



**NEVADA COMMISSION for the RECONSTRUCTION of the V&T RAILWAY
("V&T Railway Commission")
Agenda Report**

Date Submitted: 04/23/21

Meeting Date Requested: 04/29/21

Time Requested: 5 Minutes

To: NEVADA COMMISSION for the RECONSTRUCTION of the V&T RAILWAY Commissioners

From: David Peterson (dpeterson@visitcarsoncity.com)

Subject Title: Discussion and possible action regarding approval of Contract No. FY21-C003 with Gabriel Willaman Railroad Construction, for On-Call Independent Track Maintenance Services, for a total not to exceed amount of \$40,000.00.

Staff Summary: On March 25, 2021, the V&T Commission Vice Chair Mitchell moved to instruct the various members of this Commission to review, and possibly to bring back, for updates, the various contracts that the V&T Commission has. Gabriel Willaman Railroad Construction will provide on-call services for basic track maintenance, upon approval of the Commission through the 2021 operating season (December 31, 2021).

Type of Action Requested:

Resolution

Ordinance

Formal Action/Motion

Other (Specify) Presentation Only

Recommended Board Action: *I move to award Contract No. FY21-C003 to Gabriel Willaman Railroad Construction.*

Applicable Statute, Code, Policy, Rule or Regulation: n/a

Fiscal Impact: \$40,000.00

Explanation of Impact: If approved, the contract will decrease the Track Maintenance account in FY21 & FY22.

Funding Source: 53055-000 Track Maintenance

Supporting Material/Attachments: Contract No. FY21-C003 with Gabriel Willaman Railroad Construction

Prepared By: Chris Kipp, Carson City Culture & Tourism Authority's Operations Manager

ON-CALL INDEPENDENT TRACK MAINTENANCE SERVICES CONTRACT

This On-Call Independent Track Maintenance Services Contract ("Contract") is made by and between Gabriel Willaman Railroad Construction ("Contractor") and the Nevada Commission for the Reconstruction of the V&T Railway ("Commission"), effective April 29, 2021, notwithstanding an earlier or later date of signature by Contractor and Commission.

WITNESSETH

WHEREAS, Contractor owns and operates a business which provides, among other things, railroad track inspection and railroad track and right-of-way maintenance services; and

WHEREAS, the Commission is desirous of retaining Contractor to provide on-call services for basic track maintenance, Linehan Road Crossing Signal inspection and testing, and vegetation control, as well as special services as directed by the Commission ("Services"), for the Commission's railroad track constructed between Carson City and Gold Hill, Nevada, for the 2021 operating season; and

WHEREAS, Contractor agrees to perform the Services pursuant to the Fee Schedule set forth in Exhibit A of this Contract and only upon specific authorization by the Commission or the Commission's Maintenance-of-Way Supervisor; and

WHEREAS, on April 29, 2021, the Commission reviewed and approved of Contractor's Fee Schedule for work to be performed for the 2021 operating season; and

NOW, THEREFORE, for and in consideration of the above-stated recitals, each of which is incorporated into this Contract as if set forth in full, and upon the following mutual promises, conditions and covenants to be kept by the Contractor and the Commission, it is agreed by and between the Contractor and the Commission as follows:

Section 1: Description of Work (Scope of Services):

A. On-Call Basic and Special Services: Contractor has proposed, and the Commission has accepted Contractor's proposal, to provide on-call services for basic track maintenance, Linehan Road Crossing Signal inspection and testing, and vegetation control on the Commission's track between Carson City and Gold Hill, Nevada, as requested and authorized by the Commission or the Commission's Maintenance-of-Way Supervisor. The Fee Schedule for Services to be provided are as set forth in Exhibit A to this Contract.

Section 2: Contractor's Payment:

The Commission has approved of an annual not to exceed amount of \$40,000.00 for the Services provided as requested and authorized by the Commission or the Commission's Maintenance-of-Way Supervisor.

