89315

**The City**

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

**The Foundation**

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

Email: jgianoli@fnbely.com    Email: CityClerk@cityofelynv.gov    Email: president@nnry.com

**Section 18. Severability.** In the event that the operation of any part of this Agreement is determined to result in a violation of any federal, state or local law or regulation, the Parties agree that such part shall be severable as to the jurisdiction in which the operation would result in a violation and that the remaining Sections of this Agreement shall continue in full force and effect.

**Section 19. Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by the laws of the State of Nevada and federal law (regarding matters of rail operations) without regard to conflicts of laws. To the extent any dispute cannot be resolved by the Rules of Commercial Arbitration of the American Arbitration Association as described in Section 13 above, then 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 that cannot be resolved via Section 13 above, then the Parties irrevocably submit to the exclusive jurisdiction and venue of the state courts in Washoe County, Nevada.

**Section 20. Agreement and Counterparts.** This Agreement, together with all Exhibits, constitutes the entire and complete agreement concerning the Foundation's and the City's joint grant of non-exclusive trackage rights to the GB&NRR and supersedes any and all the Parties' prior offers, discussions, negotiations, understandings, or agreements. 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 their respective attorney prior to execution of this Agreement. This Agreement may be modified, supplemented, or amended only through a writing executed and agreed to by all the Parties. 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.

**Section 21. 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.

**Section 22. Incorporation of Recitals and Exhibits.** The recitals to this Agreement and all Exhibits to this Agreement are incorporated into and made a part of this Agreement.

**Section 23. WAIVER OF JURY TRIAL.** NOTWITHSTANDING ANY OTHER PORTION OF THIS AGREEMENT, IN CONNECTION WITH ANY ACTION PROPERLY BEFORE A COURT, THE PARTIES HEREBY EXPRESSLY WAIVE AND FORGO ANY RIGHT TO HAVE THE FACTUAL ISSUES DETERMINED BY A JURY IN CONNECTION WITH ANY ACTION OR PROCEEDING SEEKING TO ENFORCE ANY PROVISION OF, OR BASED ON ANY RIGHTS ARISING OUT OF, THIS AGREEMENT, AND THE PARTIES AGREE THAT ALL ISSUES, WHETHER LEGAL OR FACTUAL, MAY BE FINALLY DECIDED AND DETERMINED BY THE JUDGE OR ARBITRATOR, AS THE CASE MAY BE, ALONE. EACH PARTY REPRESENTS THAT THIS AGREEMENT IS EXECUTED, KNOWINGLY, FREELY, AND VOLUNTARILY AFTER HAVING BEEN FULLY AND COMPLETELY READ AND UNDERSTOOD BY THE PARTY OR ITS AUTHORIZED REPRESENTATIVES, AND THAT THE PARTY UNDERSTANDS THE NATURE OF THE RIGHT BEING WAIVED AND THAT IT HAS HAD THE ADEQUATE OPPORTUNITY TO DISCUSS THIS WAIVER WITH ITS COUNSEL.

**Section 24. Full Cooperation in Execution of Agreement.** The Parties agree to fully cooperate with each other in the execution and performance of this Agreement, to execute any and all supplementary documents necessary to fulfill the intent of this Agreement, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

**Section 25. LEGAL REPRESENTATION, CONSENT, AND WAIVERS OF CONFLICT.** THE FOUNDATION AND THE CITY HAVE BEEN ADVISED AND REPRESENTED IN THIS MATTER BY THE LAW FIRM OF THOMPSON HINE, THE LAW FIRM OF MAUPIN, COX & LeGOY, AND BY THE ELY CITY ATTORNEY. GB&NRR HAS BEEN ADVISED AND REPRESENTED BY THE LAW FIRM OF THOMPSON HINE AND THE LAW FIRM OF MAUPIN, COX & LeGOY. THE PARTIES TO THIS AGREEMENT HEREBY CONSENT TO THE AFOREMENTIONED LEGAL REPRESENTATIONS OF EACH PARTY AND WAIVE ANY CURRENT OR FUTURE CONFLICTS OF INTEREST ARISING FROM SUCH REPRESENTATION. THE PARTIES BELIEVE AND REPRESENT TO EACH OTHER AND TO THE LAW FIRM

**OF THOMPSON HINE, THE LAW FIRM OF MAUPIN, COX & LeGOY, AND THE ELY CITY ATTORNEY THAT THE REPRESENTATION DESCRIBED IN THIS PARAGRAPH WILL NOT ADVERSELY AFFECT THEIR RELATIONSHIP WITH EACH OTHER OR WITH THE LAW FIRMS/CITY ATTORNEY. EACH OF THE PARTIES REPRESENTS IT HAS BEEN ADVISED AND GIVEN ADEQUATE OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL WITH RESPECT TO THESE CONSENTS AND WAIVERS, AND, IF IT HAS NOT CONSULTED WITH INDEPENDENT LEGAL COUNSEL, IT HAS VOLUNTARILY WAIVED THE RIGHT AND OPPORTUNITY TO DO SO.**

**NEVADA NORTHERN RAILWAY  
FOUNDATION, INC.**

**GREAT BASIN & NORTHERN  
RAILROAD, INC.**

Dated: \_\_\_\_\_, 2020.

Dated: \_\_\_\_\_, 2020.

By: \_\_\_\_\_  
Mark Bassett

By: \_\_\_\_\_  
John Gianoli

Its: President

Its: President

**CITY OF ELY, NEVADA**

Dated: Dec 10, 2020.

By: K. Michelle Beecher  
Michelle Beecher

Its: Mayor Pro Tem

# EXHIBIT A

Great Basin and Northern Railroad System Map



- Great Basin & Northern, Inc
- Station
- City
- 83 US Highway
- 80 Interstate Highway

