

Policies and Practices Manual

C&TSRR Commission

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Background

This document describes the Policies and Practices adopted by the C&TSRR Commission in order to fulfill the purposes of the Interstate Compact established between the states of Colorado and New Mexico as owners of the railroad and in order to carry out the responsibilities that this entails.

The authority of the Commission stems from this Compact to which the U. S. Congress consented in October 1974 (See Appendix V). The Compact is based upon an initial agreement between the two states in July 1970 to jointly purchase, preserve, and maintain the C&TSRR. The terms of the Compact are embodied in parallel implementing legislation adopted by the two states and ratified by each respectively in December 1974 (See Appendices VIII and IX). In July 1977 the initial 1970 agreement was jointly amended by the two states in its entirety in order to create the C&TS Commission and establish its powers under the Compact (see Appendix VIII). Necessary implementing legislation was also adopted by each of the states at that time. Please see Appendix I for a short history of these governing documents.

As the administering body of an Interstate Compact, the Commission's policies and practices conform to the provisions of its governing documents and local, state and federal laws applicable to legal persons. Although the Commission is not a body of either state, it intends for its policies and practices to be consistent with the spirit of various regulations applicable to agencies of both states, but only to the extent that such adherence does not result in an impermissible unilateral imposition of the laws of one state over the bi-state Compact . Please see Appendix III for further information regarding federal compact law.

The Commission's policies and practices draw their legitimacy from three sources: the terms of the Compact, the agreement between the two states as amended in July 1977, and its own resolutions. Each of the three can be altered, each in its own way. Provisions that can only be altered by parallel legislative changes by the two states are footnoted by the designation "PL" as are provisions that require unanimous vote of all four Commissioners by the designation "UC". All other policies and practices may be modified by majority vote of the Commission.

Scope of the Commission's Responsibilities

Since the states have conferred upon the Commission "all powers necessary to carry out the purposes" of the Compact¹ the Commission exercises oversight over all aspects of the operations of the C&TS railroad, functioning as its governing board and directing the business affairs of the railroad. In keeping with the policies and practices described in more detail further in this document, the most significant of the Commission's duties and responsibilities entail:

¹ 1977 Agreement, Part B, I (4): "The Commission shall have all powers necessary to carry out the purposes of the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT, and this AGREEMENT, ...".

1. Representing the railroad in relations with national, state, and regional bodies, regulatory agencies, local communities, and any other outside entities both public and private;
2. Ensuring the financial health of the railroad through fiscally sound management in keeping with the provisions of the Compact, (*see Budgets, Accounting, Finance, and Audits; Contracting for Goods and Services; and Risk Management and Insurance*);
3. Offering the general public an authentic mountain railroading experience through sustained operation of steam-powered passenger trains by providing the services necessary for the preservation, maintenance, and operation of a railroad system and passenger trains (*see Contracting for Goods and Services and Cumbres Toltec Operating, LLC*);
4. Overseeing the activities of contractors and subsidiaries designated to manage the revenue-producing operations and properties of the C&TSRR and promote its services to the public, including establishing annual product, pricing, and marketing plans (*see Cumbres Toltec Operating, LLC*);
5. Preserving, interpreting, and enhancing the railroad's historic assets by working in concert with preservation agencies such as the Colorado and NM SHPO's, the National Park Service, regional preservation bodies, and the Friends of the C&TSRR (*see Historical Preservation and SHPO Oversight and Relationship with the Friends of the C&TSRR*);
6. Pursuing appropriations and grants from public and private sources, both directly and through intermediaries, in accordance with priorities established by the Commission in consultation with the Friends and other stakeholders;
7. Developing planning strategies that further the long-term viability and historic significance of the railroad, including implementing a strategic plan (based upon relevant stakeholder input) that reflects the tourism and economic development objectives of the railroad and the states and that provides for the upkeep of the railroad's historic assets in conformance with preservation standards;
8. Ensuring the railroad is operated in a safe manner for its employees, patrons, and visitors in compliance with government regulations, including especially those applicable to operating steam powered passenger trains for the public (*see Safety and Emergencies and FRA Oversight*);
9. Exercising fiduciary responsibilities in a transparent manner by establishing operating and capital budgets and monitoring performance against these budgets, engaging independent auditors to insure conformance with GASB and GAAP rules, specifying risk management practices and determining appropriate insurance coverage, implementing funds management policies, and providing requisite financial and operating reports (*see Budgets,*

Accounting, Finance, and Insurance; Risk Management and Insurance; and Funds Management);

10. Formulating ethical standards of conduct and insuring compliance with applicable law (see *Ethical Standards*); and
11. Conducting annual evaluations of the performance of the Commission and its contractors and subsidiaries against previously established plans, budgets and performance goals, and reporting such results and other requisite findings to the Governors of the two states (see *Reports to the State Governors*).

Commissioner Appointments and Credentials

Under the terms of the Compact the Governors of each state each appoint two Commissioners, for a total of four, and these appointees serve at the pleasure of their respective governors.²

Upon their appointment Commissioners provide the Chairman of the Commission with their credentials of appointment and their contact information.

In November 2006 the governors of New Mexico and Colorado agreed that, while the Cumbres & Toltec Scenic Railroad is a historic landmark, it is also a competitive business competing with other railroads and other regional attractions. They determined, by Memorandum of Understanding, that the future sustainability and success of this business required professional oversight. They agreed this oversight can only be achieved by appointing Commissioners with significant experience in an oversight role of a major business enterprise. See Appendix IX for a copy of this memorandum.

They resolved that “future commissioners appointed by either Governor shall each have the minimum qualifications of at least five (5) years experience in a substantial oversight role over a major business enterprise”....and “that the Commission shall serve an oversight role on the model of a board of directors to a corporation.”

