



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

**Date Submitted:** 08/21/21

**Meeting Date Requested:** 08/26/21

**Time Requested:** 5 Minutes

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

**From:** David Peterson

**Subject Title:** Discussion and possible action regarding approval of Lease No. FY22-L001, with Virginia & Truckee Railroad Co., Inc., for the purpose of the sale of goods and services, for a total not to exceed amount of \$1,080.26.

**Staff Summary:** Approval for leasing retail space at the Eastgate Depot Ticketing Office Gift Shop, by Virginia & Truckee Railroad Co., Inc., through January 31, 2022.

**Type of Action Requested:**

Resolution

Ordinance

Formal Action/Motion

Other (Specify) Presentation Only

**Recommended Board Action:**

*I move to approve leasing retail space at the Eastgate Depot Ticketing Office Gift Shop, by Virginia & Truckee Railroad Co., Inc., through January 31, 2022.*

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

**Fiscal Impact:**

**Explanation of Impact:**

**Funding Source:**

**Supporting Material/Attachments:** FY22-L001 Virginia & Truckee Railroad Co., Inc. Retail Space Lease

**Prepared By:** Allyson Bolton, Atypical Consulting and Events



## **Retail Space Lease No. FY22-L001**

This Lease Agreement No. FY22-L001 (this "Lease") is dated **August 26, 2021**, by and between The Nevada Commission for the Reconstruction of the V&T Railway ("Landlord"), and Virginia & Truckee Railroad Co., Inc. (VTRR) ("Tenant"). The parties agree as follows:

**RETAIL SPACE.** Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant Eastgate Depot Ticketing Office Gift Shop (the "Retail Space") located at 4650 Eastgate Siding Road, Carson City, Nevada 89701.

**TERM.** The lease term will begin on **August 26, 2021 and will terminate on January 31, 2022**. This Lease allows the Tenant to maintain store hours at its discretion, including during The Polar Express train rides.

**LEASE PAYMENTS.** Tenant shall pay to Landlord monthly installments of **\$208.00**, payable in advance on the first day of each month, **for a total lease payment of \$1,080.26**. Lease payments shall be made to the Landlord at PO Box 1711, Carson City, Nevada 89702, which address may be changed from time to time by the Landlord.

**POSSESSION.** Tenant shall be entitled to possession on the first day of the term of this Lease and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, Tenant shall remove its goods and effects and peaceably yield up the Retail Space to Landlord in as good a condition as when delivered to Tenant, ordinary wear and tear excepted.

**USE OF RETAIL SPACE.** Tenant may use the Retail Space only for the purpose of operating a business open to the public for the sale of goods or services. The Retail Space may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Retail Space not later than the first day of the extended absence.

**PROPERTY INSURANCE.** Landlord and Tenant shall each maintain appropriate insurance for their respective interests in the Retail Space and property located on the Retail Space. Landlord

shall be named as an additional insured in such policies. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force issued by companies reasonably satisfactory to Landlord. Landlord shall receive thirty (30) days' advance written notice from the insurer prior to any termination of such insurance policies. Tenant shall also maintain any other insurance which Landlord may reasonably require for the protection of Landlord's interest in the Retail Space. Tenant is responsible for maintaining casualty insurance on its own property.

**RENEWAL TERMS.** This Lease shall automatically renew for an additional period of one year per renewal term, unless either party gives written notice of termination no later than 30 days prior to the end of the term or renewal term. The lease terms during any such renewal term shall be the same as those contained in this Lease.

**UTILITIES AND SERVICES.** Landlord shall be responsible for all utilities and services incurred in connection with the Retail Space.

**CUMULATIVE RIGHTS.** The rights of the parties under this Lease are cumulative and shall not be construed as exclusive unless otherwise required by law.

**REMODELING OR STRUCTURAL IMPROVEMENTS.** Tenant shall have the obligation to conduct any construction or remodeling (at Tenant's expense) that may be required to use the Retail Space as specified above. Tenant may also construct such fixtures on the Retail Space (at Tenant's expense) that appropriately facilitate its use for such purposes. Such construction shall be undertaken, and such fixtures may be erected only with the prior written consent of the Landlord which shall not be unreasonably withheld. At the end of the lease term, Tenant shall be entitled to remove (or at the request of Landlord shall remove) such fixtures and shall restore the Retail Space to substantially the same condition of the Retail Space at the commencement of this Lease.

**ACCESS BY LANDLORD TO RETAIL SPACE.** Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord will share the facility with the Tenant. However, Landlord does not assume any liability for the care or supervision of the Retail Space. As provided by law, in the case of an emergency, Landlord may enter the Retail Space without Tenant's consent.

