



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

Date Submitted: 06/21/21

Meeting Date Requested: 06/24/21

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-C006 with Virginia Truckee Railroad, for a total not to exceed amount of \$40,000.00.

Staff Summary: Virginia & Truckee Railroad Co., Inc. will provide construction and maintenance of the North Pole for Polar Express, upon approval of the Commission through January 31, 2022.

Type of Action Requested:

Resolution

Ordinance

Formal Action/Motion

Other (Specify) Presentation Only

Recommended Board Action: *I move to approve Contract No. FY21-C006 with Virginia Truckee Railroad.*

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

Fiscal Impact: \$40,000.00

Explanation of Impact: FY22

Funding Source: 221-221-53060-232 Special Events Expenses - POLAR

Supporting Material/Attachments: Contract No. FY21-C006 with Virginia Truckee Railroad

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

A Contract Between

“Commission”:	Nevada Commission for the Reconstruction of the V&T Railway, a political subdivision of the State of Nevada
Address:	P.O. Box 1711
City, State, Zip Code:	Carson City, NV 89702
Contact:	David Peterson, Chairman
Phone:	775-686-9037
Fax:	
Email:	dpeterson@visitcarsoncity.com

and

“Contractor”:	Virginia & Truckee Railroad Co., Inc.
Address:	P.O. Box 467
City, State, Zip Code:	Virginia City, NV 89440
Contact:	Tom Gray
Phone:	775-750-6160
Fax:	
Email:	thgvc@sbcglobal.net

WHEREAS, the Commission desires to retain the Contractor for PEX North Pole construction and maintenance; and

WHEREAS, the Contractor is desirous of serving the Commission as its PEX North Pole construction and maintenance contractor; and

WHEREAS, the Commission and Contractor agree that Contractor shall be compensated for all services rendered as herein below set forth; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the Commission

NOW THEREFORE, in consideration of the aforesaid premises, mutual promises, covenants and undertakings hereinafter set forth, the parties agree as follows:

- CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 7, Contract Termination*.

Effective from:	Upon approval of the Commission, expected to be June 24, 2021	To:	January 31, 2022
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- NOTICE.** All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated above. Notices may be given: (a) by delivery in person; (b) by a nationally recognized next day courier service, return receipt requested; or (c) by certified mail, return receipt requested. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission or email to the address(es) such party has specified in writing.

3. **SCOPE OF WORK.** The Scope of Work is described below, which is incorporated herein by reference:

DESCRIPTION OF SCOPE OF WORK:
<ul style="list-style-type: none"> • Manage and execute constructional building of the “North Pole” for V&T Railway’s Polar Express <ul style="list-style-type: none"> • Includes transporting and setting up of the village • Manage the maintenance of “North Pole” throughout the event season – November and December 2021 <ul style="list-style-type: none"> • Includes maintenance, fueling and staffing • Deconstruct “North Pole” upon completion of the event <ul style="list-style-type: none"> • Includes transport to storage • Process costs associated with “North Pole” which may include but are not limited to: fuel, structural supplies, décor supplies, propane, staff, etc.

4. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 3, Scope of Work* at a cost as noted below:

DESCRIPTION OF SCOPE OF WORK:
<p>Estimated costs:</p> <ul style="list-style-type: none"> • Set up / tear down / move to storage -\$21,000 • Rentals, Forklifts, Trucking - \$6,000 • Train movements - \$4,000 • Diesel Fuel for depot light plants, NP generators - \$3,000 • Rental generators, cords, power boxes - \$6,000

Total Contract Not to Exceed:	\$40,000
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The Commission does not agree to reimburse Contractor for expenses unless otherwise specified in the Scope of Work.

5. **BILLING SUBMISSION AND PAYMENTS: TIMELINESS.**

A. The parties agree that timeliness of billing is of the essence to the Contract and recognize that the Commission is on a Fiscal Year. All billings for dates of service prior to July 1 must be submitted to the Commission no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, will subject Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the Commission of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to Contractor.

B. The Commission agrees to make payments to Contractor within thirty (30) days after Contractor submits a monthly invoice reflecting the separately delineated costs expended on behalf of the Commission.

6. **INSPECTION & AUDIT.** Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) and as required by State and federal law, complete and accurate records as are necessary to fully disclose to the Commission sufficient information to determine compliance with all State and federal regulations and statutes, and compliance with the terms of this contract, and agrees that such documents will be made available for inspection upon reasonable notice from authorized representatives of the Commission.

7. **CONTRACT TERMINATION.**

A. Termination Without Cause. Regardless of any terms to the contrary, this Contract may be terminated upon written notice by mutual consent of both parties. The Commission unilaterally may terminate this contract without cause by giving not less than thirty (30) days’ notice in the manner specified in *Section 2, Notice*. If this Contract is unilaterally

terminated by the Commission, Contractor shall use its best efforts to minimize cost to the Commission and Contractor will not be paid for any cost that Contractor could have avoided.

