



**NEVADA COMMISSION FOR THE RECONSTRUCTION OF THE V&T RAILWAY
("V&T Railway Commission")
Agenda Report**

Date Submitted: 11/22/22

Meeting Date Requested: 11/30/22

Time Requested: 20 Minutes

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

From: Stephanie Hicks & Clay Mitchell

Subject Title: Discussion and possible action regarding the draft master contract with Virginia & Truckee Railroad ("VTRR") for train services, lease, maintenance and storage of Locomotive #18, and use of VTRR's intellectual property ("the Contract"), and direction to staff and/or Chair to coordinate review with VTRR.

Staff Summary: *Staff and Commissioners Hicks and Mitchell will update the V&T Commission on the status of the proposed contract with VTRR, request additional feedback, and seek direction for staff and/or the Chair to coordinate the review of the Contract with VTRR and its legal counsel.*

Based on discussion at the October Commission meeting, staff has prepared the draft master contract utilizing the standard State contract for sole sourcing and has incorporated the train services, maintenance and storage of Locomotive #18, as well as the fee schedule all into one agreement for the Commission's review. Upon approval, staff and/or the Chair will coordinate review with VTRR's attorney and bring any changes back to the Commission at a future meeting.

Type of Action Requested:

(___) Resolution

(___) Ordinance

(_xx_) Formal Action/Motion

(___) Other (Specify) Presentation Only

Recommended Board Action:

I move to approve the draft master contract as presented and direct staff and/or the Chair to coordinate review with VTRR's attorney.

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

Fiscal Impact:

Explanation of Impact:

Funding Source:

Supporting Material/Attachments: 20221130_VT_Item 10_VTRR Contract

Prepared By: Allyson Bolton, Atypical Consulting and Events

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
A Contract Between

Agency Name:	Nevada Commission for the Reconstruction of the V&T Railway, a body corporate and politic
Address:	P.O. Box 1711
City, State, Zip Code:	Carson City, Nevada 89702
Contact:	David Peterson, Chairman
Phone:	775-686-9037
Fax:	
Email:	dpeterson@visitcarsoncity.com

Contractor Name:	Virginia & Truckee Railroad Company
Address:	P.O. Box 467
City, State, Zip Code:	Virginia City, Nevada 89440
Contact:	Thomas Gray, Vice President
Phone:	
Fax:	
Email:	tgray@virginiatruckee.com

WHEREAS, the NEVADA COMMISSION FOR THE RECONSTRUCTION OF THE V&T RAILWAY (“Commission”) is a body corporate and politic created pursuant to the Nevada Commission for the Reconstruction of the V&T Railway Act of 1993, chapter 566, Statutes of Nevada 1993 (“Act”) and, pursuant to its general powers, may enter into any contracts necessary to establish and maintain the historic railway between Virginia City and Carson City; and

WHEREAS, the Commission owns the railroad track south of the Gold Hill Depot to the Eastgate Depot, in Carson City, (“the Commission’s Track”) and related property and facilities, and a 1914 Baldwin-built 2-8-2 steam locomotive (builder’s number 41709, numbered MCR 18) and tender, hereinafter collectively referred to as “Locomotive #18”; and

WHEREAS, the VIRGINIA & TRUCKEE RAILROAD COMPANY (“VTRR”) is a Nevada corporation that operates a tourist railroad enterprise under the marks and works shown on Exhibit A to Attachment EE (“VTRR IP”), owns all right, title and interest in and to, including the right to use and control, the VTRR IP, and owns 2.5 miles of railroad track from Virginia City to the Gold Hill Depot (VTRR’s Track); and

WHEREAS, the Commission and VTRR recognize the importance of running tourist excursion train service from Carson City to Virginia City, open to the general public to promote tourism in the region and the historic significance and economic importance of re-establishing and operating a railroad between Virginia City and Carson City, Nevada to the State of Nevada and to the Storey County and Carson City areas in particular; and

WHEREAS, the Commission, in an effort to actively and aggressively market tourist excursion train operations on the Commission’s Track, desires to contract with VTRR for the provision of train services originating from and returning to Carson City, maintenance and storage of Locomotive #18, and use of the VTRR IP; and

WHEREAS, VTRR is willing and able to provide the Commission train services, maintenance and storage of Locomotive #18, and the use of the VTRR IP; and

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

WHEREAS, the Commission and VTRR agree to enter into this Contract for Services of Independent Contractor and all Attachments or Incorporated Documents (“Contract”), a contract which, by its nature is not adapted to award by a competitive solicitation, pursuant to the Nevada Revised Statutes (NRS) 332.115(1)(a) and as further described in the Attachment AA; and

WHEREAS, it is deemed that the services of VTRR are 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:

1. **CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 7, Contract Termination*. Contract is not effective until and unless approved by the Commission. Commission and VTRR agree that this Contract may be renewed upon terms and provisions as are mutually agreed between the Commission and VTRR.

