

STANDARD AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is between the City of Ely, a Municipal Corporation (hereinafter referred to as the CLIENT) and BASIN ENGINEERING CORPORATION (hereinafter referred to as CONSULTANT).

ARTICLE 1

EFFECTIVE DATE/TERM

The effective date of this THREE (3)-YEAR Agreement shall be September 12, 2019.

ARTICLE 2

SERVICES TO BE PERFORMED BY CONSULTANT

CLIENT hereby engages CONSULTANT to perform typical public entity Civil Engineering and Surveying Services (hereinafter "Services") as the Contract City Engineer. CONSULTANT shall not be responsible for procuring permits, certificates and licenses required unless such responsibilities are specifically assigned to CONSULTANT. In the event that CONSULTANT agrees to procure permits, certificates and licenses, CLIENT acknowledges that issuance of the same are subject to the approval and discretion of governmental agencies which issuance cannot, and is not guaranteed by CONSULTANT.

ARTICLE 3

COMPENSATION

3.1 Compensation for Services. (A) CONSULTANT'S fees for the Services contemplated herein shall be performed for a flat fee of \$5,200.00 per month the first year of the Agreement, \$5,400.00 per month the second year of the Agreement, and \$5,600.00 per month the third year of the Agreement. (B) For CAPITAL IMPROVEMENT PROJECTS, the CONSULTANT shall be compensated on a time and materials basis in accordance with the fee scheduled as set forth in the Fee Schedule which is attached hereto and incorporated by reference as part of this Agreement and not to exceed 15% of the project without approval of the Ely City Council. The Fee Schedule will be utilized during the effective date of this Agreement. A "CAPITAL IMPROVEMENT" is defined for the purposes of this Agreement as as a property improvement that either will enhance the property value or will increase the useful life of the property.

3.2 Methods and Times of Payment. With regard to the performance of the flat rate non-capital improvement Services contemplated in Article 2 and Section 3.1(A) of this Agreement, CONSULTANT shall submit to the CLIENT invoices on a monthly basis demonstrating Services performed. Although the invoices must reflect any work performed, CONSULTANT

shall only be entitled to compensation for the flat rate contemplated in Section 3.1(A). With regard to the performance of services for CAPITAL IMPROVEMENT PROJECTS, CONSULTANT must submit to CLIENT progress invoices with a detailed synopsis of the work performed and the materials used within thirty days of the service performed. Payment to CONSULTANT for work provided pursuant to this Agreement shall be made within thirty (30) days from the date of the invoice. Any delinquent payment beyond the 30 days shall be subject to 1.5 percent interest per month, 18% APR. Any payments made after interest has accrued will be applied to interest first, and thereafter the balance of the payment will be applied to the oldest outstanding invoice.

3.3 Deposit. CLIENT shall not pay a deposit.

3.4 Written Objections to Invoice. If the CLIENT objects to a charge on any invoice, CLIENT must provide CONSULTANT written notice of such objection within fifteen (15) business days after the date of CONSULTANT'S invoice containing the disputed services, or the fees charged in the CONSULTANT'S invoice shall be deemed accepted by the CLIENT and any objection thereto shall be deemed waived by CLIENT.

3.5 Right to Stop Work or Terminate for Non-Payment. If payment in full is not made by the CLIENT within sixty (60) days of the mailing date of any invoice, CONSULTANT may treat such non-payment as a material breach of this Agreement and, at CONSULTANT'S option, may without further notice, immediately stop work, or terminate this Agreement without breaching this Agreement.

3.6 Termination for Cause. In addition to the termination provisions in other portions of this Agreement, the obligation to continue Services under this Agreement may be terminated by CLIENT or CONSULTANT upon sixty (60) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement, provided that the breach is not cured within the sixty (60) calendar day period. In the event CLIENT terminates this Agreement for CONSULTANT'S failure to substantially perform in accordance with the terms of this Agreement, CONSULTANT shall be paid for all time and materials billed to the date of termination.

3.6.1 Termination by Client due to Successor City Council. In addition to the termination provisions in other portions of this Agreement, CLIENT may terminate this Agreement upon official action of the City Council which succeeds by election, if at all, the one in place at the time of the execution of this Agreement. Termination shall be made only upon thirty (30) days' notice to CONSULTANT and any such official action contemplated by this section must be undertaken within thirty (30) days of the seating of the successor City Council.