Contractor agrees to invoice the Commission on a monthly basis for such Services as are provided in the preceding 30 days. Contractor's Services will be paid by the Commission within thirty (30) days of receipt of an invoice from Contractor. The Contractor agrees to invoice the Commission for the Services in accordance with the prices delineated on Exhibit A to this Contract.

Section 3: Time of Performance:

Contractor will commence work on or after the parties' acceptance of and signature on this Contract. Contractor's Services shall be provided to the Commission through December 31, 2021 at a not to exceed cost of \$40,000.00 pursuant to the attached Fee Schedule in Exhibit A.

Section 4: Relationship of the Parties:

The parties to this Contract agree that Contractor is a professional entity, and that the relationship created by this Contract is that of employer-independent contractor. Contractor is not an employee of the Commission, and is not entitled to the benefits provided by the Commission to its employees, including, but not limited to, any benefit which would be provided by a public employer to a public employee within the State of Nevada such as group insurance and public employees' retirement enrollment. Contractor may practice its profession for others during those periods when Contractor is not performing work under this Contract for the Commission. The Commission may, during the term of this Contract, engage other independent contractors to perform the same work that Contractor performs hereunder.

Section 5: Limitation on Delegation:

The Services provided for in this Contract shall be performed by Contractor, and no person other than regular associates or employees of Contractor shall be engaged in such work or in performance of such Services except upon written approval of the Commission.

Section 6: Insurance and Hold Harmless:

The Contractor and Commission agree that the Commission provides no benefit, including any form of insurance, to Contractor. Contractor agrees to maintain such insurance as will fully protect both Contractor and the Commission from any and all claims under any worker's compensation act or employers' liability laws, and from any and all other claims of whatsoever kind or nature for the damage to property or for personal injury, including death, made by any person whomsoever, that may arise from operations carried on under this Contract either by Contractor or any person either directly or indirectly engaged or employed by Contractor.

Contractor agrees to indemnify the Commission and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of this Contract or any occurrence in, upon or at the location(s) where the Commission's railroad track is located during the course of Contractor's work pursuant to this Contract which may be occasioned wholly or in part by any act or omission of Contractor, its agents, contractors, employees, servants, sub-lessees or concessionaires. In case the Commission shall, without fault on its part, be made a party to any litigation commenced by or against Contractor, then Contractor shall hold the Commission harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by the Commission in connection with such litigation. Contractor shall also pay all costs,

expenses and reasonable attorney's fees that may be incurred or paid by the Commission in enforcing the covenants and agreements in this Contract.

To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, caused by the negligence, errors, omissions, recklessness or intentional misconduct of the party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This indemnification obligation is conditioned upon the performance of the duty of the party seeking indemnification (indemnified party), to serve the other party (indemnifying party) with written notice of actual or pending claim, within 30 days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable for reimbursement of any attorney's fees and costs incurred by the indemnified party due to said party exercising its right to participate with legal counsel.

The parties do not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Agreement liability of both parties shall not be subject to punitive damages. Actual damages for any Commission breach shall never exceed the amount of funds which have been appropriated for payment under this Contract, but not yet paid.

Prior to this Contract becoming effective, Contractor has supplied to the Commission proof that Contractor has furnished annually a Certificate of Liability Insurance attached hereto as Exhibit B. Contractor will maintain throughout the term of this Contract such general liability and property damage insurance as shall protect Contractor and any of Contractor's subcontractors, agents, employees and/or invitees performing work covered by this Contract from claims based upon bodily injury, sickness, disease, death or property damage arising or resulting from Contractor's performance, or the performance by any subcontractor, person, firm, agent, invitee or employee directly or indirectly employed by Contractor. Contractor shall procure insurance in the amount of TWO MILLION DOLLARS (\$2,000,000) combined single limit per occurrence for bodily injury, death and property damage, and provide the Commission with a certificate evidencing such coverages naming the Commission as an additional insured.

The Contractor shall maintain the required insurance coverages throughout the term of this Contract and require that the Contractor's carrier notify the Commission at least thirty (30) days prior to modification or cancellation of such insurance. Any insurance carried by the Commission shall be considered excess insurance and shall not contribute to any loss covered by Contractor's insurance or Contractor's obligations under this Contract.