Effective from:	January 1, 2023	To:	January 1, 2028
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2. **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: (i) by delivery in person; (ii) by a nationally recognized next day courier service, return receipt requested; or (iii) 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/SERVICES (INCORPORATED DOCUMENTS).** The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work and services. The Contract incorporates by reference the following attachments:

ATTACHMENT AA:	SOLE SOURCE DETERMINATION MEMO
ATTACHMENT BB:	INSURANCE SCHEDULE
ATTACHMENT CC:	TRAIN SERVICES AGREEMENT
ATTACHMENT DD:	LOCOMOTIVE #18 LEASE AND MAINTENANCE
ATTACHMENT EE:	INTELLECTUAL PROPERTY LICENSE
ATTACHMENT FF:	FEE SCHEDULE

4. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 3, Scope of Work/Services (Incorporated Documents)* at a cost as designated in Attachment FF – Fee Schedule. For each year of the term of this Agreement, the Commission and VTRR shall review and revise Attachment FF and the operating schedule by March 1st. The Chair of the Commission with ratification by the Commission and VTRR may agree, in writing, to change, alter, or reschedule rates, times and any other pertinent items at any time during the term of this Contract.

The Commission does not agree to reimburse VTRR for expenses unless otherwise specified in the Scope of Work.

5. **BILLING SUBMISSION: 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 VTRR 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 VTRR.
 - B. The Commission agrees to make payments to VTRR within thirty (30) days after VTRR 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, VTRR shall use its best efforts to minimize cost to the Commission and VTRR will not be paid for any cost that VTRR could have avoided.
- B. Termination by the Commission 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 contracting Commission's funding from State 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 VTRR 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 VTRR 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 VTRR files a petition in bankruptcy or insolvency, or if a receiver or trustee is appointed to take charge of all or a portion of VTRR's property, or if VTRR is adjudicated bankrupt or insolvent in any court, or if VTRR makes an assignment for the benefit of creditors or if the property or business of VTRR be seized under execution and unreleased for ten (10) or more days (in no event shall this Contract become an asset of VTRR in any bankruptcy, receivership or insolvency proceeding, or in any judicial proceedings); or
 - 4) If the Commission materially breaches any material duty under this Contract and any such breach impairs VTRR'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 VTRR, or any agent or representative of VTRR, 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 VTRR 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. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fire, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.
11. **INDEMNIFICATION AND DEFENSE.** To the fullest extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, VTRR 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 VTRR under this contract, or any alleged negligent or willful acts or omissions of VTRR, its officers, employees and agents. VTRR'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. VTRR waives any rights of subrogation against the Commission. VTRR's duty to defend begins when the Commission requests defense of any claim arising from this Contract.
12. **REPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS.** VTRR 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 VTRR will reimburse the Commission for that liability. Neither VTRR nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the Commission and are not entitled to the benefits provided by the Commission to its employees, including, but not limited to, any benefit which would be provided by an employer to an employee within the State of Nevada such as group insurance. VTRR may practice its profession for others during those periods when VTRR is not performing work under this Contract for the Commission.
13. **INSURANCE SCHEDULE.** The Contractor must procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum requirements specified in the Insurance Schedule designated in Attachment BB of *Section 3. Scope of Work/Services (Incorporated Documents)* of this Contract.
14. **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.
15. **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.
16. **OWNERSHIP OF PROPRIETARY INFORMATION.** Any data or information provided by the Commission to VTRR and any documents or materials provided by the Commission to VTRR 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 VTRR upon completion, termination, or cancellation of this Contract.
17. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from VTRR 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. VTRR may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that VTRR agrees to indemnify and defend the Commission for honoring such designation. The failure to so label any document that is

released by the Commission shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

18. **GENERAL WARRANTY.** VTRR 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.
19. **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.
20. **ASSIGNMENT AND SUBCONTRACTING.** The parties agree that the lease relationship is unique to the parties. Therefore, VTRR shall not assign any part or any interest in the use, operation, maintenance or possession in Locomotive # 18 without the express prior written consent of the Commission. The Commission shall have the right, subject to its obligations under the Lease Agreement (Attachment DD), to sell, assign, or otherwise dispose of the Commission's interest in Locomotive # 18 and in the Lease Agreement at any time. VTRR shall have the right to sell, assign or otherwise dispose of its rights, obligations, and duties under the Train Services Agreement (Attachment CC)
21. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its *Scope of Work/Services (Incorporated Documents)* listed in subsection 3 of the Contract 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.
22. **COUNTERPARTS.** This Contract, and any amendments, may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Contract.

(The remainder of this page left intentionally blank; the signature blocks follow on the next page.)

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year written below.