3.7 Change in Conditions. If, during the course of performance of this Agreement, conditions or circumstances are discovered which were not reasonably foreseeable by CONSULTANT at the commencement of this Agreement, CONSULTANT shall notify the CLIENT of the newly discovered conditions or circumstances, and CONSULTANT and the CLIENT shall renegotiate, in good faith, the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within thirty (30) days after such notice, either party may terminate this Agreement without breaching this Agreement.

3.8 Remedies upon Work Stoppage or Termination.

3.8.1 In the event CONSULTANT stops work or terminates this Agreement as provided in Article 3.5, 3.6 or 3.7, the CLIENT releases CONSULTANT from, and CLIENT agrees to defend, indemnify and hold CONSULTANT harmless from, any liability or responsibility arising from the stopping of work or termination including, without limitation all claims, demands or actions of any kind for direct damages, consequential damages, special damages, economic losses, repair costs, business interruption, delay costs, lost profits, financing and interest costs, construction costs, additional costs to hire new consultants, property damage, personal injury, operating costs, loss of investment, attorney's fees or litigation expenses, and any other damages or cause of action alleged to have been caused thereby. This obligation shall survive termination of this Agreement.

3.8.2 In the event CONSULTANT stops work or terminates this Agreement as provided in Article 3.5 or 3.6, CONSULTANT may recover for:

- a. All time and material charges up to the date of work stoppage or termination;
- b. Profit the CONSULTANT would have received if the CAPITAL IMPROVEMENT PROJECTS as contemplated in Section 3.1 above, would not have been stopped or terminated. The parties agree that this sum is difficult to quantify upon execution of this Agreement, and therefore agree to a liquidated sum that shall be calculated by deducting the time and materials billed up to the date of work stoppage or termination from the estimated sum for the Services and multiplying the difference by 15%. CLIENT and CONSULTANT that this calculation serves as a reasonable estimate of the actual loss of overhead and profit CONSULTANT would have received had the Services not been stopped or terminated;
- c. Interest on any amounts due shall accrue at the rate of 1.5% per month, 18% Annual Percentage Rate;
- d. The prevailing party, whether CONSULTANT or CLIENT, shall be entitled to its reasonable attorney's fees and costs actually incurred regardless of whether mediation, arbitration, or litigation has been commenced.

ARTICLE 4

STANDARD OF CARE

CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by others practicing under similar circumstances in the same geographic vicinity and at the time the Services are performed. CONSULTANT'S Services shall be deemed acceptable under this standard and CLIENT waives all claims against CONSULTANT which in any way relate to or arise from a claim of a breach of this standard, if CLIENT does not notify CONSULTANT in writing of such deficiencies or defects in CONSULTANT'S Services within ninety (90) calendar days of the date when CLIENT knew or should have known of the deficiency or defects after performance of said Services. If written notice is received as outlined herein, CONSULTANT shall re-perform the Services if CONSULTANT determines said Services failed to satisfy the foregoing standard of care or CLIENT may at its discretion, seek any other remedy allowed at law.

ARTICLE 5

THE CLIENT'S RESPONSIBILITY

5.1 Provide Information. The CLIENT shall provide CONSULTANT with all known information regarding existing conditions on all projects CONSULTANT is tasked with provided services on and will immediately transmit to CONSULTANT any new information or change in plans which could affect CONSULTANT'S Services. The CLIENT releases CONSULTANT from any liability, and agrees to defend, indemnify, protect and hold harmless CONSULTANT as to all claims, liabilities, damages, expenses of any nature, or attorney fees arising in whole or in part, directly or indirectly, from allegations of incorrect advice, judgment or decision by CONSULTANT, made without such information or based on inaccurate information furnished by the CLIENT. This obligation shall survive termination of this Agreement.

5.2 Assist in Access. The CLIENT shall assist CONSULTANT in obtaining access to public and private lands so the CONSULTANT can perform the Services.

