

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

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**NORTHERN RAIL CAR CORPORATION,**

**Plaintiff,**

**v.**

Case Number 01-CV-011168  
Declaratory Judgment 30701

**VIRGINIA RAILWAY EXPRESS, et al.,**

**Defendants.**

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**AFFIDAVIT OF PETE SKLANNIK, JR.**

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COMMONWEALTH OF VIRGINIA,  
CITY OF ALEXANDRIA, to wit:

This day in the City of Alexandria, Commonwealth of Virginia, Pete Sklannik, Jr., personally appeared before me, Anna Gotthardt, a Notary Public of and for the Commonwealth of Virginia, and made oath as follows:

1. I am Pete Sklannik, Jr., and I am the Chief Operating Officer, Virginia Railway Express Operations Group.

2. The Virginia Railway Express Operations Group directs the day-to-day operations of the Virginia Railway Express, a Governmentally-owned and operated commuter rail service between cities and counties in Northern Virginia, and the District of Columbia.

3. The Virginia Railway Express is a transportation partnership of the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission.

4. The Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission are each independent political subdivisions of the Commonwealth of Virginia, and each is created under the authority granted by the Transportation District Act of 1964, as amended, CODE OF VIRGINIA, §§ 15.2-4500 through 15.2-4534. It is the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, and not the Virginia Railway Express, which are the entities capable of contracting. CODE OF VIRGINIA, § 15.2-4518.4.

5. On August 9<sup>th</sup>, 2000, the Virginia Railway Express entered into a Contract with Northern Rail Car Corporation, VRE Contract #VRE00-006, a copy of which is

attached as Exhibit A to the Complaint of Northern Rail Car Corporation. I am the Contract Administrator.

6. The Contract, at Paragraph Number 3., incorporates by reference other documents, including, *inter alia*, at Paragraph Number 3.(1), the Solicitation which preceded the Contract, Solicitation VRE RFP #00-006, “Ex-Metra Gallery Rail Car Renovation.” A true and complete copy of Solicitation VRE RFP #00-006, “Ex-Metra Gallery Rail Car Renovation,” is attached to this Affidavit as Exhibit A.

7. Solicitation VRE RFP #00-006, “Ex-Metra Gallery Rail Car Renovation,” includes in Section C, “General Terms and Conditions,” the following provisions:

1. Proposal and Contract Requirements: Federal funds will be used for this contract. VRE also follows Virginia procurement laws. Accordingly all applicable federal and state requirements will apply. Proposers are expected to become familiar with these requirements, and should not submit proposals if unable to execute a contract containing these provisions for execution by the Proposer that is selected. Proposers should not expect to use their own standard contracts for this engagement. Federal requirements are subject to change; the Proposer is responsible for complying with the most current regulations.

2. Applicable Law and Courts: Any contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The successful Proposer shall comply with applicable federal, state, and local laws and regulations.

3. Precedence of Terms: In the event of an inconsistency between the Request for Proposal, the Contract Terms and Conditions, other included documents, or the Federal Transit Administration (FTA) Master Agreement and the state procurement law, the inconsistency shall be resolved by the following order of precedence:

- a. Federal Transit Administration Master Agreement (October 1, 1998)
- b. Contract Terms and Conditions
- c. Virginia's Public Procurement Act, as amended
- d. Firm's Accepted Proposal
- e. RFP . . . .

4. Obligation of Proposer: By submitting a proposal, the Proposer agrees that it has satisfied itself from a personal investigation of the conditions to be met, that the obligations herein are fully understood, and no claim may be made nor will there be any right to cancellation or relief from the contract because of any misunderstanding or lack of information.

. . . .

20. Contractual Disputes: Disputes by the successful Proposer with respect to this Contract shall be decided in the first instance by the Contract Administrator or designee who shall reduce his/her decision to writing, and mail or otherwise furnish a copy thereof to the successful Proposer. This decision shall be final and binding unless within thirty (30) days from the date of such decision the successful Proposer mails or otherwise furnishes a notice of appeal to VRE. VRE's decision shall be final unless the successful Proposer institutes legal action in accordance with the Code of Virginia. Pending a final determination of a properly appealed decision of the Contract Administrator, the successful Proposer shall proceed diligently with the performance of the Contract in accordance with that decision.

21. Default: In case of failure to deliver goods or services in accordance with the contract terms and conditions, VRE, after due oral or written notice, may procure them from other sources and hold the successful Proposer responsible for any resulting additional purchase and administrative costs.

This remedy shall be in addition to any other remedies which VRE may have.

....

23. Termination for Default: VRE may terminate this Contract, without further obligation, for any default of the other party or its agents or employees with respect to any agreement or provision contained herein.