VIRGINIA AND TRUCKEE RAILROAD COMPANY

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

Tom Gray

David Peterson
Chair

Date

Date

ATTACHMENT AA – SOLE SOURCE DETERMINATION MEMO

ATTACHMENT BB – INSURANCE SCHEDULE

ATTACHMENT CC – TRAIN SERVICES AGREEMENT

DUTIES AND SERVICES TO BE PROVIDED BY THE PARTIES

The Commission shall:

1. Provide the required, regular track, structure, right-of-way and crossing signal inspections and maintenance operations in accordance with Federal Railway Administration Class II Safety Standards and applicable regulations of the Nevada State Public Utilities Commission for the Commission's Track. The Commission is required to ensure that all necessary inspections, maintenance, testing, documentations and reports for locomotives, rolling stock and other equipment, accidents and such other matters as may be required by local, state or federal agencies are filed by the person or entity with whom the Commission contracts to operate tourist excursion trains on the Commission's Track.
2. In support of the interim tourist excursion train operations to be provided, provide water service for locomotive and domestic use, an Americans with Disabilities Act ("ADA") compliant parking area and loading platform at the Eastgate Depot, and a standard fire hydrant for emergency water use by the Commission near the Linehan Road at-grade crossing.
3. Should the Commission commence future construction activities, Commission and VTRR shall not interfere in any way with the Commission's contractor and reconstruction activities and shall not access or utilize any track constructed in Phases 3B, 3C and 4 without the prior approval of the Commission.

VTRR shall:

1. Because VTRR will operate tourist excursion trains for the Commission pursuant to this Agreement, VTRR agrees that it will file all such reports required by local, state or federal agencies for all necessary inspections, maintenance, testing, documentations and reports for locomotives, rolling stock and other equipment and such other reports as may be required by local, state or federal agencies.
2. Due to the potentially dangerous nature of operating a tourist excursion train or trains on the Commission's Track, ensure that VTRR, and any entity or person with whom it contracts to operate the Commission's tourist excursion train or trains, shall conduct its operations in a manner that is free from safety and health hazards, and ensure that any person employed to operate a train or trains is competent, adequately trained in all safety and health aspects of operation of a tourist excursion train, and not under the influence of any alcoholic beverage, legal or illegal drug, or any substance that may impair the safe performance of their work. The Commission shall have no responsibility for the VTRR's operations, passengers or employees. VTRR shall ensure that any person or entity operating a tourist excursion train pursuant to this Contract shall promptly notify the Commission of any United States Occupational Safety and Health Administration reportable injuries occurring to any person during VTRR's use of the Commission's Track pursuant to this Contract.
3. Comply with all applicable local, state and federal laws, rules, regulations and orders relating to its operations over the Commission's Track including, but not limited to, those of the Federal Railroad Administration, Nevada State Public Utilities Commission, and ADA.
4. Provide ADA compliant parking, restroom and loading facilities in Virginia City.
5. Ensure that all necessary inspections, maintenance, testing, documentations, and reports for locomotives, rolling stock and other equipment, accidents, and such other matters as may be required by local, state or federal agencies are filed by VTRR, and VTRR shall file all such reports as required by local, state or federal agencies, and shall provide copies of all such reports to the Commission. VTRR further agrees to provide and document operating and safety certification for all personnel operating equipment over the track and provide copies of all reports and certifications to the Commission. VTRR further agrees to immediately notify the Commission in writing of any derailments or other accidents that occur on or adjacent to the Commission's Track and prepare necessary accident reports to federal, state and local agencies as required.
6. Be responsible for the repair or replacement of any damaged or destroyed property which is a part of, or related to, the Commission's Track when such damage or destruction arises out of VTRR's acts of negligence when using the Commission's Track.

7. Set up dispatch/radio block/key block/train warrant or other train traffic control system to ensure collision accidents do not occur on track between trains and between other equipment using track, and provide the Commission a copy of these requirements to allow the Commission to communicate these operating requirements to its maintenance forces. VTRR has an ongoing obligation to provide the Commission the most recent copy of its Standard Operating Procedures and Safety Rules for use on the Commission's Track.
8. Except as necessary for the provision of tourist excursion trains on the Commission's Track for the Commission, not allow any person, other than employees of VTRR performing duties in furtherance of the excursion train operations for the Commission, to use, occupy or travel upon the Commission's Track. Both the Commission and VTRR recognize the exposure to property damage, injury or death from any unauthorized use of the Commission's Track by persons other than VTRR and its employees, and to that end, VTRR shall not issue or dispatch by train warrant or order to any third person to utilize the Commission's Track without the Commission's prior consent to such use. Violation of this provision shall be grounds for immediate termination of this Train Services Agreement, without notice.
9. Prepare and implement through its employees an Emergency Response Plan detailing procedures to be used by VTRR during all operations on the Commission Track for responding to emergencies on-board trains or along the railroad right-of-way.
10. Ensure that any person operating an excursion on the Commission's Track shall not release, dispose of or place any materials or debris on the Commission's Track, and shall be responsible for removing and properly disposing of any such materials or debris.
11. Be solely responsible for any damage or destruction to the VTRR's equipment which, the Commission, in its sole discretion, agrees to allow to be stored on the Commission's Track or property.

The Commission and VTRR agree that:

1. Only VTRR or its designees may operate trains on the Commission's Track. Any other train operations on the Commission's Track shall be first reviewed and approved by the Commission and by VTRR; provided, however, that no other train operations shall be approved which will cause the Commission and/or VTRR to be considered a short line railroad by the Federal Railroad Agency.
2. Special events, whereby trains may be operated on the Commission's Track, may be permitted, so long as both parties agree and VTRR is satisfied that all safety and regulatory standards are met. VTRR's approval of such uses shall not unreasonably be withheld.
3. The operation of a special events train after approval by VTRR will be the sole responsibility of the Commission.
4. Any special train event approved by VTRR to operate on VTRR's Track on an individual basis will only be allowed to operate to the extent that is approved by VTRR for that individual use and such approval will not be interpreted to apply to any other use, or to bestow a continuing right to use, VTRR's Track.