Desirable credentials of an effective Commissioner include:

- The business qualifications emphasized by the Governors (above).
- Experiences and perspectives that complement the skills of other Commissioners, adding value and avoiding duplication.
- Familiarity with financial matters and reports – including those used for non-profits.
- Competence in marketing and tourism specialties.
- Willingness to research and understand all facets of the railroad.
- Commitment to attendance, availability, and time expectations.

² PL -- 16-5-4 NMSA 1978 and 24-60-1903 CRS 1973

Election and Duties of Officers

Officers. The Commission's officers are the Chairman, the Vice-Chairman, the Secretary, and the Treasurer.

Elections. The officers are members of the Commission and are elected by the members of the Commission. Elections are held at least annually, with the current practice being to hold the election during the third quarterly meeting (typically around mid-October), and the newly elected officers take their office at the completion of that meeting.

The Commission's practice is for nominees to be determined in the following manner of rotation: the serving Vice-Chairman becomes the nominee for Chairman, the serving Secretary becomes the nominee for Vice-Chairman, the serving Treasurer becomes the nominee for Secretary, and the serving Chairman becomes the nominee for Treasurer. The Chairman and Vice-Chairman are from different states,³ and the practice is for the Secretary to be from the Chairman's state and the Treasurer to be from the Vice-Chairman's state.⁴

In the event of any replacements of Commissioners the Commission's practice is to have the new Commissioner assume the position held by the Commissioner being replaced. However, if the Chairman is being replaced, a new election is held at the Commission's next regularly scheduled meeting in a manner consistent with the above practices.

Duties of the Chairman. The Chairman presides at meetings of the Commission. The Chairman may call meetings and establish the agendas thereof. His duties are such as may be assigned by the Commission from time to time. The Chairman serves as the official spokesperson for the Commission. This does not preclude any member of the Commission speaking on his or her own behalf.

Duties of the Vice-Chairman. The Vice-Chairman serves as Chairman of meetings in the absence of the Chairman.

Duties of the Secretary. The Secretary is responsible for the minutes of Commission meetings [See "Minutes" (below) and Appendix X], and this responsibility may be delegated. The Secretary also perform such duties as the Commission may direct.

Duties of the Treasurer. The Treasurer oversees the receipt, holding, and disbursement of all funds of the Commission.

³ UC -- 1977 Agreement, Part B, I (2)

⁴ 1977 Agreement, Part B, I (2), provides that the Secretary or the Treasurer may be members, officers, or employees of the Commission.

Meetings

Since the Commission is subject to the provisions of the Interstate Compact between Colorado and New Mexico, but is not a body of either state, its policy is to insure that its own practices regarding meetings comply with the terms of the Compact.⁵ In addition, its practice is to conform to the spirit of the public meeting laws of the two states.⁶ A meeting is defined as a gathering of two or more of the Commissioners and may be in person or electronically. The Commission annually adopts a resolution covering the following policies and practices:

- **Open meetings**

All meetings of the Commission in which actual or anticipated discussion of decisions or adoption of resolutions are conducted are open to the public, published with appropriate advance notice, and accessible to the public, with minutes taken and subsequently published.

Frequency. The Commission holds Regular quarterly meetings of the Commission at least four times a year and Special meetings at the call of the Chairman or upon written notice by at least two members of the Commission. Emergency meetings may be called with the unanimous consent of the four Commissioners and without advance notice in order to take actions that, if not taken immediately, are likely to result in injury or damage to persons or property or financial loss to the Commission. Special and Emergency meetings may be held electronically provided that a conference call service or equivalent is available for public access. Any meeting of the Commission may be recessed from time to time and re-convened at a place determined by the Chairman.

Venue. The Commission apportions its meetings equally between Colorado and New Mexico at locations agreed upon by the Commission, usually on a rotating basis and usually in either Chama, New Mexico, or Antonito, Colorado.

Notice and Agenda. The Commission provides notice of its Regular and Special meetings, including a preliminary agenda, at least ten days prior to a meeting, with the final agenda available at least seventy-two hours prior to the meeting. Notices and agendas are available at the Commission's office and are also available electronically by contacting the Commission's office or by accessing any cooperating web site.

Quorum. A majority of the Commission (i.e., three) constitutes a quorum for the transaction of business.⁷

⁵ Please see Appendices III, VIII, IX, and X

⁶ See 10-15-1 *et al* NMSA 1978 and 24-6-101 *et al* CRS 1973

⁷ UC -- 1977 Agreement, Part B, I (3)

Voting. The Commissioners of each State have the right to vote in any of the deliberations of the Commission. Three of the Commissioners must concur in any action taken by the Commission, unless such action requires amending the 1977 Agreement, in which case all four Commissioners must concur.⁸ Any Commissioner who cannot attend a meeting in person can do so electronically and is eligible to join the discussion and vote.

Order of Business. At each meeting of the Commission the order of business, unless agreed otherwise, is as follows:

- Call to order
- Approval of prior meeting minutes
- Report of Chairman
- Report of Vice-Chairman
- Report of Treasurer
- Report of Secretary
- Unfinished business
- New business
- Adjournment.

Open to Public. All decision-making meetings of the Commission are open to the public except when the Commission is meeting in closed Executive Session.

Closed Executive Sessions. The Commission limits Executive Sessions to discussions of (a) personnel matters, (b) relations and negotiations with contractors for goods and services, (c) state and federal regulatory matters pertinent to the operation of the C&TSRR, (c) legal and litigation matters involving the Commission, (d) development of strategic business plans, (e) matters required to be kept confidential by federal or state law, (f) reviews and interpretations of provisions of the Interstate Compact agreements and enabling legislation, and (g) minutes of previous Executive Sessions. Executive Sessions are open only to members of the Commission and advisers and employees as may be designated by the Commission. The Commission may call parties before it when in such sessions. Executive Sessions may be called by a majority vote of the Commission upon a motion of the Commission stating the topics to be discussed. Executive Sessions may be called during the meeting even if they were not addressed in the Agenda. Any Commission actions arising as a result of discussions in an Executive Session occur in an open meeting.