If, through any cause, the successful Proposer shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the successful Proposer shall violate any of the covenants, agreements or stipulations of the Contract, VRE shall thereupon have the right to terminate the Contract by giving written notice to the Proposer of such termination. The written notice shall specify the effective date of termination and shall be delivered to the successful Proposer. The written notice shall specify the effective date of termination and shall be delivered to the successful Proposer prior to the effective date of termination. . . .

....

53. Performance Bond: The Contractor shall deliver to VRE within ten (10) calendar days of the notification of award a duly executed Performance Bond, and a Labor and Material Payment Bond payable to the Virginia Railway Express, and in the amount of at least equal to one hundred percent (100%) of the contract as guarantee to the faithful performance of the Contract and the payment to all persons who have and fulfill, contracts which are directly with the Contractor.

The Sureties of all bonds shall be of such surety company or companies [sic] and are authorized to transact business in the Commonwealth of Virginia. No Contract shall be deemed to be in effect until the bonds have been approved by the Virginia Railway Express.

All change orders may be executed without obtaining the consent of the surety or sureties on the Performance and Payment Bonds unless otherwise directed by VRE.

....

Solicitation VRE RFP #00-006, as amended.

8. On August 29<sup>th</sup>, 2001, Virginia Railway Express notified Northern Rail Car Corporation, by letter of that same date that VRE Contract #VRE00-006 was terminated for Northern Rail Car Corporation's failure to cure conditions of default about which Northern Rail Car Corporation had been previously notified, in writing. A true and complete copy of this letter notice of default termination is attached to this Affidavit as Exhibit B. In accordance with the terms of the Performance Bond, and in accordance with the terms of the Labor and Material Payment Bond, the Surety was notified of the default termination, just as it had been previously notified of the conditions of default.

9. Northern Rail Car Corporation has not disputed this default termination in accordance with the General Terms and Conditions, Paragraph Number 20, "Contractual Disputes." Northern Rail Car Corporation has not made claims under VRE Contract #VRE00-006 in accordance with the General Terms and Conditions, Paragraph Number 20, "Contractual Disputes."

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Pete Sklannik, Jr.

Subscribed and sworn to before me, this 27<sup>th</sup> day of March, 2002. In testimony whereof, I have hereunto set my hand and seal the day, month, and year aforesaid.

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Notary Public

My commission expires May 31<sup>st</sup>, 2005.



## What is the Virginia Railway Express?



The Virginia Railway Express (VRE) is a transportation partnership of the [Northern Virginia Transportation Commission \(NVTC\)](#) and the [Potomac and Rappahannock Transportation Commission \(PRTC\)](#). VRE provides

commuter rail service from the Northern Virginia suburbs to

Alexandria, Crystal City and downtown Washington, D.C. The [VRE Operations Board](#), consisting of seven commissioners - three each from NVTC and PRTC and the Director of the Virginia Department of Rail and Public Transportation (VDRPT), oversees all operating aspects of the Virginia Railway Express. Reporting to the Board is the [VRE Operations Group](#), which handles the daily operations of the VRE.

Comments or Questions, contact us at: [gotrains@vre.org](mailto:gotrains@vre.org)

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The Northern Virginia Transportation Commission (NVTC) was established to manage and control the functions, affairs, and property of the Northern Virginia Transportation District--which was created by the 1964 Acts of Assembly of the Commonwealth of Virginia, chapter 630; and the Transportation District Act. The purpose of the Act is to develop transportation systems encouraging orderly growth and development of urban areas of the Commonwealth for the safety, comfort, and convenience of its citizens and for the economical utilization of public funds.

Nineteen commissioners make up NVTC. Thirteen are locally elected officials from its six member jurisdictions: Arlington (3), Fairfax (5), and Loudon (1) Counties, and the cities of Alexandria (2), Fairfax (1), and Falls Church (1). Five of the 19 commissioners are appointed from the General Assembly (2 senators and 3 delegates). The other commissioner represents the Virginia Department of Rail and Public Transportation (VDRPT).


NVTC is a strong advocate of adequate, stable, and reliable funding to finance public transit and also supports improved efficiency of the region's transportation system. NVTC provides a policy forum for its region and allocates almost \$100 million in state, regional, and federal transit assistance each year among the member jurisdictions. Its budget is funded primarily by the Commonwealth of Virginia and by local contributors. NVTC also appoints Virginia's two principal and two alternate members to the Board of Directors of the Washington Metropolitan Area Transit Authority (WMATA or Metro).

NVTC was selected by the American Public Transit Association as the outstanding government agency for 1996. APTA's 1100 members include public transit operators, state departments of transportation, metropolitan planning organizations and suppliers.

