



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

Date Submitted: 03/14/23

Meeting Date Requested: 03/20/23

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 Contract No. FY23-C002 with Virginia & Truckee Railroad ("VTRR") for train services, lease, maintenance and storage of Locomotive #18, and use of VTRR's intellectual property ("the Contract"), effective through January 1, 2028.

Staff Summary: *Following contract negotiations, the V&T Commission, VTRR and legal counsel have compiled the proposed Contract that is being recommended for approval.*

Type of Action Requested:

Resolution

Ordinance

Formal Action/Motion

Other (Specify) Presentation Only

Recommended Board Action: *I move to approve No. FY23-C002 with Virginia & Truckee Railroad ("VTRR") for train services, lease, maintenance and storage of Locomotive #18, and use of VTRR's intellectual property ("the Contract"), effective through January 1, 2028.*

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

Fiscal Impact:

Explanation of Impact:

Funding Source:

Supporting Material/Attachments: 20230320_VT_Item 9_VTRR

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
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, President
Phone:	(775) 847-0380
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, which is more fully depicted in Attachment GG, V&T Railway Reconstruction – Project Status Map Updated September 2018; and

WHEREAS, the Commission owns the railroad track south of the Gold Hill Depot to Eureka Siding, 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” or “Contractor”) 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 immediately past 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 charter services on the Commission’s Track, 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:

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:	March , 2023	To:	March , 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:	CHARTER SERVICES AGREEMENT
ATTACHMENT DD:	LOCOMOTIVE #18 LEASE AND MAINTENANCE AGREEMENT
ATTACHMENT EE:	INTELLECTUAL PROPERTY LICENSE
ATTACHMENT FF:	FEE SCHEDULE
ATTACHMENT GG:	V&T RAILWAY RECONSTRUCTION – PROJECT STATUS MAP, UPDATED SEPTEMBER 2018

4. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph 3 of this Contract and at a cost as designated in Attachment FF. 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.

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Commented [MN2R1]: They are numbered in the version I sent you. Who knows what happened. Are they now?

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 second Friday in July, 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 an invoice reflecting the separately delineated costs expended on behalf of the Commission.

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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. ~~Either party may unilaterally terminate this contract without cause by giving not less than thirty (30) days' written notice to the other party. If this contract is unilaterally terminated by one party, the other party shall make its best efforts to minimize costs to the terminating party. If the Commission shall cancel without cause, the Commission shall compensate VTRR for reasonable costs incurred in reliance on the continuation of this Contract, including without limitation all expenses incurred by VTRR for train operations, equipment, facilities, and personnel and pay all outstanding amounts due through the date of termination.~~

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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 by VTRR for Incapacity. The continuation of this Contract is subject to and contingent upon VTRR having adequate staffing and equipment.

D. 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 outlined in paragraph 7(e) of this Contract, if applicable. 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;

6) If it is found by either party that the other has failed to disclose any material conflict of interest relative to the performance of this Contract.

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.** Both parties 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 ant Commission breach shall include the 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 and reasonable damages VTRR incurred as a result of the breach. Neither party's tort liability shall 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 41, both parties shall indemnify, hold harmless, and defend the other party 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 under this Contract or any alleged negligent or willful acts or omissions of the party, its officers, employees and agents. Both parties waive any rights of subrogation against the other. The duty to defend begins when the other party 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, information, or documents provided by one party to the other in the course of this Contract shall be and remain the exclusive property of the producing

**LAW OFFICE OF
MICHAEL S. ROWE, ESQ.**


ATTORNEY AT LAW

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P.O. Box 2080
Minden, NV 89423

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Michael@rowelawoffices.net

MEMORANDUM

To: David Peterson, Chairman to the Nevada Commission for the Reconstruction of the V&T Railway

From: Michael Smiley Rowe 

Subject: Sole Source Contract - Train Services Operation

Date: 27 January 2022

By virtue of a letter which was dated 16 September 2021, and received by me somewhat after that, you, as the Chairman, requested a legal opinion relating to the current relationship between the V&T Railway Commission and the V&T Railroad (Mr. Tom Gray) as it relates to the Train Services Operation that is currently in place. Specifically, you stated that the legal opinion request is whether or not the Train Services Operation qualifies as a sole source, given the unique ownership of the tracks themselves that the trains are operating on.