Minutes. The Secretary or his designee record the minutes of each meeting in conformance with the guidelines described in Appendix X and within ten days circulates copies to Commissioners in order for the Commission to review and approve them. Upon approval by the Commission, the minutes are signed by the Secretary, preserved in a suitable manner, and made available to the public, except for minutes of Executive Sessions which are

⁸ UC -- 1977 Agreement, Part C, I

preserved but not available to the public.

Seal. The Commission no longer affixes a seal to its documents.

- **Ad Hoc Meetings**

Any number of the Commissioners may meet at any time for the purpose of gathering or discussing information and/or attending events that promote the interests of the railroad. Such meetings do not require advance notice, public access or minutes, however if minutes are taken they are to be considered discussion notes and are not treated as public documents. No actions of the Commission shall be discussed or taken at such ad hoc meetings.

Books and Records

The Commission maintains complete records and books of accounts at its principal office in conformance with GASB record retention requirements, and these are open to inspection by the public during normal business hours,⁹ unless subject to applicable state or federal privacy laws or regulations regarding confidentiality. Below are examples of records maintained by the Commission which it deems are available to the public under the terms of the Compact, along with examples of pertinent restrictions:

- contracts for goods and services executed by the Commission or its subsidiaries with other parties (but not documents in negotiation);
- documents which set forth and codify the governance of the C&TSRR;
- legal correspondence (except subject to attorney-client privilege unless specifically released by the Commission);
- minutes of meetings approved by the Commission (but not unapproved minutes or minutes of Executive Sessions);
- motions, resolutions and rules adopted by the Commission;
- proposals submitted by the Commission to state, federal, and private entities for grants or appropriations;
- trademark licenses obtained or granted by the Commission;
- correspondence with state or federal regulatory bodies (unless otherwise designated as confidential by such bodies);
- a current inventory of all property of the Commission;
- budgets, books of accounts, and financial statements approved by the Commission (but not payroll and personnel records); and
- financial audits performed by the auditors of either state.

Delegation of Duties

Since the 1977 Agreement permits the Commission to employ such persons or contract for services necessary to carry out the purposes of the Compact,¹⁰ the

⁹ UC -- 1977 Agreement, Part B, III

¹⁰ UC -- 1977 Agreement, Part B, I (4) (b) (ii)

Commission may by written agreement delegate specified powers authorized by the Compact that are not reserved to the Commission by the terms of the 1977 Agreement.

From time to time the Commission creates special or ad hoc committees composed of members and other persons and assigns tasks as determined by action of the Commission. These members are appointed by the Chairman and approved by the Commission.

Cumbres Toltec Operating, LLC (CTO)

Acting in accordance with the authority granted to the Commission under the terms of the Interstate Compact¹¹, in December 2012 the Commission formed CTO, LLC, a wholly-owned subsidiary responsible for railroad operations and administrative support of the activities of Commission. CTO's sole partner is the Commission, with its four members serving as the CTO board.

Under this arrangement the Commission remains responsible for all matters of governance and policy, but delegates to its President responsibility for the day-to-day operations of CTO as its general manager, with the Vice Chairman of the Commission providing liaison with the President for matters pertaining to CTO activities. In their capacity as members of the CTO board, Commissioners hold periodic working sessions with the CTO general manager and various staffers to insure that CTO's activities are being performed in a manner consistent with the Commission's policies, objectives, and other requirements specified in this Manual.

For further information on CTO, its management, duties and obligations, employment policies, and its responsibilities for railroad operations and administrative support of the Commission please refer to Appendix XII, CTO Operating Agreement, August 5, 2017.

Contracting for Goods and Services

The states have given the Commission the power to contract for services necessary to carry out the purposes of the Compact on such terms and conditions as the Commission deems proper.¹² Please see Appendix II for a more complete discussion of these provisions. Furthermore, under the terms of the Compact the C&TSRR is not bound by the procurement codes of either of the two states.¹³

As a matter of fair business practice, the Commission's contracting policy is for it and CTO to act in a manner consistent with the spirit of the procurement practices common to both states, but only to the extent that such conformance does not violate the Compact (please see Appendix III discussion).

¹¹ See particularly the 1977 Agreement, Part B, I (4) (b) (iii), (iv), (v), and (vii).

¹² UC -- 1977 Agreement, Part B, I (4)

¹³ PL -- 6-5-6 NMSA 1978 and 24-60-1902 CRS 1973

Depending upon the size, scope, time constraints, and overall significance of the goods or services required, the Commission's policy is to employ a variety of procurement techniques, ranging from competitive tenders to sole source agreements, in order best satisfy the purposes of the Compact and good public policy. The Commission's policy is to insure that any tenders for goods or services are available to the public, and, once negotiated, contracts are awarded by decision of the Commission at public meetings, and their contents made available to the public.

When the Commission determines that a particular procurement is best served by the use of an RFI/RFP process the Commission insures that the RFP clearly states its purposes, its evaluation criteria, background information, the information required from proposers, various other proposal requirements, and the schedule and nature of the selection process. At its option the Commission may utilize an evaluation committee to assist in its deliberations. Depending on circumstances the Commission may also modify or cancel an RFP.

As for activities involving the use of Commission operating assets (e.g., locomotive rebuilding at a C&TSRR shop, the Osier Dining Hall, etc.) the Commission's practice is either to delegate such activities to CTO or to enter into sole source agreements with qualified contractors. As for the preservation and restoration of historic non-operating equipment, the Commission has delegated these activities to the Friends of the C&TSRR (see *Relationship with the Friends of the C&TSRR*).