- B. Commission Termination for Non-Appropriation. The continuation of this Contract is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available. The Commission may terminate this Contract, and Contractor waives any and all claims(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Commission's funding from State, local government and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- C. Termination with Cause for Breach. A breach may be declared with or without termination. A notice of breach and termination shall specify the date of termination of the Contract, which shall not be sooner than the expiration of the Time to Correct, if applicable, allowed under **Subsection 7D**. This Contract may be terminated by either party upon written notice of breach to the other party on the following grounds:
- 1) If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
 - 2) If any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - 3) If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the Bankruptcy Court; or
 - 4) If the Commission materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
 - 5) If it is found by the Commission that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the Commission with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
 - 6) If it is found by the Commission that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- D. Time to Correct. Unless the breach is not curable, or unless circumstances do not permit an opportunity to cure, termination upon declared breach may be exercised only after service of formal written notice as specified in **Section 2, Notice**, and the subsequent failure of the breaching party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared breach has been corrected. Upon a notice of breach, the time to correct and the time for termination of the contract upon breach under **Subsection 7C**, above, shall run concurrently, unless the notice expressly states otherwise.

8. **REMEDIES**. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. For purposes of an award of attorneys' fees to either party, the parties stipulate and agree that a reasonable hourly rate of attorneys' fees shall be one hundred and fifty dollars (\$150.00) per hour.

9. **LIMITED LIABILITY**. The Commission will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Damages for any Commission breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the Fiscal Year budget in existence at the time of the breach. Contractor's tort liability shall not be limited.

10. **INDEMNIFICATION AND DEFENSE**. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the Commission's right to participate, the Commission from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any breach of the obligations of Contractor under this Contract, or any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents. Contractor's obligation to indemnify the Commission shall apply in all

cases except for claims arising solely from the Commission’s own negligence or willful misconduct. Contractor waives any rights of subrogation against the Commission. Contractor’s duty to defend begins when the Commission requests defense of any claim arising from this Contract.

11. REPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS. Contractor represents that it is an independent contractor, as defined in 616A.255, warrants that it will perform all work under this contract as an independent contractor, and warrants that the Commission will not incur any employment liability by reason of this Contract or the work to be performed under this Contract. To the extent the Commission incurs any employment liability for the work under this Contract; Contractor will reimburse the Commission for that liability.

12. INSURANCE SCHEDULE. The Contractor must procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum requirements specified below. Each insurance policy shall provide for a waiver of subrogation against the Commission, its officers, employees and immune contractors as defined in NRS 41.0307, for losses arising from work/materials/equipment performed or provided by or on behalf of Contractor. By endorsement to Contractor’s automobile and general liability policies, the Commission shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of Contractor. Contractor shall not commence work before Contractor has provided evidence of the required insurance in the form of a certificate of insurance and endorsement to the Commission.

A. Workers’ Compensation and Employer’s Liability Insurance.

- 1) Contractor shall provide proof of worker’s compensation insurance as required per Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) If Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310 and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the Commission a fully executed “Affidavit of Rejection of Coverage” form under NRS 616B.627 and NRS 617.210.

B. Commercial General Liability – Occurrence Form. The Policy shall include bodily injury, property damage and broad form contractual liability coverage.

1) General Aggregate	\$2,000,000
2) Products – Completed Operations Aggregate	\$1,000,000
3) Personal and Advertising Injury	\$1,000,000
4) Each Occurrence	\$1,000,000

C. Professional Liability/Errors and Omissions Liability. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

- 1) Each Claim \$1,000,000
- 2) Annual Aggregate \$1,000,000

Mail all required insurance documents to the Commission at the address identified on page one of the Contract.

13. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

14. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

15. OWNERSHIP OF PROPRIETARY INFORMATION. Any data or information provided by the Commission to Contractor and any documents or materials provided by the Commission to Contractor in the course of this Contract (“Commission Materials”) shall be and remain the exclusive property of the Commission and all such Commission Materials shall be delivered into Commission possession by Contractor upon completion, termination, or cancellation of this Contract.

16. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The Commission may have the duty to disclose unless a particular record is made confidential by law or a common law balance of interests or attorney-client privilege.
17. **GENERAL WARRANTY.** Contractor warrants that all services, deliverables, and/or work products under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; and shall be fit for ordinary use, of good quality, with no material defects.
18. **GOVERNING LAW: JURISDICTION.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Contract, and consent to personal jurisdiction in such court for any action or proceeding arising out of this Contract.
19. **ASSIGNMENT AND SUBCONTRACTING.** This Agreement shall not be assigned by either the Commission or the Contractor without the prior written consent of the other party to this Agreement. The Contractor shall not subcontract any substantial portion of this Agreement without the Commission's prior written consent.
20. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its Scope of Work constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto. This Contract, and any amendments, may be executed in counterparts.

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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Virginia & Truckee Railroad Co., Inc.

Date

Independent Contractor's Name and Title

**NEVADA COMMISSION FOR
THE RECONSTRUCTION OF
THE V&T RAILWAY**

Date

Name and Title