In addition, Contractor shall purchase and maintain throughout the term of this Contract such worker's compensation insurance as required by the State of Nevada to protect Contractor from claims which may arise out of or result from Contractor's performance of work under this Contract, whether such work is performed by the Contractor or by any subcontractor, agent, invitee, firm or person directly or indirectly employed by Contractor, or employed by anyone else for whose acts any of the Contractor's or Contractor's subcontractors, agents, employees, invitees, firm or employees may be liable. Contractor shall be required to provide evidence of such worker's compensation insurance to the Commission at the

time of execution of this Contract. Contractor's worker's compensation insurance carrier shall be required to notify the Commission at least thirty (30) days prior to modification or cancellation of such insurance.

CONTRACTOR AGREES TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS COMMISSION FOR, FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, CLAIMS, DEMANDS, ACTIONS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEY'S FEES) (COLLECTIVELY, "LOSSES") (a) CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, ANY ACT OR OMISSION OF USE, OR (b) ANY BREACH BY CONTRACTOR OF THIS CONTRACT, OR (c) FOR PERSONAL INJURY TO OR DEATH OF CONTRACTOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS OCCURRING WHILE SUCH PERSON IS ON OR ABOUT THE COMMISSION'S TRACK. THE FOREGOING RELEASE AND INDEMNITY SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF COMMISSION EXCEPT TO THE EXTENT THE LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF COMMISSION.

THE COMMISSION AGREES TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS CONTRACTOR FOR, FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, CLAIMS, DEMANDS, ACTIONS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEY'S FEES) (COLLECTIVELY, "LOSSES") (a) CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, ANY ACT OR OMISSION RELATED TO THE CONSTRUCTION OF THE COMMISSION'S TRACK. THE FOREGOING RELEASE AND INDEMNITY SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF CONTRACTOR EXCEPT TO THE EXTENT THE LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CONTRACTOR.

Section 7: Anti-Assignment:

Neither this Contract nor any interest herein, or claim hereunder, shall be assigned or transferred by Contractor to any other party or parties without the prior express written content of the Commission.

Section 8: Term:

This Contract shall be in force and effect for a period of time from April 29, 2021 through December 31, 2021.

Section 9: Licenses

During the entire term of this Contract, and during any renewed term of this Contract, Contractor shall always maintain, in good standing, the Contractor's license issued by the Nevada State Contractors Board. Contractor shall also maintain, in good standing, Contractor's Nevada State Business License for the entire term, and any renewed term, of this Contract. Copies of Contractor's license and Nevada State Business License are attached hereto as Exhibit C. Upon renewal of the Contractor's license or Nevada State Business License, Contractor shall, within 15 days of such renewal, provide copies of the renewed licenses to the Commission.

Section 10: Place of Work:

It is agreed by Contractor and Commission that Contractor's Services will be rendered at or around the Commission's railroad track extending from Gold Hill to Carson City, Nevada. Contractor and the Commission agree that Contractor may, on request, be required to perform Services at such other places as designated by the Commission.

Section 11: Notices

Any notice required to be provided by this Contract to the parties shall be deemed given when mailed by U.S. Mail, certified mail return receipt requested, or personally delivered.

Gabriel Willaman Railroad Const.
Attn: Gabriel Willaman
P.O. Box 19067
Reno, NV 89511

V&T Railway Commission
Attn: Chairman
P.O. Box 1711
Carson City, Nevada 89702

With Copy to:
Michael Smiley Rowe, Esq
Law Offices of Michael Smiley Rowe
1638 Esmeralda Avenue
Minden, NV 89423

Section 12: Miscellaneous

A. The Contractor and the Commission represent to each other that each has separately read this Contract, has had it fully explained to them by counsel or advisors of their own choosing, each is fully aware of the contents of this document, and each has independently verified all of the data in the exhibits to this Contract.

B. Contractor and the Commission agree to make, sign, seal, execute and deliver any and all documents or instruments necessary to carry into full force and effect this Contract.