ATTACHMENT DD – LOCOMOTIVE #18 LEASE AND MAINTENANCE

This document, titled Attachment DD – Locomotive #18 Lease and Maintenance will hereinafter be referred to as “the Lease”. Pursuant to this Lease, the Commission and VTRR agree as follows:

1. **Lease of the 18:** Commission hereby leases to VTRR, and VTRR hereby leases from the Commission, Locomotive # 18 on the terms and conditions set forth as follows.
2. **Repairs:** The Commission will budget for annual repairs. VTRR agrees to provide an annual update on repairs. The parties agree that as additional items of repair are undertaken in the future, more items of repair may be discovered. Upon such discovery of additional repair items, the parties may execute addendums to this Agreement to address such respective repairs, however VTRR shall have no obligation to make the same without a mutually agreeable addendum hereto.
3. **Use:** Provided that VTRR is not in default of any provision of this Lease or Contract, VTRR, except as set forth in this Lease and Contract, will be entitled to the right to the use, operation, possession, and control of Locomotive # 18 during the term of this Lease. VTRR will also during such period employ, and have control, supervision, and responsibility over, any operations or uses of Locomotive # 18.
4. **Rental Agreement:** VTRR shall be required to pay annual rent for its use of Locomotive # 18 according to Attachment FF – Fee Schedule.
5. **Costs:** VTRR shall be responsible for the costs of the following:
 - a. All costs of maintenance of Locomotive # 18, as defined in this Lease, together with all costs of VTRR for use of Locomotive #18 for the term of this Lease shall be paid by VTRR; and
 - b. VTRR shall be responsible for all costs of taking Locomotive # 18 out of service at the end of its use and prior to storage, including all costs of winterizing the locomotive.
6. **Condition Precedent to Lease:** The Commission and VTRR agree that this Lease is conditioned upon the existence of a valid Train Services Agreement between them by which VTRR shall receive appropriate consideration for those excursion trains operated exclusively by VTRR for the Commission.
7. **Inspections:** The Commission shall also, at its sole cost and expense, have Locomotive # 18 inspected by the appropriate representative of the Federal Railroad Administration (“FRA”) and/or the Nevada Public Utilities Commission (“PUC”) and shall obtain all required FRA/PUC certifications that Locomotive #18 may be operated and used for excursion trains offered by VTRR for the Commission. The Commission shall also, at its sole cost and expense, have Locomotive # 18 inspected by such other federal or state regulatory agencies as may have jurisdiction over Locomotive # 18 and excursion trains operated in the State of Nevada prior to this Lease becoming effective.
8. **Operation and Storage:** VTRR agrees to operate, maintain, and protect Locomotive # 18 for the term of this Lease. VTRR agrees to store Locomotive # 18 during the term of this Lease at a rate of \$1,400 per month. The Commission at its discretion may decide to arrange for alternative storage solutions upon 60 days’ written notice to VTRR. Upon the return of Locomotive # 18, no further storage fees are due.
9. **Compliance with Law:** VTRR shall, at VTRR’s sole cost, comply with all applicable requirements, rules, laws, ordinances, and orders of all municipal, state, and federal governments and authorities now in force, or that may later be in force, pertaining to the possession and use of Locomotive # 18. VTRR shall meet and pay timely when due all applicable permit, license and other fees required by local, state or federal authorities pertaining to Locomotive # 18. VTRR shall prepare and file all required reports with any municipal, state and/or federal agency required by any regulatory agency which has jurisdiction over Locomotive # 18.
10. **Disclaimer:** The Commission represents and warrants that the Commission has the right to lease Locomotive # 18, as provided in this Lease.