In the event a funding source, be it federal, state, or private, requires the Commission to comply with the source's own established procurement requirements as a condition of the Commission benefitting from the funding support and those requirements are contrary to the established procurement procedures of the Commission, the Commission may determine to so comply by unanimous assent of all serving Commissioners.

Contracts to which the Commission is a party require the signatures of all serving Commissioners in order to be valid. However, the Commission has delegated to the general manager of CTO the authority to place orders and sign purchase orders and purchase agreements necessary for the operation of a railroad system and in compliance with authorized budgets.

Historical Preservation, HPA, and SHPO Relationships

The Commission's preservation policies are grounded in a fundamental purpose of the Compact which is "*to promote the public welfare ... by preserving, as a living museum for future generations, a mode of transportation that helped in the development and promotion of the territories and states, ...*".¹⁴ In pursuing this purpose the Commission has adopted policies, in cooperation with the Friends, that have resulted in the C&TSRR being recognized and listed in the National Register of Historic Places as a site of National Significance and being designated a National

¹⁴ PL -- 16-5-1 NMSA 1978 and 24-60-1901 CRS 1973

Historic Landmark. The Commission intends to further promote recognition of the C&TSRR as a historical property of national significance.

With those designations come certain responsibilities which include implementing practices that satisfy the preservation and rehabilitation standards and guidelines specified in the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (i.e., "SIS") at www.nps.gov/history/hps/tps/standguide. Two basic mechanisms ensure compliance:

Review by the States' Historical Preservation Offices. The Commission fully supports cooperation with the SHPO's of the two states which have jurisdiction over such matters. Proposed projects that are subject to SHPO review, whether originated by the Friends, Commission staff, or contractors, are submitted in written form to the Commission in advance and thence are forwarded to the appropriate SHPO for review, modification if necessary, and concurrence before any work commences.¹⁵ As a courtesy, both SHPO's are usually notified whenever historic assets are, or may be, involved in a project, however the SHPO for the state in which the project is located has the jurisdiction.

Compliance with SIS Guidelines. Historic preservation and rehabilitation projects are conducted in accordance with the SIS guidelines. The Commission requires compliance by contractors, such as the Friends, with pertinent SIS guidelines when working on historic properties.

The Commission maintains a record of decisions taken regarding its preservation policies and practices, including by way of example its 1995 decision regarding visual preservation of the Chama Yard in which the NM SHPO concurred. Please see Appendix IV.

- **Historic Preservation Association (HPA)**

Acting in accordance with the authority granted to the Commission under the terms of the Interstate Compact¹⁶, in December 2011 the Commission formed the Cumbres and Toltec Historic Preservation Association, LLC, a wholly-owned subsidiary to fund historic preservation projects which maintain and promote the historical nature of the Railroad. Projects involve preserving and rehabilitating Contributing Resources of the Railroad as specified in the National Register of Historic Places and in similar state registers overseen by the SHPO's of the two states. The principal source of monies for this fund is a percentage surcharge levied on all ticket sales of the railroad. HPA's sole partner is the Commission, with its four members serving as the HPA board. In consultation with CTO and the Friends of the C&TSRR, the Commission determines how best to direct the use of monies available from the fund at its sole discretion.

¹⁵ Mandated by the National Historic Preservation Act of 1966, the role of the SHPO's is to subject any project proposed on an historic property to prior review (called a Section 106 review). Technically, the SHPO does not "approve" a project, rather the SHPO determines that the "proposed work will have **no adverse effect** on the historic qualities of this historic resource."

¹⁶ See particularly the 1977 Agreement, Part B, I (4) (b) (iii), (iv), (v), and (vii).

Relationship with the Friends of the C&TSRR

In order to implement its historic preservation policies, the Commission has established a strategic relationship with the Friends of the C&TSRR, delegating to that organization responsibility for the museum functions of the railroad. The Commission's policy is for the Friends to be the custodian of all historic non-revenue assets of the C&TSRR with primary responsibility for the care, preservation, restoration, record-keeping, and interpretation of such assets, as well as the operation of these museum functions; all subordinate to the overall authority of the Commission.

For further information on the relationship between the Commission and the Friends and the rights, duties, and obligations of each party, please refer to Appendix XIII, Memorandum of Understanding between the Commission and the Friends, May 13, 2017.

Budgets, Accounting, Finances, and Audits

Budgets. The Commission's practice, consistent with GAAP and GASB standards, is to adopt a flexible operating budget in the quarter prior to the beginning of each fiscal year that includes all revenues and disbursements anticipated for all operations of the C&TSRR, with no formal budget revisions required during the fiscal year. Capital budgets for projects dependent upon state, federal, and private appropriations and grants are also established by the Commission in accordance with GAAP and the requirements of funding entities. All operating and capital budgets, including comparisons of actual expenditures to plan, are submitted to the Commission by CTO on a monthly basis and are subject to review by the Commission at its regular meetings.

Financial Audits. The books of accounts of the Commission, CTO, and HPA are subject to audit by the State Auditor of Colorado and the State Auditor of New Mexico, both of which provide for such audits to be performed by qualified independent CPA firms.¹⁷ Beginning with FY 2012 the Commission's policy is to issue an RFP at least every three years to contract for such auditing services from qualified CPA firms in either state. The results must include proposals from at least two firms. In the event the audits have been done for three consecutive years by auditors from one state, the contract for the next fiscal audit can only be awarded to an auditing firm from the other state. The Commission's policy is to select the proposal that best suits the Commission's needs. The audit contract may be for a term of up to three years. A current contractor may submit a proposal to the RFP process. The auditor's report for each year is accepted by the Commission and forwarded to the State Auditors and Governors of both states.