### NVTC Principal Staff:

**Executive Director** - Richard K. Taube

**Director of Finance and Administration** - Scott Kalkwarf



**Assistant Financial Officer** - Colethia Turner  
**Director of Transportation Planning and Projects** - Vacant  
**Transportation Planner** - Tamara Ashby  
**Transportation Planner** - Sharmila Samarasinghe  
**Director of Public Outreach** - Kala Quintana  
**Commission Secretary** - Rhonda Gilchrest  
**Secretary/Receptionist** - Linda Inge

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The mission of the Potomac and Rappahannock Transportation Commission (PRTC) is to assure that proper, coordinated, and cooperative transportation planning and implementation activities in the PRTC jurisdictions and in Northern Virginia are conducted in a manner to maintain a high quality of life and a healthy economy in the region.

The Cities of Manassas and Manassas Park and the counties of Prince William and Stafford created the District in 1986 under authority granted by the Transportation District Act of 1964 (as amended in 1986). The City of Fredericksburg joined in 1990. PRTC is overseen by a governing body. Its 15 commissioners represent the member jurisdictions, as well as the Virginia Department of Rail and Public Transportation, Virginia Senate (1), and House of Delegates (2).

Revenue for the PRTC is derived from a 2% sales tax on motor fuel within the member jurisdictions. This generates approximately \$4 million in annual revenue. Funds collected are held in trust for future planning, development, and implementation of approved PRTC projects.

### PRTC Principal Staff:

**Executive Director** - [Alfred Harf](#)

**Director of Budget and Project Development** - Brad Miller

**Director of Finance & Administration** - Joyce Hought

**Director of Planning** - [Eric Marx](#)

**Director of Marketing** - [Sheila Larson](#)

[Visit PRTC's Home Page](#)



# About the VRE

## VRE Welcomes Refurbished Gallery Cars to its Fleet First 4 cars-consist to debut on Manassas line

### [Photo Essay](#)

VRE will debut the latest addition to its fleet June 12 when it unveils the first of 19 refurbished Pullman Gallery cars on the Manassas Line. The cars will bring more seats and a unique seating arrangement that is sure to please discriminating VRE customers.

VRE has received the first shipment of the coaches from its contractor Northern Railcar and is in process of testing the cars on site. Once testing is complete the first 4 cars will be deployed on the Manassas line. The balance of the order, 15 cars, will arrive on site throughout the next 9 months. The order is expected to be complete in the first quarter of '02.

### **What are they like?**

The refurbished Gallery cars have two by two seating on the lower level and single "gallery" (looks like a balcony seating) on the top. The trailer cars can seat 161 people.

Passengers will board through automatic doors at the center of the cars and climb a four-step stairway. All doors can be opened at each station stop. The seats on the lower level are 32.5 inches apart and the cushions are 39 inches wide creating ample leg and hip room. Inside the car each compartment has two stairways accessing the upper or "gallery" level. Luggage compartments are available on the Gallery level. The single seats on this level are 18 inches wide.

### **Is this why my fares are going up?**

No, the increase in fares is separate from this project. The funding for the Gallery cars was made possible by a combination of federal and state funds. In addition, a special allocation by Governor James Gilmore in the Virginia Transportation Act of 2000 provided a critical

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\$2 million in funding. The majority of the funds to rehabilitate these cars came from the capital budget and there is no correlation to the upcoming increase in passenger fares.

### **Are they running on the Manassas side or Fredericksburg side?**

The first shipment of cars (4) will operate on the Manassas line. As more cars arrive, VRE will look at the consists (train makeup) and decide where the cars will go. Consist (or train makeup) is determined by ridership, mid-day and evening storage as well as projected ridership.

### **Why Refurbished cars? Why not new cars?**

The last several years have brought unprecedented growth in ridership on VRE. This growth has been fueled by Northern Virginia's worsening commutes, the reconstruction of the Springfield interchange and by the Executive Order giving Metrochek to every Executive Branch employee. While a welcome development, this growth was greater than predicted. As the ridership started to grow, VRE looked at what other options existed that would add seats, be quick and also be cost effective. Purchase of new cars was a consideration, but it would take at least 3+ years to have the cars manufactured and delivered and the minimum cost of \$1.5 million per car was prohibitive since funding for a new car purchase was unavailable. The entire purchase and rehabilitation of the 19 Gallery cars budget was \$8 million. Faced with this critical funding constraint, we chose this route.

However, as these cars are only expected to operate through the duration of the Springfield Interchange Improvement project expected to be complete in 2006. Subsequently, VRE is looking at viable alternatives for the future. We are in process of creating a strategic plan that, among other things, will give us a new rail car acquisition strategy to meet our growth.