- 11. Property Insurance:** The Commission shall maintain primary property insurance on Locomotive # 18, and provide a certificate to VTRR evidencing such insurance which shall cover damage or destruction to Locomotive # 18.
- 12. Liability for Damage or Destruction:** VTRR hereby assumes and shall bear the entire risk of loss and damage to Locomotive # 18 arising out of the negligence of VTRR, excepting any cause due to the negligence or willful misconduct of the Commission or its members, officers, agents, representatives, or assigns. In the event of loss or material damage to Locomotive # 18 arising out of the negligence of VTRR, VTRR shall, at VTRR's sole option, and as reasonable: 1) place the same in good repair, condition and working order; 2) replace the same with like equipment which is reasonably acceptable to the Commission and is in good repair, condition and working order; or 3) pay to the Commission the replacement cost of Locomotive # 18. The parties agree to cooperate in submitting any such matter as an insurance claim under all applicable policies described in the Insurance schedule and paragraph 11 above.
- 13. Maintenance and Repair:**
- a. The Commission and VTRR agree that for the purposes of this Lease:
 - i. Maintenance is defined as: servicing of the engine, all necessary and appropriate inspections, submittal of end of year Form 5 to the FRA, winterizing of the locomotive, and maintenance activities that include cleaning, lubrication and adjustment of journals, axles, bearings, linkages, cylinders, pins and bushings, cleaning and servicing of brake valves, dead weight testing of gauges, UT dry pipes, adjusting mechanisms, replacing brake shoes and brake hoses, servicing of injectors without replacing parts, punching of fire tubes, cleaning out smoke box, sweeping of fire box, wiping jacketing, cab surfaces and machinery, replacing glass, light bulbs, cotter pins and general fasteners, fixings sanders, hoses, minor gaskets and loose components such as water glasses and sweeping out of the tender for each season.
 - ii. Repairs are defined as:
 - 1. Form 19 boiler repairs or alterations, the 1472-day service inspection, Form 4 inspections, manufacture or replacement of stay bolts, tubes, sheets, refractory or other boiler work, including caulking, forming, drilling, tapping, welding or riveting including tender tank components and caulking of seams where necessary.
 - 2. new piping, tubing, jacketing, insulation, fitting replacement, bearings, bushings, castings, bolts, pins and forgings, air system rings, pistons, rods, valves, cylinders, replacement of wooden beams, decks, ladders, attachments, couplers, knuckles, tender wheels, bearings, frame, bolsters, boxes, pads, linkage, draw bars, pockets, pins, buffers, springs, air pump and governor parts, air brake components, injector parts, check valves, mechanical lubricator parts, safety valves, bells, whistles, lamps, burners, drifting valves, journal boxes, drive wheels, tires, axles, wedges, adjusting bolts, frame pieces, spring or components of springs, brake levers or arms, pistons, rings, cylinders, valves, linkages, rods, cross head components, valve motion, reverse mechanism, throttle shaft and linkage, throttle body, dry pipe, throttle pipe, saddle, smoke box, nozzles, injectors (except cleaning and servicing are maintenance items), and dynamo, is also intended as repair. VTRR, at its own cost and expense, shall maintain Locomotive # 18 during its use by VTRR.
 - b. The VTRR and the Commission shall mutually agree on repairs that may need to be made from time to time, and further agree to VTRR's price to make the repairs, as VTRR may set from time to time, with the cost of repair being borne by the Commission save and except for those repairs which are made necessary and occasioned by the VTRR's negligence or misuse of Locomotive # 18.
 - c. VTRR, at its own cost and expense, shall keep Locomotive # 18 in good repair, condition, and working order while being used by VTRR.

- d. The Commission shall have the right to inspect Locomotive # 18, either by duly authorized members of the Commission or by its authorized representatives and shall have the right after such inspections to “meet and confer” with VTRR regarding the physical condition of Locomotive # 18. In addition, at the end of the term of this Lease, VTRR shall provide to the Commission with a written report by a qualified maintenance and operations representative describing the current status of Locomotive # 18 and the work performed by VTRR on it during the term of this Lease and shall provide to the Commission copies of all records required by regulatory agencies.

14. Operation and Movement of Locomotive # 18:

a. VTRR shall store Locomotive #18 in at least as secure and protected a location as VTRR’s other locomotives in Virginia City.

b. VTRR shall not modify Locomotive # 18 in any manner, except for decoration and lettering, that would change its historic appearance, other than as required to meet federal requirements, without the prior written consent of the Commission.

c. VTRR shall not, without the Commission’s prior written consent, permit the operation, use or possession of Locomotive # 18 by any person, company, organization, or entity other than VTRR and its respective officers, agents, employees and representatives.

15. **Return of Locomotive # 18:** Upon the expiration or termination of this Contract or Lease, VTRR will transport and deliver Locomotive # 18 to the Commission at the East Gate Depot, in good repair and condition.
16. **Ownership:** Locomotive # 18 is, and shall at all times be and remain, the sole and exclusive property of the Commission. VTRR shall have no right, title or interest in or to Locomotive # 18 except as expressly set forth in this Lease.
17. **Liens:** VTRR shall keep Locomotive # 18 free from all liens arising out of any work performed, material furnished or obligation incurred by VTRR. VTRR shall not, however, be required to pay or discharge any tax or assessment so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the Commission’s title and interest to Locomotive # 18.

ATTACHMENT EE – INTELLECTUAL PROPERTY LICENSE

I. Definitions:

This Intellectual Property License will hereinafter be referred to as the “IP License”.

The railroad from Virginia City, Nevada to Gold Hill, Nevada will hereinafter be referred to as the “Short Line”.

The railroad from the end of the “Short Line” in Gold Hill, Nevada to Carson City, Nevada will hereinafter be referred to as the “Long Line”.