C. If any portion of this Contract shall be void, voidable or unenforceable, the balance of this Contract shall be deemed severed therefrom and enforceable.

D. This Contract contains the entire agreement between Contractor and the Commission and the terms of this Contract are contractual and not mere recitals. This Contract shall be binding upon the Contractor and the Commission, and each, every and all of their agents, servants, representatives, attorneys, successors, assigns, executors, administrators, heirs and next of kin. This Contract supersedes any and all prior written or oral agreement between the parties. There are no representations or warranties by either of the parties hereto other than those expressly set forth in this Contract.

E. This Contract shall be governed and construed in accordance with the laws of the State of Nevada as they exist from time to time. Venue of any proceedings regarding this Contract shall be in Carson City, Nevada.

F. No modification or waiver of any of the terms of this Contract shall be valid unless it is in writing and signed by both the Contractor and the Commission. No waiver of any breach of or default under this Contract shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

G. In the event that either party hereto shall fail to comply with any of the terms, conditions or covenants herein contained, the aggrieved party hereto shall be entitled to utilize any and all remedies at law and in equity the aggrieved party shall have against the defaulting/breaching party.

H. In the event that suit is brought to enforce the provisions of this Contract or to collect damages for any breach of this Contract, the prevailing party shall be entitled to recover their litigation costs, including reasonable attorney's fees. Such shall include appeal.

I. This Contract may be executed in any number of counterparts, facsimile or electronic signatures are accepted as executions of the original, each of which shall be deemed an original but all of which shall constitute one and the same instrument; but in making proof of this Contract, it shall not be necessary to produce or account for more than one such counterpart. It is not necessary that each party hereto execute the same counterpart so long as identical counterparts are executed by all parties.

Dated this ___ day of _____, 2021.

Dated this ___ day of _____, 2021.

Gabriel Willaman Railroad Construction

Nevada Commission for the Reconstruction of
The Virginia & Truckee Railroad

By: _____

By: _____

Gabriel Willaman

David Peterson, Chairman

EXHIBIT A

Gabriel Willaman Railroad Construction
 P.O. Box 19067
 Reno, Nevada 89511
 (775) 815-8756
 Nevada Contractor's License #0077199
 19-Apr-21

PROPOSAL FOR:
VTRW - 2021 INTERIM TRACK MAINTENANCE CONTRACT – COST SCHEDULE

ITEM	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	COST
<u>BASIC SERVICES</u>					
1	Once Weekly On-Track Inspection & Light Maintenance w/One (1) Helper	DAY	As Authorized	\$625.00	TBD
2	Once Weekly On-Track Inspection without Maintenance	DAY	As Authorized	\$425.00	TBD
3	Railbike Block Track Inspections without Maintenance (Twice Weekly)	DAY	As Authorized	\$200.00	TBD
4	Special Heat or Storm Inspections as Directed	DAY	As Authorized	\$300.00	TBD
5	Track Maintenance: 2-Man Maintenance Crew	DAY	As Authorized	\$750.00	TBD
6	Track Maintenance: 3-Man Maintenance Crew	DAY	As Authorized	\$1,140.00	TBD
7	Track Maintenance: 4-Man Maintenance Crew	DAY	As Authorized	\$1,570.00	TBD
8	Linehan Road Crossing Signal Inspection & Testing Services	MONTH	As Authorized	\$375.00	TBD
9	Ballast Regulator w/Operator	DAY	As Authorized	\$750.00	TBD
10	Rail Welding & Grinding per day as directed	DAY	As Authorized	\$850.00	TBD
11	Vegetation Control: Purchase and Application of Pre-Emergent on 12.2 miles of railroad roadbed	LS	As Authorized	\$12,500.00	TBD
12	Hourly Services - Foreman	HR	As Authorized	\$75.00	TBD
13	Hourly Services - Laborer	HR	As Authorized	\$50.00	TBD
SUBTOTAL:					TBD
TOTAL ESTIMATED COST PER YEAR:					TBD

Note Authorized Material Purchases and Equipment Rentals made buy Gabriel Willaman Railroad Construction will be billed at Cost plus 25%.