5.3 Examine Documents and Render Timely Decisions. The CLIENT shall examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the CONSULTANT and others, and shall render decisions based on CONSULTANT'S recommendations pertaining thereto within a reasonable time so as not to delay CONSULTANT'S Services.

5.4 Indemnify Consultant for Alterations to Project After Consultant's Services Completed. The CLIENT agrees to defend, indemnify, protect and hold harmless CONSULTANT as to all claims, liabilities, damages, expenses of any nature, including attorney fees arising in whole or in part, directly or indirectly, from alterations to the Project subsequent to the time when CONSULTANT'S Services on the Project are completed. This obligation shall survive termination of this Agreement.

ARTICLE 6

OWNERSHIP AND REUSE OF WORK PRODUCT

6.1 Ownership of Work Product. CONSULTANT shall be deemed the sole owner and author of its work product derived from performance of all Services including all drawings, specifications, tests, reports, surveys, summaries, plans, maps, inventions, know-how, specifications, spreadsheets and other documents and property, including those in electronic form prepared by CONSULTANT, are ("Work Product") and CONSULTANT shall retain all common law, statutory and other reserved rights, including copyrights to such Work Product. During the existence of this Agreement, CONSULTANT grants the CLIENT a nonexclusive license to reproduce the Work Product solely for the purposes of completing the project, provided that CLIENT shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Any termination of this Agreement prior to completion of the CONSULTANT'S work shall terminate this license. CONSULTANT'S work product shall convert to CLIENT'S property upon termination of this Agreement as the work performed by CONSULTANT is generally for purposes of the Municipality.

6.2 Use of Work Product by Others. The nonexclusive license granted in Article 6.1 shall not be assigned to any other person or entity unless such assignment is approved in advance and in writing by CONSULTANT. In the event that CLIENT assigns any of its rights or interests to the Services provided or to be provided by CONSULTANT, than such assignee shall be subject to all obligations and limitations of this Agreement regardless of any contrary language in an assignment.

6.3 Reuse of Work Product at Other Locations. The Work Product is for use solely with respect to the area specified for that specific project and is not intended or represented to be suitable for reuse on any other location or purpose than that specified in the Work Product documents. The CLIENT agrees not to distribute, convey or use CONSULTANT'S work product to any person or organization other than those directly related to the project who need such information for the project's completion, or as required by law. Any unauthorized reuse or distribution by the CLIENT will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT. The CLIENT shall defend, indemnify, protect and hold harmless CONSULTANT as to all claims, liabilities, damages, expenses of any nature, including attorney

fees, arising in whole or in part, directly or indirectly, from such unauthorized reuse or distribution. This obligation shall survive termination of this Agreement.

6.4 Modifications of Work Product. Neither the CLIENT nor any other person may change or modify CONSULTANT'S Work Product without CONSULTANT'S written authorization. The CLIENT releases CONSULTANT from liability and agrees to defend, indemnify, protect and hold harmless CONSULTANT against all claims, liabilities, damages, losses and expenses, including attorney fees, arising in whole or in part from any such unauthorized changes or modifications.

ARTICLE 7

UNCONTROLLABLE FORCES

Neither the CLIENT nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to uncontrollable forces the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid and were not reasonably foreseeable at the time of entering into this Agreement. The term "uncontrollable forces" includes without limitation, weather delays, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to procure permits, licenses or authorizations from any state, local or federal agency or person for any of the supplies, materials, accesses or services required to be provided by either the CLIENT or CONSULTANT under this Agreement, strikes, work slowdowns or other labor disturbances, and judicial restraint. Nothing herein shall relieve the CLIENT from its obligation to make full payment of Services performed by CONSULTANT prior to the uncontrollable force.

ARTICLE 8

NOTICE

Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if personally delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

To CONSULTANT:

Basin Engineering Corporation
1070 E. Aultman Street
Ely, Nevada 89301
Attn: Emil W. Almberg, Jr., P.E.

To CLIENT:

City of Ely
501 Mill Street
Ely, Nevada 89301
Attn: City Clerk/City Administrator

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and the CLIENT.