II. Terms:

The Parties hereby agree that during the Contract Term, which is specified in *Section 1, Contract Term*:

1. VTRR grants the Commission an exclusive license with the right to sublicense the VTRR IP on and in connection with the operation of a tourist railroad between Virginia City, Nevada and Carson City, Nevada and a non-exclusive license to use the VTRR marks on promotional merchandise.
2. The Commission shall always market, advertise and promote VTRR’s Short Line along with the Commission's Long Line, (including at a minimum its comparable schedule, website and phone number,) except in connection with the Carson River Canyon Loop (between Drake to East Gate) which may be marketed on its own. The Commission shall not use the VTRR mark on any trains that do not use VTRR tracks, i.e. trains that do not come into Virginia City, Nevada.
3. In order to facilitate VTRR’s exercise of quality control, the Commission and its sub-licensees shall submit to VTRR product samples of any VTRR merchandise as well as all marketing, advertising, promotional and ticketing materials created on its behalf at least thirty (30) days prior to mass production thereof VTRR shall provide specific reasons for disapproval of any item within 14 days of its receipt and all samples not expressly disapproved in writing shall be deemed approved. After approval, the commercially distributed merchandise and/or marketing materials must be of substantially similar nature and quality to that which was approved.
4. VTRR maintains any and all rights not expressly granted herein and specifically the right to use or license its VTRR IP in connection with the operation of the Short Line and the promotion thereof, including on retail and wholesale merchandise.
5. VTRR shall acquire and maintain one or more trademark registrations of the VTRR marks for railroad services.
6. The Commission shall pay VTRR a royalty of seven and one-half percent (7.5%) on its gross revenue from the sale of any merchandise bearing the VTRR IP. Payments shall be made twice annually, within 45 days after the end of the second and fourth quarters of each calendar year.
7. Any and all intellectual property rights resulting from the Commission’s use of the VTRR IP inures to VTRR.
8. The Commission shall adhere to the Quality Control provisions set forth on Exhibit B to this Agreement, which is a necessary part hereof.
9. All billboards, websites, brochures and posters bearing the VTRR IP shall state "Used by Permission from the Virginia & Truckee Railroad Co."
10. In the event that a third-party operator takes over operation of the Commission's railroad, during the Term, then the Commission shall pay VTRR a royalty of five percent (5%) of its gross revenue from tourist railroad tickets sales.

VTRR may inspect the Commission’s books and records, premises railroad track and equipment used in operation of the Long Line to ensure compliance with this IP License upon ten (10) days written notice. The Commission may provide documents reflecting revenue received from ticket and merchandise sales under this IP License in lieu of providing its books, provided that such records are maintained in the normal course of business and contain detail sufficient for VTRR to confirm the royalties due and owing under this IP License.

11. In the event of a breach of this IP License, each Party's' damages shall be capped at fifty thousand dollars (\$50,000).
12. The Commission would be in material breach of this IP License if it: (a) failed to provide consideration provided for in Subsections II.6 and II.10 of this IP License; (b) failed to comply with the quality control provisions on Exhibit B or (c) Failed to include the identification designations called for in Subsection II.9.
13. V&T would be in material breach if it: (a) failed to register its mark as provided for in Paragraph 5 of this IP License or (b) failed to enforce its rights in the V&T mark against infringement for use in connection with tourist railroad services.
14. Within thirty (30) days of the Termination Date of this IP License: (a) the Commission shall pay all unpaid royalties; (b) the Commission and any sub-licensees shall cease use of the VTRR IP; (c) the Commission shall provide written certification that conditions (a) and (b) have been met.
15. In the event Attachment CC of the Contract, Train Services Agreement, which is Attachment CC of the Contract, is terminated for any reason, VTRR shall continue to allow the Commission to use the VTRR IP on the Commission's Track.

Exhibit A - VTRR INTELLECTUAL PROPERTY (VTRR IP)

1. The following marks are licensed in connection with tourist railroad services:





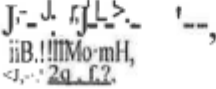
VIRGINIA & TRUCKEE RAILROAD
VIRGINIA & TRUCKEE
V&T RAILROAD
V&T
QUEEN OF THE SHORT LINES
VIRGINIA & TRUCKEE R.R. QUEEN OF THE SHORT LINES
VIRGINIA & TRUCKEE RAILROAD QUEEN OF THE SHORT LINES 
<i>Yellow and green with black trim trade dress.</i>    

Exhibit B – VTRR QUALITY CONTROL PROVISIONS

Type of Trains & Exterior Appearance of Passenger Trains

All passenger train equipment must be, or appear to be, vintage, i.e., from the 1930s or earlier.

All passenger coaches shall bear VTRR's distinctive green and yellow trade dress.

All passenger coaches shall have a letter-board bearing the VIRGINIA & TRUCKEE service mark.

All passenger coaches shall be numbered in sequence.

All passenger coaches shall be named after a Nevada regional town or location. All passenger coaches shall have Pullman riveted iron safety gates.

The letter-board name, and numbering of each train shall be in the same color paint in gold leaf, silver gilt or fed or black.

Interior Appearance of Passenger Coaches

All closed passenger coaches shall have 19th Century or turn-of-the-century appearances.

VTRR shall control on the appearance of the interior of the passenger coaches, as part of its efforts to create a "magical" authentic vintage train experience for all passengers (see Miscellaneous provisions herein as follows below).

All closed passenger coaches shall have historical displays (e.g., photographs, maps, old posters, etc.) in the advertising spaces.

All closed passenger coaches shall have clerestory style windows and roofing.

All closed passenger coaches shall have wicker or mohair or leather or leatherette walkover seats.

All closed passenger coaches shall have Victorian style carpet.