### **History of Equipment - (For the serious railfan!)**

The Gallery cars were originally manufactured in 1955 and 1956 for Chicago's North and Western (that became Metra) Commuter rail. Metra #7600, originally C&NW #1, was the Chicago and North Western's first bi-level car. St. Louis Car company built 16 of these cars in 1955. Pullman Standard built 32 identical looking cars the following year. These cars were in service for the Chicago Metra Commuter Rail until 1998. VRE purchased cars in the 7600 class from Northern Railcar. VRE has purchased the following cars:

**VRE Car #  
Metra Number**

V801 8701  
V802 8702  
V803 8703  
V804 8704  
V401 7652  
V402 7653  
V403 7658  
V404 7659  
V405 7661  
V406 7662  
V407 7663  
V408 7664  
V409 7668  
V410 7672  
V411 7674  
V412 7675  
V413 7676  
V414 7677  
V415 7681

The following is some further information on the cars:  
#7600-7613 Coach St Louis 1955 ex C&NW 1-7, 10-16  
7650-7681 Coach Pullman 1956 ex C&NW 17-48



## VRE Refurbished Gallery Cars

Click on the photo for a full sized picture.



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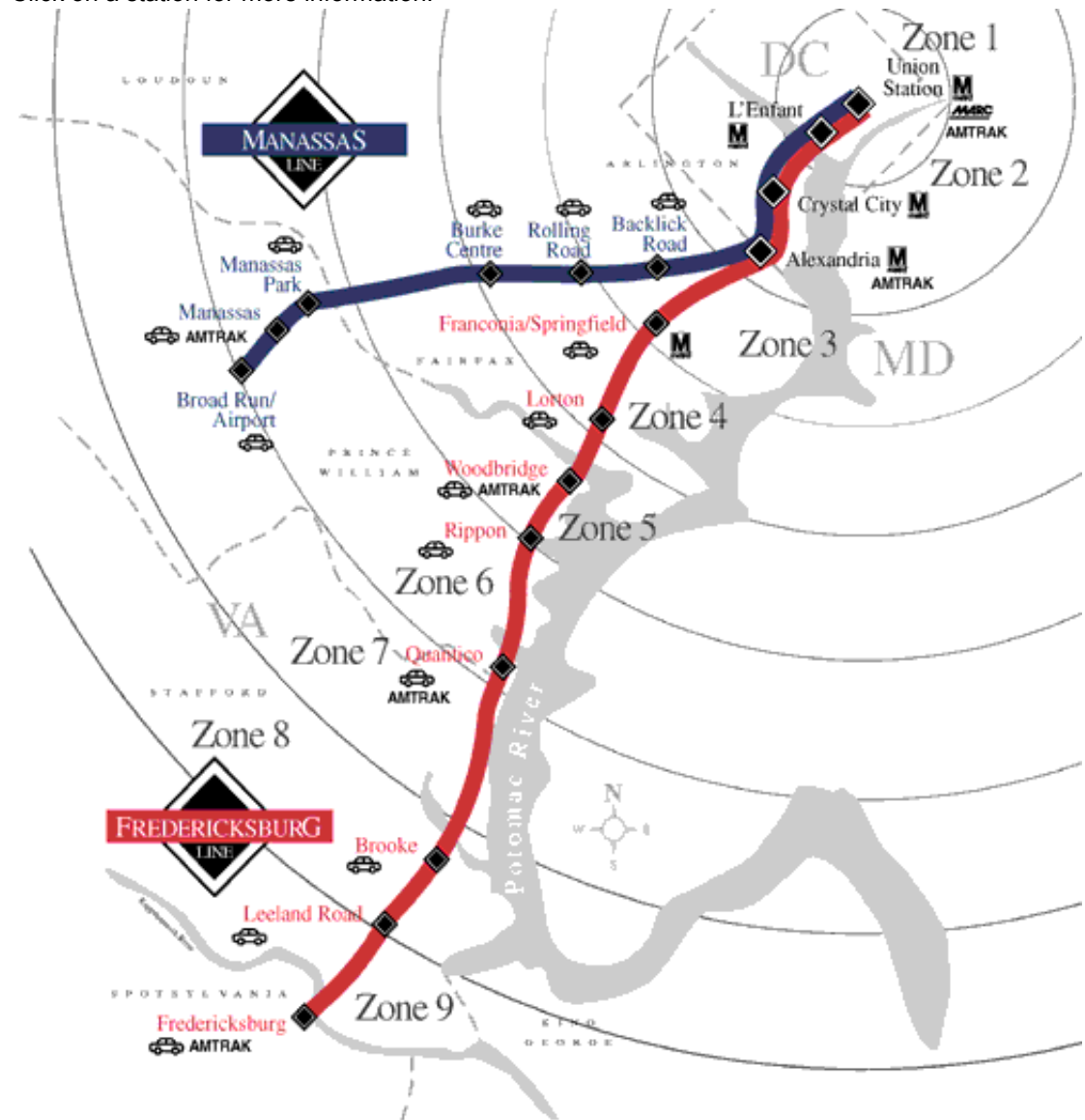


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