¹⁷ UC -- 1977 Agreement, Part B, III

Accounting Practices and Controls. The books of the Commission, CTO, and HPA are maintained in accordance with *Generally Accepted Accounting Principles* (GAAP) for government entities and with the accounting principles and standards established by the *Government Accounting Standards Board* (GASB), including accounting for all receipts, disbursements, and any other financial transactions. For further detail please see the "*Internal Accounting Control Policies and Procedures*" Manual (available upon request) which is maintained in coordination with the Commission's financial auditors to insure the Commission's financial statements are properly reported in conformity with GAAP and GASB standards. The Commission's fiscal year begins on July 1st of each year and ends on the following June 30th.

Contributions and Gifts to the C&TS. Under a ruling issued by the Internal Revenue Service on May, 22, 1985, contributions and gifts made to the Commission are deductible by donors under section 170 (a) of the IRS Code because the Commission is viewed by the IRS as an instrumentality of the two states under the provisions of the C&TS Compact.

Funds Management. The Commission authorizes and approves the selection and use of bank accounts necessary for the efficient operation of the C&TSRR in accordance with the Internal Control Procedure Manual.¹⁸ Such accounts are kept under the name of the Cumbres and Toltec Scenic Railroad Commission or its subsidiaries. Disbursements from such accounts shall be in accordance with the Internal Control Procedures Manual.¹⁹

The Commission delegates to CTO responsibility for managing the railroad's deposits, loans, disbursements, credit extensions and cash reserves in conformance with existing policies and GASB standards.

Purchase Order System. As part of its financial controls The Commission utilizes a purchase order system that requires prior approval by the general manager of CTO for any expenditure of \$500 or more. Exceptions to this policy are permitted on a case-by-case basis in the event of a financial or operating emergency.

Borrowings. The Commission's ability to incur debt is limited to \$250,000 and subject to other constraints on the use of such borrowing as specified in the enabling statutes of the two states.²⁰ See Appendices VIII and IX. As a matter of policy the Commission limits use of this authority to working capital needs.

Asset Accounting. The Commission maintains a current inventory record of the properties of the C&TSRR. These capital assets comprise the railroad's real and personal property (including intellectual property). The Commission accounts for such capital assets in accordance with GAAP and GASB standards.

¹⁸ UC -- 1977 Agreement, Part B, III, and Appendix XI B of this Manual

¹⁹ UC -- 1977 Agreement, Part B, III, and Appendix XI B of this Manual

²⁰ PL -- 16-5-9 NMSA 1978 and 24-60-1906 CRS 1973

Reports to the Governors

Prior to the beginning of the next fiscal year the Commission provides the Governors of Colorado and New Mexico with the budgets adopted by the Commission for the next fiscal year.

By the end of January of each year the Commission provides the Governors with a report which includes (a) the estimated budget for the current fiscal year, (b) the audited financials for the prior fiscal year, and (c) the Commission's evaluations of performance of the C&TSRR during the past year under its stewardship.

On request the Commission will make available to the Governors any information within the Commission's possession, providing open access to its records by the Governors or by their representatives.

Ethical Standards

The Commission's policy is to hold each Commissioner to a high ethical standard and to ensure that the Commission acts ethically in carrying out its responsibilities. Any concerns regarding ethical issues involving any aspect of the Commission's activities are to be brought to the Commission in Executive Session. These include, but are not limited to, insuring compliance with the Commission's policies relevant to document retention and access, open meetings, open records, honesty, and conflicts of interest.

The Commission's policies regarding Conflicts of Interest are as follows:

- Commissioners and direct employees of the Commission or CTO may not have a relationship with any entity or individual with which the railroad or commission contracts and may not receive any financial compensation or other consideration from these entities. Any exceptions to this policy require full disclosure of such relationship and a unanimous vote of approval by the Commission.
- No Commissioner may profit from any transaction between himself, his immediate relatives or entities in which he owns an interest, and the Commission, CTO, HPA, or contractors.
- Commissioners are obligated to reveal potential conflicts and to recuse themselves from participating in discussions about or votes on resolutions of any kind before the Commission.

Risk Management and Insurance

Since 2003 the Commission has obtained property and liability coverage from one of the three insurers providing such policies for tourist railroads and includes CTO as a "name insured", thus by agreement providing equivalent coverage for CTO. Application of this practice for other contractors is decided upon a case-by-case basis.

As for the nature and extent of property coverage the Commission's practice is to specify the amount of coverage for each type of asset, with special consideration given to having sufficient coverage of important historical properties. In turn, deductibles are varied upward in order to keep premiums within an acceptable range.

Safety and Emergencies

Safety. Since the C&TS is an operating railroad open to the public, the Commission places highest priority on requiring all entities with a contractual relationship with the Commission and CTO to comply with all federal, state and local safety rules and regulations relevant to employees, patrons, and visitors to the railroad's facilities. FRA safety rules regarding railroad practices for operating and maintaining steam locomotive powered passenger trains are of special relevance.

Fire Safety. The Commission's policy is to actively cooperate with adjacent landowners and public land managers and state foresters to develop and implement fire mitigation plans for the protection of the lands traversed by the C&TS, including training programs for employees of CTO and use of motor cars for fire patrols and other fire-fighting equipment owned by the railroad.

Emergencies. The Commission and CTO maintain crisis management plans for dealing with a variety of emergencies including train breakdowns, injuries or illnesses involving employees, passengers, or visitors to the property, fire, and any other hazards that disrupt operations or place people at risk. These procedures include evacuation plans for relatively inaccessible portions of the railroad and arrangements for seeking aid from emergency responders.