ARTICLE 9

LIMITS OF LIABILITY

9.1 **Responsibility for Acts of Others.** CLIENT agrees that CONSULTANT is not responsible for the work performed by CLIENT or any contractor, subcontractor, vendor or other party other than CONSULTANT, including the construction means, methods, techniques, procedures, sequences, costs, timing, safety, or completion or quality of work, dependent upon or to be performed by the CLIENT or parties other than CONSULTANT, nor shall CONSULTANT be responsible for the failure of CLIENT or any contractor, subcontractor, vendor or other project participant to fulfill contractual or other responsibilities to the CLIENT, or to comply with federal, state or local laws, ordinances, regulations, rules, codes, orders, criteria or standards, regardless of whether CONSULTANT'S Services included any observation, testing, inspection or certification of such parties' work.

9.2 **Risk Acceptance and Limitation of Liability.** In order to obtain the benefits of a fee which includes a lesser allowance for risk funding, and in recognition of the relative risks and benefits to both the CLIENT and CONSULTANT, the risks have been allocated such that CLIENT agrees, to the fullest extent permitted by law, to limit the risks and liability of CONSULTANT to the CLIENT and to all other parties, including owners and subsequent owners of a CAPITAL IMPROVEMENT PROJECT, contractors, subcontractors, consultants, lenders, suppliers, manufacturers and secured parties for all claims, losses, costs, damages or expenses of any nature, including attorney's fees, such that the total aggregate liability of CONSULTANT, its owners, officers, directors, partners, employees, vendors and subconsultants, shall not exceed fifty thousand dollars (\$50,000) for each CAPITAL IMPROVEMENT PROJECT, or CONSULTANT'S total fee for the services rendered on each CAPITAL IMPROVEMENT PROJECT, whichever is less. It is intended that this limitation apply to any and all liability or cause of action against CONSULTANT however alleged or arising, including, without limitation, claims of professional errors or omissions, negligence including the sole negligence of consultant, strict liability, breach of contract, breach of warranty, breach of the covenant of good faith and fair dealing, indemnity and/or contribution or any other cause of action or claim whether arising in contract, tort, strict liability, warranty or equity. CLIENT further agrees to defend, indemnify, protect, hold harmless and reimburse CONSULTANT as to all claims, liabilities, damages, costs, and expenses of any nature, including attorney's and expert's fees, brought by CLIENT or any third party, including those named above which exceed this aggregate amount. This obligation shall survive termination of this agreement.

9.3 Waiver of Consequential Damages. Notwithstanding anything herein to the contrary, CONSULTANT shall not be liable to CLIENT for any consequential losses or damages, including but not limited to loss of use, economic losses, business interruption, delay costs, financing and interest costs or lost profits, whether such claims arise in contract, tort, strict liability, warranty, equity, breach of the covenant of good faith and fair dealing, or otherwise.

9.4 No Personal Liability. The services are being performed by CONSULTANT as a Nevada corporation. It is intended by the parties to this Agreement that the CONSULTANT'S services in connection with the project shall not subject CONSULTANT'S owners, individual employees, officers or directors to any personal legal exposure for the risks associated with the project. Therefore, and notwithstanding anything to the contrary contained herein or by law, client agrees that its sole and exclusive remedy, any claim or demand shall be asserted only against Basin Engineering Corporation, a Nevada corporation, and not against any individual owners, employees, officers or directors and CLIENT hereby releases any such individual owner, employee, officer or director from any such claim.

9.5 Time to Commence an Action. In the event that CLIENT has a claim, demand, legal or administrative action of any type against CONSULTANT, CLIENT must file such claim, demand, legal or administrative action with a court or governing authority of proper jurisdiction within two (2) years from completion of CONSULTANT'S services under this agreement, or within two (2) years from cessation or termination of CONSULTANT'S services under this agreement, whichever is earlier. CLIENT hereby waives the right to assert a claim, demand, legal or administrative action, of any type against consultant after such time frame and the same shall be deemed forever barred.

ARTICLE 10

MISCELLANEOUS

10.1 Opinions on Costs and Schedules. CONSULTANT has no control over the cost of labor, materials, equipment, services or resources provided by others on projects. CONSULTANT'S costs estimates and forecasted schedules, if any, are estimates only and are not made with the same knowledge as a contractor performing the work. As a result, CONSULTANT cannot and does not guarantee that proposals, bids, actual project costs and/or actual time schedules will not vary from CONSULTANT'S cost estimates or forecast schedules. The CLIENT expressly assumes the risk for any reliance on such estimates and releases CONSULTANT from any claims or liability for any actual or perceived damages or delays due to such differences.