**CONSTRUCTION ON ADJACENT PREMISES.** If any excavation or other building operation shall be authorized or undertaken on any premises adjoining or above or below the Retail Space, Tenant shall permit Landlord, employees, licensees and contractors, to enter the Retail Space and to shore the foundations and/or wall thereof, and to erect scaffolding and/or protective barricades around and about the Retail Space (but not so as to preclude entry thereto) and to do any act or thing necessary for the safety or preservation of the Retail Space. Tenant's obligations under this Lease shall not be affected by any such construction or excavation work, shoring-up, scaffolding or barricading. Landlord shall not be liable in any such case for any inconvenience, disturbance, loss of business or any other annoyance arising from any such construction, excavation, shoring-up, scaffolding or barricades, but Landlord shall use its best efforts to assure that such work will cause as little inconvenience, annoyance and disturbance to Tenant as possible consistent with accepted construction practice in the vicinity and to assure that such work shall be expeditiously completed.

**INDEMNITY REGARDING USE OF RETAIL SPACE.** To the extent permitted by law, Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which Landlord may suffer or incur in connection with Tenant's possession, use or misuse of the Retail Space, except Landlord's act or negligence.

**DANGEROUS MATERIALS.** Tenant shall not keep or have on the Retail Space any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Retail Space, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained, and proof of adequate insurance protection is provided by Tenant to Landlord.

**COMPLIANCE WITH REGULATIONS.** Tenant shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters. However, Tenant shall not by this provision be required to make alterations to the exterior of the building or alterations of a structural nature.

**RELATIONSHIP OF THE PARTIES.** Nothing contained herein shall be deemed or construed by the parties hereto, or any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Payment or Additional Rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

**ASSIGNABILITY/SUBLETTING.** Tenant may not assign or sublease any interest in the Retail Space, nor effect a change in the majority ownership of the Tenant (from the ownership existing at the inception of this lease), nor assign, mortgage or pledge this Lease, without the prior written consent of Landlord, which shall not be unreasonably withheld.

**GOVERNING LAW.** This Lease shall be construed in accordance with the laws of the State of Nevada. Venue shall be in Carson City, Nevada.

**ENTIRE AGREEMENT/AMENDMENT.** This Lease Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

**SEVERABILITY.** If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it will become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**HOLD HARMLESS.** VTRR agrees to release, indemnify, defend and hold harmless the Commission for, from and against any and all losses, damages, claims, demands, actions, costs and expenses (including, without limitation, court costs and attorneys' fees) (collectively, "losses") (a) caused by or arising from, in whole or in part, any act or omission of use, or (b) any breach by VTRR of this agreement, or (c) for personal injury to or death of VTRR's employees, agents, occurring while such person is on or about the Commission's track. The foregoing release and indemnity shall apply regardless of any negligence or strict liability of Commission except to the extent the loss is caused by the gross negligence or willful misconduct of Commission.

**INSURANCE.** VTRR shall procure liability insurance for its operations in the amount of \$2 million dollars per act or occurrence and shall at all times maintain such insurance in full force and effect. VTRR shall provide the Commission with a Certificate issued by its insurance carrier evidencing the insurance coverage required. VTRR shall maintain the required insurance coverage throughout the term of this Agreement and require the VTRR's insurance carrier to notify the Commission at least 30 days prior to modification or cancellation of such insurance. Property insurance carried by the Commission, if any, shall be considered excess insurance and shall not contribute to any loss covered by VTRR property insurance or VTRR's obligations under this Agreement. All insurance correspondence to the Commission shall be directed to the Commission and also shall be directed to the Commission by sending such correspondence to Nevada Commission for the Reconstruction of the V & T Railway, PO Box 1711, Carson City, NV 89702.

**WAIVER.** The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

**BINDING EFFECT.** The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

**SIGNATURES AND NOTICE.** This Lease shall be signed by the following parties. No notice under this Lease shall be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed to the parties below:

**LANDLORD:**

The Nevada Commission for the Reconstruction of the V&T Railway Commission  
David Peterson, Chairman of the Board  
PO Box 1711  
Carson City, Nevada 89702

with a copy to

Law Office of Michael S. Rowe  
PO Box 2080  
Minden, Nevada 89423

**TENANT:**

Virginia & Truckee Railroad Co., Inc.  
Tom Gray, Director and Vice President  
PO Box 467  
Virginia City, Nevada 89440

**LANDLORD:**

**The Nevada Commission for the Reconstruction of the V&T Railway Commission**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Peterson,  
Chairman of the Board

**TENANT:**

**Virginia & Truckee Railroad Co., Inc.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Thomas H. Gray,  
Director and Vice President