



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

**Date Submitted:** 09/21/23

**Meeting Date Requested:** 09/27/23

**Time Requested:** 15 Minutes

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

**From:** David Peterson

**Subject Title:** Discussion and possible action regarding a proposed mutual termination agreement of Contract No. FY21-C004 dated May 18, 2021, entitled "Contract for Services of Independent Contractor" with Atypical Consulting and Events and its Amendment #1 dated November 3, 2022 ("the Contract"), effective September 30, 2023.

**Staff Summary:** *In April 2023, Atypical Consulting and Events expressed a desire to terminate the Contract and the parties, through their legal counsel, have worked on reaching a mutual agreement to terminate. The proposed mutual termination agreement is being brought to the V&T Commission for consideration.*

**Type of Action Requested:**

Resolution

Ordinance

Formal Action/Motion

Other (Specify) Presentation Only

**Recommended Board Action:**

***I move to approve mutual termination agreement of Contract No. FY21-C004 dated May 18, 2021, entitled "Contract for Services of Independent Contractor" with Atypical Consulting and Events and its Amendment #1 dated November 3, 2022 ("the Contract"), effective September 30, 2023.***

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

**Fiscal Impact:**

**Explanation of Impact:**

**Funding Source:**

**Supporting Material/Attachments:** 20230927\_VT\_Item 15\_Atypical Termination

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

## MUTUAL TERMINATION AGREEMENT

This Mutual Termination Agreement (the “Agreement”) is made and entered into as of September 27, 2023 (the “Effective Date”), between and among Nevada Commission for the Reconstruction of the V&T Railway (the “Commission”), on the one hand, and ATypical Consulting and Events (or “Contractor”), on the other hand. Commission and Contractor sometimes are collectively referred to herein as the “Parties” and each individually referred to herein as a “Party.”

### RECITALS

WHEREAS, Commission and Contractor entered into Contract No. FY21-C004 dated May 18, 2021, entitled “Contract for Services of Independent Contractor” (the “Original Contract”), pursuant to which Atypical agreed to perform certain services for the Commission in exchange for certain compensation, pursuant to the terms and conditions more fully set forth in the Original Contract.

WHEREAS, Commission and Contractor entered into Amendment #1 to the Original Contract, effective November 3, 2022.

WHEREAS, the Parties desire to terminate the Original Contract, as amended (the “Contract”) upon written notice by mutual consent of both Parties pursuant to the terms and conditions set forth herein, in accordance with Section 9.A. of the Contract.

### AGREEMENT

NOW THEREFORE, in consideration of the undertakings of the Parties as set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

**1. Termination of the Contract.** The Parties mutually agree that Contract shall be terminated effective September 30, 2023 (the “Termination Date”). Upon the Termination Date,

the Contract shall have no further force or effect, except as provided in Sections 2 and 3 of this Agreement and Section 9.D. of the Contract.

**2. Consideration.** In accordance with the Contract, Contractor will submit its invoice for services rendered in September 2023 to the Commission on or before October 4, 2023 (the “October Invoice”) for payment by the Commission in the ordinary course of business consistent with the terms of the Contract. Commission’s obligation to pay Contractor the charges in the October Invoice pursuant to the terms of the Contract, as well as any rights Commission had under the Contract to dispute any of the charges in the October Invoice, shall survive the termination of the Contract provided for herein. Other than Commission’s obligation to pay Contractor’s October Invoice as provided hereinabove, each Party acknowledges and agrees that it has already received all payments and amounts owed from the other Party under the Contract and that no additional consideration of any kind is due from the other Party with respect to the Contract.

**3. Effect of Termination on Contract.** Except as expressly provided in this Agreement, the Parties acknowledge and agree that their respective rights and obligations specifically enumerated in Section 9.D. of the Contract shall survive the termination of the Contract pursuant to the terms and conditions as set forth therein. Any and all transactions completed by the Parties under the Contract prior to the Termination Date shall remain in full force and effect and shall not be revoked or adversely effected as a result of the termination of the Contract or this Agreement.

**4. Fees and Expenses.** Each Party hereto shall bear its own fees and expenses (including attorneys’ fees) incurred in connection with the Contract and this Agreement.

**5. Representations.** Each Party hereby represents and warrants that it has not assigned or otherwise conveyed or delegated, in whole or in part, any claim or right that it has or may

have under the Contract to any third party or person. Each Party represents that the execution and delivery of this Agreement is the duly authorized and binding act of the Party, and that the Party's signatory hereto is duly authorized to execute this Agreement on behalf of the Party.

6. **No Admission of Liability.** The Commission and Contractor expressly agree and acknowledge that their entering into this Agreement shall not be construed in any manner as an admission of any liability, obligation, or wrongdoing on the part of either Party. Each Party expressly denies any and all liability or wrongdoing with respect to the Contract.

7. **Cooperation between the Parties.** Each Party shall fully cooperate with the other Party with respect to the performance of this Agreement. Each Party will provide or make available to the other Party any information and will execute, acknowledge, and deliver such further documents that may reasonably be required in order to effectively perform this Agreement and to evidence the termination of the Contract and to release all obligations and liabilities of the Parties thereunder.

8. **Governing Law and Venue.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Nevada, without giving effect to the principles of conflicts of law of such state. The Parties hereby agree that any action arising out of this Agreement will be brought solely in any state court located in Carson City, Nevada or federal court located in Reno, Nevada. Both Parties hereby submit to the exclusive jurisdiction and venue of any such court.

9. **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns, and legal representatives of the Parties. There are no third-party beneficiaries to this Agreement. Each Party acknowledges and agrees that it fully understands the provisions set forth in this Agreement and their effect, and that each Party is voluntarily entering into this Agreement.

**10. Severability.** If any provision or portion of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.

**11. Construction.** The headings and captions appearing in this Agreement have been inserted for the purposes of convenience and ready reference, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the provisions to which they pertain. This Agreement shall not be construed more strongly against either Party regardless of which Party is more responsible for its preparation.

**12. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.

**13. Entire Agreement; Modification.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement or communications between the Parties, whether written, oral, electronic or otherwise. No change, modification, amendment, or addition of or to this Agreement shall be valid unless in writing and signed by authorized representatives of the Parties. Each Party hereto has received independent legal advice regarding this Agreement and their respective rights and obligations set forth herein. The Parties acknowledge and agree that they are not relying upon any representations or statements made by the other Party or the other Party's employees, agents, representatives or attorneys regarding this Agreement, except to the extent such representations are expressly set forth herein.

**14. Attorneys' Fees and Costs in Enforcement of the Agreement.** If either Party

incurs any legal fees and/or costs and expenses in any proceeding to enforce the terms of this Agreement or any of its rights provided hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and any court or other litigation expenses from the other Party.

**15. Public Record Requests.** Pursuant to NRS 239.010, the Commission information or documents may be open to public inspection and copying. Owner will have the duty to disclose particular information or documents, unless they are made confidential by law or a common law balancing of interest.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the date set forth below.

DATED: \_\_\_\_\_

NEVADA COMMISSION FOR THE  
RECONSTRUCTION OF THE V&T RAILWAY

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_

ATYPICAL CONSULTING AND EVENTS

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_