I would point out that the ownership of the tracks themselves is not the only factor in my determination. In addition, the equipment (coaches) used by the V&T Railroad are owned by the V&T Railroad, and, for those trains which are not powered by Engine 18, the motive power for such trains is also owned by the V&T Railroad.

I, and the Commission as of 30 November 2021 at its public meeting, have determined that the Train Services Operation Agreement that is currently in place with the V&T Railroad qualifies as a sole source.

The governing provisions of the Nevada Revised Statutes (NRS) are set forth in the Local Government Purchasing Act, NRS 332.015 et. seq. Clearly, the Railway Commission falls within the definition of Local Government inasmuch as it is a political subdivision of the State of Nevada which has the right to levy or receive money from ad valorem taxes or other taxes or for any mandatory assessments. There are other statutes such as NRS chapter 333 NRS as it relates to State Purchasing ("The State Purchasing Act") that provided guidance.

While NRS 332.115 does not prohibit the Commission from advertising for or requesting responses, due to the unique nature of the track and equipment ownership, there does not seem to be a viable option in contracting with another entity to run trains on the Commission's track.

The ownership of the track is perhaps the best example of why the V&T Railroad is a sole source of Train Services Operations. The track from Virginia City to Gold Hill is the private property of the V&T Railroad and, it is doubtful, if another vendor was selected to run train operations, that vendor would be granted permission to utilize the V&T Railroad owned tracks from Gold Hill to Virginia City. The same may be said about any equipment which is used by the V&T Railroad to provide train services to the Commission.

An exception to the competitive bidding requirements of NRS 332 is found in NRS 332.115(1)(a): Contracts which by their nature are not adapted to award by competitive solicitation, including contracts for:

“(a) items which may be only contracted from a sole source”

I would like to note that my decision was influenced by a meeting which was conducted between Ken Dorr, Project Engineer, Jim Wells, Treasurer, you as Chairman, and me to discuss the sole source justification. At that meeting it was concluded that the issue of sole source justification should be submitted to the entire Commission for the Commissioner’s input and determination. That was accomplished on 30 November 2021 at which time all of the Commissioners were offered the opportunity to review and comment on the issue of whether or not the Train Services Operation and Agreement that is currently in place qualified as a sole source. At the conclusion of the discussion, a motion was made, duly seconded and carried to determine that the Train Services Operation under the Train Services Agreement with the Virginia and Truckee Railroad qualified as a sole source.

ATTACHMENT BB – INSURANCE SCHEDULE

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.

1. **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.

1. **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.

1. Garage Liability (may be listed as a General Liability) – Occurrence Form

Policy shall include bodily injury, property damage, premises, operational and broad form contractual liability for garage operations, covered autos and operations necessary and incidental to the garage business.

- General Aggregate \$2,000,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The Commission shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of VTRR".
- b. The policy shall be endorsed to include coverage for towing or on hook coverage (if towing services are included in the scope of services in the Contract or part of the normal operations of the Contractor).

1. Garagekeeper's Liability \$100,000

Policy should provide coverage for damage to a customer's vehicles while under the care, custody or control of the contractor.

- a. The policy can be included as an endorsement to the contractor's garage/auto liability policies or may be listed as a separate policy.

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.

- **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.

(End of attachment BB-Insurance Schedule).

ATTACHMENT CC – CHARTER SERVICES AGREEMENT

DUTIES AND SERVICES TO BE PROVIDED BY THE PARTIES

The Commission shall:

1. Provide the required, regular track, **lubrication**, 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.
2. 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 or the person or entity with whom the Commission contracts to operate tourist excursion trains on the Commission's Track.
3. In support of the interim tourist excursion train operations to be provided, provide **electric and** 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.
4. Provide regular track lubrication.
5. Conduct regular fire prevention practices and provide fire patrol during the summer months.
6. **Provide security for trains left overnight at the Eastgate station and provide security for trains left at Eastgate for the performance of the Polar Express trains or other special event trains.**
7. Allow for filming and video production along the train route and within the trains. This includes allowing the loading and unloading of necessary equipment without disruption.
8. Provide adequate training for contractors and vendors employed by the Commission.
9. Be responsible for the safety and operations of contractors and vendors employed by the Commission.
10. Be responsible for coordinating all equipment and contractors involved in track inspections.
11. **Provide one board member for access and inclusion to track related issues.**
12. **Provide one board member for access and inclusion to financial issues.**
13. **Provide one board member for access and inclusion to equipment issues.**
14. **Provide one board member for access and inclusion to operating issues.**
15. **Provide one member for access and inclusion to future growth issues**

VTRR shall:

1. 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, on behalf of the Commission and shall provide copies of all such reports to the Commission.