FRA Oversight

The Commission recognizes that the Federal Railroad Administration (FRA) has primary jurisdiction over the railroad operations of the C&TS and requires CTO, its contractors, and employees comply with relevant FRA rules, regulations, and safety requirements. In the event FRA regulations conflict with other policies and regulatory objectives (e.g., historical preservation goals and standards), FRA regulations take precedence, especially in matters relating to the health and safety.

Intellectual Property

The various Cumbres & Toltec Scenic Railroad Service Marks are registered with the U.S. Patent and Trademark Office. As a consequence any commercial uses of any representations of the C&TSRR, including Internet domain names, are subject to approval and licensing by the Commission. The Commission's practice is to grant non-exclusive, royalty-free licenses for the commercial use C&TSRR representations subject to certain limitations on such use.

Any design, advertising or promotional materials created for or paid for by the Commission are the sole property of the Commission and subject to the provisions of the Compact pertinent to C&TSRR property.²¹ See Appendix VIII.

Principal Office

The Commission's principal office is in Antonito, Colorado, which is open to the public during normal business hours. The Commission's phone number is 719 376 5488, and its web site is <http://commission.ctsrr.com/>.

Rules of Order (Roberts)

The Commission's policy is to conform its parliamentary procedures to the rules contained in the current edition of *Robert's Rules of Order Newly Revised* in all cases to which they are applicable and in which they are not inconsistent with the Compact, the 1977 Agreement between the States, or any other special rules of order the Commission may adopt. The Secretary of the Commission shall have available a copy of the current edition for prompt reference at the Commission's meetings.

²¹ See particularly 1977 Agreement, Part B, I (4) (b) (iii),(iv)

Appendix I – Compact History

A Short History of the C&TSRR Interstate Compact

July 1970. Initial Agreement between Colorado and New Mexico.

Governors John A. Love and David F. Cargo execute the "Narrow Gauge Railroad Agreement" which provides for the two states to jointly "purchase, preserve, and maintain" the railroad with ownership and funding to be on a 50/50 basis as tenants-in-common. Agreement establishes separate Colorado and New Mexico Railroad Authorities to administer the railroad. Since this agreement was amended in its entirety in July 1977 it is no longer operative, but is archived at the Commission office.

October 1974. The U. S. Congress Consents to the Compact between the States. Senators Dominick and Haskell of Colorado and Senators Domenici and Montoya of New Mexico co-sponsor Public Law 93-467 which "Grants the consent of Congress to the Cumbres and Toltec Scenic Railroad Compact, as agreed to by the States of Colorado and New Mexico." See Appendix V for a copy of the Law.

December 1974. Compact Ratified by the General Assembly of Colorado and the Legislature of New Mexico. The Compact executed by Governors Bruce King and John D. Vanderhoof "provide[s] for the joint acquisition, ownership and control ..." of the railroad "to promote the public welfare ... and by preserving as a living museum for future generations a mode of transportation ...". See 24-60-1901, *et seq.* CRS 1973 and 16-5-1 *et seq.* NMSA 1978 which are reproduced in Appendices VIII and IX of this Manual.

July 1977. Initial Agreement Amended. This comprehensive amendment, which establishes the C&TSRR Commission as an administering agency of the interstate compact and which enumerates its powers, was executed by the authorized officials of both states, including the Offices of the Attorneys General. Drafted by Eugene Cavaliere, Colorado AAG, this amendment replaces the July 1970 provisions for the Colorado and New Mexico Railroad Authorities with a single Commission having two members from each state appointed by their respective governors. See 24-60-1903 through 1906, CRS 1973, and 16-5-3 through 9, NMSA 1978. See Appendix VIII for a copy of this agreement.

August 1978. Commission Internal Operating Rules. This initial set of rules and regulations for the internal organization of the Commission conform to the terms of the Compact and the 1977 Amended Agreement and were adopted by the Commission in 1997. These rules are no longer operative since they have been superseded by this Policies and Practices Manual, but are archived at the Commission office.

November 2006 – Memorandum of Understanding by the Governors of New Mexico and Colorado. The Governors agreed that, while the Cumbres & Toltec Scenic Railroad is a historic landmark, it is also a competitive business competing

with other railroads and other regional attractions. They determined, by Memorandum of Understanding, that the future sustainability and success of this business required professional oversight. They agreed this oversight can only be achieved by appointing Commissioners with significant experience in an oversight role of a major business enterprise. See Appendix IX for a copy of this memorandum.

A note on the powers of the Commission. The Initial Agreement had proven unmanageable and unworkable due to inherent conflicts and confusion by the separate state Authorities in the application of the laws of each state to the operations of the railroad. The 1977 Amendment mitigated these problems by vesting powers in the bi-state C&TSRR Commission.

The 1977 Amendment states that "The Commission shall be an interstate Commission acting as joint agent for both the State of Colorado and the State of New Mexico", and goes on to state that "The Commission shall have all powers necessary to carry out the purposes of the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT, and this AGREEMENT", including such activities as entering into contracts for goods and services incident to the operation of a railroad system, acquiring and using any real or personal property for the operation of a railroad, and accepting public and private monies to accomplish the purposes of the Compact and the Agreement.

This 1977 Amendment also provides that its terms may be amended from time to time by unanimous agreement of all members of the Commission.

Appendix II – Contractual Powers

Discussion of the Commission's Contractual Powers and Appropriate Legal Review

(The governing documents referenced and footnoted below are included in this Manual as Appendices VI, VII, and VIII).

A. Grant of Contracting Authority. The statutes of the two states and the agreements between the two states grant, but limit, the powers of the Commission to activities necessary to carry out the purposes of the Compact between the two states and to operate a railroad system.

