Virginia Railway Express
Operations Board

Resolution

Authorization to Issue Written Notice of Termination
to Abernathy Construction Corporation of
Hamilton to Crossroads Third Track Contract

WHEREAS, on June 21, 2013, the VRE Operations Board authorized the award of
Contract No. VRE-013-012 ("Contract") to Abernathy Construction Corporation
("Abernathy") for construction of the Hamilton to Crossroads Third Track project; and

WHEREAS, during Abernathy’s performance of the Contract work, repeated
violations of state and federal safety regulations and requirements, as well as safety
requirements of both CSX Transportation and VRE, were committed by Abernathy,
such violations having been detailed in the materials presented to the Operations
Board including, among other materials, the documents attached hereto; and

WHEREAS, the aforesaid violations by Abernathy breach the Contract; and

WHEREAS, as a result of the aforesaid safety violations and the serious concerns
about Abernathy’s ongoing compliance with all safety requirements under the
Contract, VRE suspended the Contract on January 28, 2015, and all work by
Abernathy on the project has ceased since then; and

WHEREAS, VRE sent to Travelers Casualty and Surety Company of America
("Travelers"), Abernathy’s Performance Bond surety, and Abernathy, a letter dated
February 2, 2015, captioned “Intent to Declare Contractor Default and Termination
the Contract, because of Abernathy’s safety violations, and requested a meeting with
Travelers and Abernathy to be held within fifteen (15) days of VRE’s letter, which
meeting was held on February 19, 2015; and

WHEREAS, as agreed at the February 19, 2015, meeting, Abernathy provided on
February 27, 2015, a written response to the safety violations and proposed “Future
Steps” to ensure compliance with all safety requirements; and

WHEREAS, staff has consulted with CSX Transportation, as owner of the railroad
right-of-way within which much of Abernathy’s Contract work is required to be
performed, concerning the history of repeated safety violations and Abernathy's response to them and its proposed Future Steps;

NOW, THEREFORE, BE IT RESOLVED THAT the VRE Operations Board finds that, based on Abernathy's pattern of safety violations in breach of the Contract, Abernathy is in default of the Contract; and

BE IT FURTHER RESOLVED THAT the VRE Operations Board does hereby find that Abernathy's response to the continuing pattern of safety violations and proposed Future Steps are inadequate to remedy the aforesaid safety violations and the serious risks posed by Abernathy's continued breach of the Contract safety requirements; and

BE IT FURTHER RESOLVED THAT, in accordance with Article 14 of the Contract General Conditions, Termination for Default, the VRE Operations Board does hereby authorize the Chief Executive Officer to issue a notice of termination of the Contract, effective April 20, 2015, subject to Abernathy's right to cure the default prior to the effective date as set forth in Article 14 of the Contract General Conditions.

Approved this 20th day of March 2015

Paul Smedberg  
Secretary

John C. Cook  
Chairman