10.2 No Third Party Beneficiary and Indemnity from Third-Party Claims. Nothing herein shall be construed to give any rights or benefits to anyone other than the CLIENT and CONSULTANT. CONSULTANT'S work is performed for CLIENT only and no third party may rely upon, use or make a claim against CONSULTANT based upon CONSULTANT'S

Services provided pursuant to this Agreement. CLIENT agrees to defend, indemnify, protect and hold harmless CONSULTANT as to all claims, liabilities, damages, expenses of any nature, including attorney fees, arising in whole or in part, directly or indirectly, from claims by any such third parties to the extent such claims exceed the limitation of liability set forth in Paragraph 9.2. This obligation shall survive termination of this Agreement.

10.3 Nonwaiver. A failure by either the CLIENT or CONSULTANT to enforce any provision of this Agreement shall not be binding unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

10.4 Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement and, the greatest extent possible, the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform this Agreement to replace any unenforceable provision with a valid provision that enforces the parties intent.

10.5 Integration and Modification. This eleven (11) page Agreement and two (2) page Fee Schedule represents the entire and fully integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by each of the parties. Unless otherwise specified in writing, if there is any inconsistency between the terms of this Agreement and any other agreement between the parties, the terms of this Agreement shall control.

10.6 Client's Representation. CLIENT hereby represents and warrants that the work being performed by CONSULTANT is being performed at the owner's or the owner's agent's request for the property at which the scope of work is being performed by CONSULTANT and that the owner is aware of CONSULTANT'S Services and approves of the same.

10.7 Request for Notices of Completion. CONSULTANT hereby requests CLIENT to provide CONSULTANT with any Notice of Completion recorded or received by CLIENT on this Project.

10.8 Independent Contractor. CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of its own performance. Nothing contained in this Agreement shall be construed or interpreted to create a joint venture, exclusive agency, joint enterprise, or any other continuing relationship between the parties. Nothing contained in this paragraph shall prevent CONSULTANT from performing private practice and any potential conflict of interest deemed by both parties shall be handled by a third

party upon agreement of the Parties to this Agreement. CONSULTANT shall promptly inform CLIENT of any actual or potential conflicts of interest arising from CONSULTANT'S work on behalf of another person or entity.

10.9 Assignment. Neither the CLIENT nor CONSULTANT shall assign, sublet or transfer any rights under or interest in this Agreement (including, but without limitation, monies that may become due or monies that are due) without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent consultants, associates and subcontractors, as CONSULTANT may deem appropriate to assist in the performance of the Services hereunder.

10.10 Attorney's Fees. In the event that either party incurs attorney's fees to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all attorney's fees and costs incurred therein, including costs of experts and costs of appeal, however, CONSULTANT'S responsibility for CLIENT'S attorney's fees and costs shall be limited such that CONSULTANT'S total liability, including CLIENT'S claim for attorney's fees and costs, does not exceed the aggregate limit of liability set forth in Paragraph 9.2 above. This obligation shall survive termination of this Agreement.

10.11 Applicable Law and Forum Selection. This Agreement may alter rights each party may have under Nevada law and should therefore be reviewed by counsel of each parties' choice. Nevada law shall be applicable to the interpretation of this Agreement, where not in conflict with the terms of this Agreement. The CLIENT and CONSULTANT agrees that any claim, demand, legal or administrative action shall be commenced and tried in the courts of the County of White Pine, State of Nevada, and submits to the personal jurisdiction thereof.

10.12 Mutual Drafting. This Agreement was mutually drafted and therefore any legal rule weighing for or against the drafting or non-drafting party is hereby waived and inapplicable.

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IN WITNESS WHEREOF, the parties hereby agree to this AGREEMENT FOR CONSULTING SERVICES as of the above date.

CITY OF ELY

BASIN ENGINEERING CORPORATION

By: _____

By: _____

Date: _____

Date: _____