All closed passenger coaches shall have vintage lighting.

All closed passenger coaches shall have appropriate time period artifacts in the luggage racks.

All closed passenger coaches shall have polished mahogany or hardwood railings and window frames.

All closed passenger coaches shall have provisions for old-style bell cords.

The interior of each passenger train shall be cleaned and the windows shall be washed after each day's run between Virginia City and Carson City or Carson City and Virginia City to maintain the highest standards of cleanliness and professionalism.

Photography Policy

Public photography is encouraged, and all employees shall facilitate people taking photographs of the train equipment, so long as it may be accomplished safely and does not interfere with the operation of the trains.

Dress Code

All conductors on the open-air-excursion trains shall wear uniforms consisting of a VTRR baseball cap or a conductor's hat, a white or denim shirt, a black or denim vest and black or denim pants. All conductors on the closed passenger coaches shall wear uniforms consisting of a conductor's hat, a white shirt, a black or denim vest with a pocket watch, and black or denim pants.

The only baseball caps that may be worn by any public-facing employees are the authorized VTRR baseball caps.

Employees may be required to wear costumes on occasion during theme coaches, e.g., dressing up like elves during the Christmas Train or wearing costumes on the Halloween train, etc.

1.1 Fundraising Transparency

All fundraising efforts must explicitly state: (a) what entity or individuals are conducting the fundraising activity; and (b) what entity or entities shall receive the funds that are raised (c) and the amount of gross revenue to be distributed.

Any fundraising activities that shall not result in funds being provided to VTRR shall expressly state that the funds raised will not be distributed to the Virginia & Truckee Railroad Company.

Upon ten (10) days' written notice, VTRR may inspect the Fundraiser's books and records, to ensure compliance with this IP License.

1.2 General Provisions

All train employees shall demonstrate knowledge and passion for railroad heritage and preservation.

The Commission shall not interfere with, or prevent VTRR from maintaining the "Ma & Pa" image of hardworking entrepreneurs with "Yankee Ingenuity" for which the VTRR is well known and respected.

The Commission shall assist VTRR to maintain a flat organizational structure wherein the brand owner is able to make its representatives available to the ridership in order to provide highly personalized service to them; provided however that the Commission shall be allowed to maintain its own phone line if desired for the Long-Line.

VTRR's Principal shall be informed of all complaints, comments or compliments of which the Commission becomes aware relative to the tourist railroad services being offered in connection with this IP License.

ATTACHMENT FF – FEE SCHEDULE

Attachment BB

Insurance Requirements

INSURANCE REQUIREMENTS:

VTRR shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by VTRR, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Commission in no way warrants that the minimum limits contained herein are sufficient to protect VTRR from liabilities that might arise out of the performance of the work under this Contract by VTRR, his agents, representatives, employees or subcontractors and VTRR is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** VTRR shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$5,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The Commission for the Reconstruction of the V&T Railway shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

b. Policy shall contain a waiver of subrogation against the Commission.

c. **Deductibles/retentions** \$ _____

2. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

a. Policy shall contain a waiver of subrogation against the Commission.

b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

3. **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 Services of this Contract.

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, VTRR 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.

- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
1. On insurance policies where the Commission is named as an additional insured, the Commission shall have per project or per location endorsement.
 2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- C. **NOTICE OF CANCELLATION:** VTRR shall insure that each insurance policy required by the insurance provisions of this Contract shall not be suspended, voided or canceled except after providing thirty (30) days prior written notice to the Commission, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to the Commission. Should VTRR fail to provide Commission timely notice, VTRR will be considered in breach and subject to cure provisions set forth within this Contract.
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The Commission in no way warrants that the above-required minimum insurer rating is sufficient to protect VTRR from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** VTRR shall furnish the Commission with certificates of insurance (ACORD form or equivalent approved by the Commission) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- All certificates and any required endorsements are to be received and approved by the Commission before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of this Contract.
- All certificates required by this Contract shall be sent directly to the Commission. The project description shall be noted on the certificate of insurance. The Commission reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.
- F. **SUBCONTRACTORS:** VTRR's certificate(s) shall include all subcontractors as additional insureds under its policies **or** VTRR shall furnish to the Commission separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Commission, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
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Attachment FF

Fee & Calendar Schedule - SAMPLE

SECTION 1 – HOME BASE

Train will be housed in Virginia City and watched in Carson City on its stay-over nights.

SECTION 2 – REGULAR SCHEDULED TRAINS FOR STANDARD SEASON TO BE DETERMINED ANNUALLY

CARSON CITY (CC) to VIRGINIA CITY(VC) LONG LINE TRAIN STEAM/DIESEL OPERATION

Saturday Long Line Run	8:00 AM Depart VC to CC 10:00 AM Depart CC to VC 3:00 PM Depart VC to CC
Sunday Long Line Runs	10:00 AM Depart CC to VC 3:00 PM Depart VC to CC 4:30 Deadhead to VC

Scheduled trains originating at the CARSON EASTGATE DEPOT are subject to change or cancellation with a minimum of 48 hours' notice to VTRR. Cancellation will be communicated by mutual agreement by and between the Commission and VTRR.