A. Both states use identical language in their respective enabling statutes to establish that a key purpose of the C&TSRR Compact is "... to promote the public welfare by encouraging and facilitating recreation and by preserving, as a living museum for future generations, a mode of transportation ...".²²

B. To better realize the intent of the Compact, in July 1977 the two states agreed that "... The Commission shall have all powers necessary to carry out the purposes of the ... Compact...and this Agreement".²³ New Mexico undergirds this with an enabling statute that declares that the Commission "... shall have all powers necessary to effectuate the provisions of the ... Compact."²⁴

C. In describing the scope of these powers, the 1977 agreement provides for the Commission to "... contract for other services, as may be necessary to carry out the purposes of the ... Compact and this Agreement ...".²⁵

D. Furthermore, a New Mexico statute adds that "The Cumbres and Toltec Scenic Railroad Act [16-5-1 to 16-5-13 NMSA 1978] shall be liberally construed to carry out its purpose."²⁶

E. However, by statute in both states the Commission's power to contract for indebtedness is limited to \$250,000 and is limited as to the use of such monies.²⁷

Example: Authority to operate a railroad system. The Commission's current arrangements with Cumbres Toltec Operating LLC (CTO), its wholly-owned subsidiary, and the various prior agreements with designated operators to operate the railroad, all fall within the scope of the Commission's powers to provide or

²² 16-5-1 NMSA 1978 and 24-60-1901 CRS 1973

²³ 1977 Agreement, Part B, I (4) (a)

²⁴ 16-5-7 NMSA 1978

²⁵ 1977 Agreement, Part B, I (4) (b) (ii)

²⁶ 16-5-13 NMSA 1978

²⁷ 16-5-9 NMSA 1978 and 24-60-1906 CRS 1973

contract for services necessary to carry out the purposes of the Compact. More specifically, regarding the Commission's authority to establish CTO to operate a railroad system, the 1977 Agreement between the states declares that the Commission may "Plan, establish, acquire, purchase, develop, construct, enlarge, improve, maintain, equip, operate, protect, and police a railroad system...".²⁸ In addition, the Commission may "... Enter into contracts, leases, or other arrangements with any person ... granting privilege of operating the railroad system ... on such terms and conditions as the Commission deems proper."²⁹ Other provisions in the 1977 Amendment further articulate and expand upon the Commission's powers to operate a railroad system.³⁰

Example: Authority to contract for the museum functions of the railroad.

Agreements and understandings with the Friends of the C&TSRR also fall within the scope of the Commission's powers to contract for services necessary to carry out the purposes of the Compact, especially since a key purpose of the Compact is "... preserving, as a living museum for future generations, a mode of transportation...".³¹ The 1977 Agreement between the states further specifies that the Commission may "... furnish and supply services and utilities incident to the operation of a railroad system, including the granting of franchises ... for the purposes specified in the ... Compact and this Agreement ..."³²

B. Review of Commission Contracts by New Mexico and Colorado.

1. In the statutes and agreements between the two states regarding the railroad the only explicit requirement is that the Commission's "... books of account shall be subject to audit by the State Auditor of Colorado and the State Auditor of New Mexico."³³
2. The enabling statutes of the two states are also careful to specify that the Commission is not a body of state government. The Colorado statutes state that the Commission is "...an independent entity whose members and employees are not officers and employees of either of the states...".³⁴ In turn, the New Mexico statutes state that the Commission "... is exempt from compliance with the Personnel Act [10-9-01 NMSA 1978] and the Public Purchases Act."³⁵
3. However, since the Commission may "Enter into agreements or contracts with ... state agencies in obtaining funds or other assistance for the acquisition or operation of a railroad system",³⁶ there is a reasonable expectation that such agreements might call for review and approval by state

²⁸ 1977 Agreement, Part B, I (4) (b) (iii)

²⁹ 1977 Agreement, Part B, I (4) (b) (v)

³⁰ 1977 Agreement, Part B, I (4) (a) and (b)

³¹ 16-5-1 NMSA 1978 and 24-60-1901 CRS 1973

³² 1977 Agreement, Part B, I (4) (b) (iii)

³³ 1977 Agreement, Part B, III

³⁴ 24-60-1902 CRS 1973

³⁵ 16-5-6 NMSA 1978

³⁶ 1977 Agreement, Part B, I (4) (b) (ix)

agencies of Commission contracts as a condition of receiving funding as long as such actions do not violate the terms of the Compact.

C. Commission Legal Representation in Contractual Matters

1. While the Commission may find it prudent to obtain legal opinion from the Attorneys General of the two states, there is no provision in the C&TSRR Compact, its underlying bi-state agreements, or the enabling statutes of the two states that require legal review and approval by the Attorneys General of either state as to content, form, or legal substance of *bona-fide* agreements entered into by the Commission.

2. Furthermore, as stated in a circa 2003 opinion letter to the Commission by a Colorado AAG, "By the terms of the statute that created the Commission, its members comprise a single 'independent agency' which...is the 'client' of an attorney employed to advise and/or represent it. This is true whether the attorney is an independent 'outside' attorney either from the Colorado Department of Law or a private firm...".³⁷ This "independent agency" principle is further articulated in Appendix III which follows.

³⁷ Undated letter from John R. Sleeman, Jr., First Assistant Attorney General, State Services Section (303-866-5264) entitled "Commission Legal Orientation."

Appendix III – Legal Status

Opinion of the Colorado Dept. of Law Regarding the C&TS RR Interstate Compact

In response to a request from the Commission regarding the applicability to the C&TSRR Compact of state laws governing and regulating state bodies (such as Colorado's TABOR Amendment) in May 2005 Colorado AAG Nancy Wahl replied with a memorandum that addressed the matters of law in depth. On file at the Commission, this document sets out the legal distinctions between (a) an administrative agency of an Interstate Compact and (b) the bodies of a sovereign state, and further comments upon the applicability of state laws to the operation of the Commission. The document draws heavily upon judicial precedents under federal common law to support its conclusions. The key findings follow.