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 or employees.
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 and the Nevada State Public Utilities Commission.
4. Provide ADA compliant parking and loading facilities in Virginia City.
5. Provide and document operating and safety certification for all personnel operating equipment over the track and provide results of all reports and certifications to the Commission.
6. 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. 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 VTRR trains and 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 is not responsible for collision accidents by and between equipment not belonging to it.
8. 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.
9. 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 volunteers, and to that end, VTRR shall not issue or dispatch by train warrant or order to any third person the right to utilize the Commission's Track without the Commission or the Commission's Chair's prior consent to such use. Violation of this provision may be grounds for immediate termination of this Charter Services Agreement, without notice.
10. Since the Commission has engaged the services of VTRR to provide various train services on the Commission's Track, then the Commission assigns to VTRR, and VTRR accepts the full responsibility for track use by VTRR to eliminate conflicts with its trains 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.
11. 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.

12. Except as necessary for the provision of tourist excursion trains, other services by the Commission's contractors or vendors, [fire patrol motor cars and trailers and trailers](#), not allow any person, other than employees [and volunteers](#) of VTRR performing duties in furtherance of the excursion train operations for the Commission, to use, occupy or travel upon the Commission's Track.
13. 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.
14. Be solely responsible for any damage or destruction, due to any reason, 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. VTRR shall indemnify and hold the Commission harmless from any and all damage, loss, claim, cause of action or expense arising directly or indirectly from VTRR storing items of personal property on the Commission's Track or property. If VTRR receives a written notice from the Commission to remove its property and VTRR does not remove the property in a timely manner, the Commission may deem the property abandoned and may, destroy, or otherwise dispose of it. [This provision does not reduce the Commission's tort liability.](#)
15. Ensure that the appropriate locomotive and passenger cars for nonrecurring or special event trains, including Polar Express, arrive at the Eastgate Depot a minimum of **two** hours prior to the first scheduled departure of said nonrecurring or special event trains, including Polar Express.

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.
5. Any special train event approved by the Commission to operate on the Commission's Track on an individual basis will only be allowed to operate to the extent that it is approved by the Commission for that individual use and such approval will not be interpreted to apply to any other uses, or to bestow a continuing right to use, the Commission's Track.
6. 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 future track constructed in Phases 3B, 3C and 4 as further described in Attachment GG, without the prior approval of the Commission.

7. VTRR may 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~~ **Lincoln** 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.

(End of Attachment CC – Charter Services Agreement)

ATTACHMENT DD – LOCOMOTIVE #18 LEASE AND MAINTENANCE AGREEMENT

This document, titled Attachment DD – Locomotive #18 Lease and Maintenance Agreement 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 **daily** 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; and
 - b. 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 **at the end of the operating season**.
6. **Condition Precedent to Lease:** The Commission and VTRR agree that this Lease is conditioned upon the existence of a valid Charter 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.

The Commission will reimburse V&T RR for expenses related to the annual inspection costs for Locomotive #18.

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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 provided in Attachment FF-Fee Schedule. 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:

~~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.~~

- i. Daily Maintenance is defined as, and includes: servicing of the engine, daily inspections, fueling and watering, boiler treatment and testing, wiping jacketing, cab surfaces and machinery; soft packing and minor lapping of steam valves; cleaning, lubrication and or adjustment of bearings, linkages, cylinders, pins and bushings; adjusting brake shoes and replacing brake hoses; servicing of components without replacing parts, such as injectors, water glasses, sanders, mechanical lubricators; punching of fire tubes, cleaning out the smoke box, sweeping of the fire box, cleaning burner; replacing glass, light bulbs, cotter pins, general fasteners and minor hoses and gaskets. It also includes the 31-day inspection requirements.