SECTION 3 - SPECIAL TRAINS AND SPECIAL EVENT TRAINS

Commission may schedule special trains or trains for special events with the VTRR for any day and time that VTRR agrees that they can provide train service and VTRR shall make every effort to meet the demands of the Commission for special trains. VTRR shall quote prices for each train depending on length of trip, standing time, and other operating costs, but pricing shall be predicated on the base price established for the regularly scheduled trains in SECTION 2.

The Commission may schedule a departure from either depot with mutual consent of VTRR.

SECTION 4 - COMPENSATION TO VTRR

A, TRAIN SERVICES

The Commission will pay VTRR for train services according to the following table within 30 days of receipt of invoice for all services rendered:

Excursion	Locomotive	Cost	Capacity	Notes
Round Trip CC to VC	Steam – 29			
Round Trip CC to VC	Steam – 18			
Round Trip CC to VC	Diesel			
Deadhead CC to VC	Steam – 29			
Deadhead CC to VC	Steam – 18			
Deadhead CC to VC	Diesel			
Deadhead VC to CC	Steam – 29			
Deadhead VC to CC	Steam – 18			
Deadhead VC to CC	Diesel			
Canyon Run	Steam – 29			
Canyon Run	Steam – 18			
Canyon Run	Diesel			
The Polar Express	Diesel			
Toast of the Canyon	Steam – 29			
Toast of the Canyon	Steam – 18			
Toast of the Canyon	Diesel			

The Commission will pay to VTRR a fuel escalation charge based on the rate of 500 gallons of steam fuel per day at a rate of 2012 prices of .85 cents per gallon to be adjusted each week. For example, if the preceding month's fuel cost was \$1.50 per gallon and the average fuel cost of the 2012 season was \$0.85 per gallon VTRR would include a fuel surcharge of \$1.50 less \$0.85 or \$0.65 times 500 or \$325 per day. The VTRR will make available to the Commission such documents as necessary to determine pricing surcharges or reductions.

B. LOCOMOTIVE # 18

The Commission will pay VTRR for housing of Locomotive # 18 according to the following table within 30 days of receipt of invoice. Furthermore, VTRR will pay the Commission for use of Locomotive # 18 according to the following table within 30 days of receipt of invoice.

Item	Cost	Notes
Housing of Locomotive # 18	\$1,400 per month; \$16,800 per year	Commission to pay VTRR
Use of Locomotive # 18	\$500 per use	VTRR to pay Commission

B. EQUIPMENT RENTAL

The Commission will pay VTRR for track equipment rentals according to the following table within 30 days of receipt of invoice.

Item	Cost	Notes

SECTION 5 - TRAIN SERVICE

VTRR, for each scheduled train in Section 2 will provide a train that has the capacity to carry 210 passengers. VTRR may substitute an "OPEN CAR" in acceptable weather. Train must have restroom facilities. Changes may be made to train configuration by mutual consent of Commission and VTRR, and Commission will notify VTRR promptly when reduced capacity is applicable. All trains shall run on time, within reason, and VTRR may be penalized TEN PERCENT (10%) of the gross payment for that train which operates later than scheduled, if due to gross negligence of VTRR.

In the event of an unexpected breakdown of the equipment, VTRR shall make every reasonable effort to provide a redundancy backup (with current equipment as available, 18, 29, D-1, D-2, 101, 102, 103, 55, 50) with the ability to provide a train that has the minimum capacity to carry 210 passengers. However, unless the breakdown is caused by the gross negligence of the VTRR., the Commission shall not penalize VTRR by a deduction in the gross payment pursuant to the compensation due to VTRR for operation. If VTRR is unable to run a particular train pursuant to the schedule herein established, then VTRR shall forfeit any compensation for that scheduled trip.

SECTION 6 - EXEMPTIONS

VTRR shall continue to run the Virginia City-Gold Hill train excursion from the Virginia City depot as their sole and separate business and VTRR will be allowed to run extended trains to Haywards provided they do not conflict with the scheduled Carson City-Virginia City long trains each day with no fees or assessments in exchange for the VTRR waiving the fees and assessments for the Carson-Virginia City train using the VTRR's track from Virginia City to Gold Hill during the term of this agreement.

SECTION 7 - TRACK USE AND SCHEDULING RESPONSIBILITY

Since the Commission has engaged the services of VTRR to provide various train services on this track, then the Commission assigns to VTRR, and VTRR accepts the full responsibility for track use by the VTRR to eliminate conflicts by any other users who subscribe to warrants on the track from VTRR. All other trains, railcars, scooters, high-rails, railbikes and any other rail equipment, whether for operation or inspections shall obtain a warrant from VTRR and VTRR shall have the right to deny, restrict or refuse access by anyone with the right of review by the Commission for such action.

SECTION 8 - CONTACTS

For the COMMISSION:

Nevada Commission for the Reconstruction of the V&T Railway
PO Box 1711
Carson City, NV 89702
admin@vtrailway.com

For the VIRGINIA AND TRUCKEE RAILROAD:

Thomas Gray, Vice President
P O Box 467
Virginia City, Nevada 89440
tgray@virginatruckee.com