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Repairs are defined as:

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.

And including: 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, 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, 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.

ii. Repairs and wear and tear components are excluded and defined as:

1. Form 19 boiler repairs or alterations, the 1472-day service inspection, Form 4 inspections, designs or engineering, manufacture or replacement of stay bolts, tubes, sheets, braces, mudring, w/o plugs, studs, bearers, refractory, throttle shaft and linkage, throttle body, dry pipe, saddle, smoke box and nozzles or other boiler components and work, including caulking, forming, drilling, tapping, welding, riveting, or heat treating, including tender tank and frame components and caulking and repair of seams.
2. And including: new piping, tubing, fittings, valves, jacketing, insulation, bearings, bushings, castings and forgings, machined bolts, pins; air system components and parts, including compressors, governors, brake valves, rings, pistons, cups and seals, rods, valves, cylinders, and tanks; replacement of wooden beams, decks, ladders, attachments, couplers, knuckles, and tender components including wheels, axles, bearings, boxes, pads, brake shoes, frame, bolsters, planks, linkages, draw bars, pockets, pins, buffers, springs; locomotive appliances such as injector parts, check valves, gauges, mechanical lubricator parts, check valves, drifting valves, dynamo and electrical appliances, safety valves, bells, whistles, lamps, burners; running gear components, such as pilot, drive or guide wheels and truck assemblies, tires, axles, boxes, liners, bearings, wedges, adjusting bolts, frame pieces, springs or components of equalizing system, levers, foundation brake linkage, brake shoes, engine cylinders, liners, pistons, rods, rings, valves, linkages, metallic packing, cross head components, metallic packing, valve motion components, reverse mechanisms, nozzles, and dynamo, are also intended as repair (or non-daily maintenance item).

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- 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, ~~and assume at its own cost and expense the daily maintenance as defined above, but not the repairs or wear and tear as defined above which will be borne by the Commission,~~ 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 indoors ~~or~~ 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, ~~and be reimbursed for costs to prepare and transport Locomotive #18 for the move, not to exceed \$3,500.~~

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.

(End of Attachment DD – Locomotive #18 Lease and Maintenance Agreement)

ATTACHMENT FF – FEE SCHEDULE TEMPLATE

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

SECTION 3 - NONRECURRING AND SPECIAL EVENT TRAINS

Commission may schedule nonrecurring or special event trains 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 such 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 4.

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

SECTION 4 - COMPENSATION TO VTRR

Compensation may be adjusted for an increase in C.P.I. using bls.gov or mutually agreeable indicator.

A, TRAIN SERVICES

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

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

Service day preparation, steam fire up. \$1450 per day, (one required for each steam weekend)

Excursion	Locomotive	Cost	Capacity (min/max)	Notes
Round Trip CC to VC	Steam – 29	6500	210	N/A

Round Trip CC to VC	Steam – 18	6500	210	
Round Trip CC to VC	Diesel	4800	210	
Deadhead CC to VC	Steam – 29			N/A
Deadhead CC to VC	Steam – 18			
Deadhead CC to VC	Diesel			
Deadhead VC to CC	Steam – 29			N/A
Deadhead VC to CC	Steam – 18			
Deadhead VC to CC	Diesel			
Canyon Run	Steam – 29			N/A
Canyon Run	Steam – 18	950		*
Canyon Run	Diesel	750		*
The Polar Express	Diesel	5750	3- 70-80' cars	Per Evening
	Additional coach	2200	1-80' car	Per Evening
Toast of the Canyon	Steam – 29			N/A
Toast of the Canyon	Steam – 18	950		*Special Conditions
Toast of the Canyon	Diesel	750		*Special Conditions

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	N/A
Use of Locomotive # 18	\$500 per day use	VTRR to pay Commission

C. EQUIPMENT RENTAL

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

Item	Cost (Not to Exceed)	Notes
Work Train with Ballast Car(s)	2500	
Track Liner (“Spud Liner”) w/o Operator	750	
Track Tamper – non lifting/lining capable w/o Operator	1200	
Hi-Rail Excavator w/o Operator	1500	

Motor Car and track cart(s) w/o Operator	150	
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SECTION 5 - TRAIN SERVICE

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~~). 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.

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.