- The memorandum finds that "The Commission is an independent interstate agency formed by Congressionally approved compact and implementing statutes of the states...".
- As such, the memorandum concludes that the Commission is not subject to the provisions of the TABOR Amendment since the Commission is "... not a part of the legislative, executive, or judicial branch of Colorado state government...".
- The memorandum further points out that "While compacts may be implemented by enactment of state laws, a compacting state cannot unilaterally adopt laws governing compact operations". To do so would be an "... impermissible unilateral impairment of the Compact..." between the states and be a matter for adjudication under federal law.
- The memorandum further finds nothing in the terms of the Compact, the enabling statutes of the two states, or judicial precedent that would support the notion that the "...laws of each state are presumed to apply unless the states exempt the Commission".

All of the foregoing arguments lead to a clear conclusion that the Commission is not subject to the laws of either state that specifically apply to bodies of that state (e.g., laws covering procurements, open meetings, state employees, risk management, etc.) or that would constitute a unilateral imposition on the Compact.

Appendix IV – Chama Yard Policy

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**PRIORITIES FOR PRIMARY VISUAL PRESERVATION
AND
PRIORITIES FOR FUTURE BUILDING EXPANSION & ADDITIONS
on the
CUMBRES & TOLTEC SCENIC RAILROAD
Chama, New Mexico**

OCT 28, 1994
45402

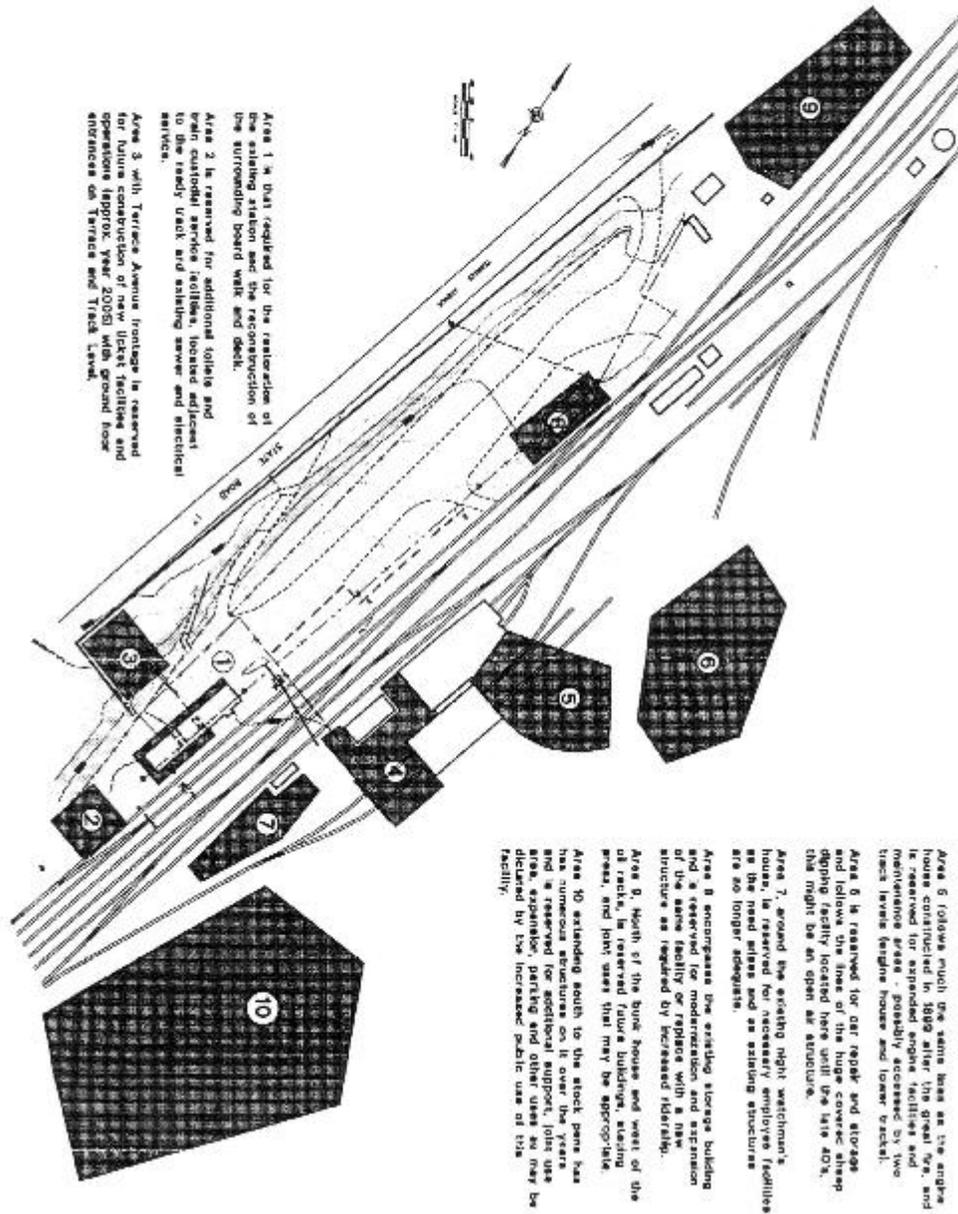
These two drawings reflect the unanimous decision of the Cumbres & Toltec Scenic Railroad Commission regarding views to preserve and locations on the site where probable construction will take place in Chama. The Commission's action was taken on September 9, 1994. These exhibits were necessary to demonstrate the use of the site while following the intent of the provision outlined by the Secretary of Interior's Standards for Historical Preservation. In an effort to establish clear Historical Guidelines the attached exhibits reflect issues involving view and structures in the Chama main yard area.

The concern here is that the Major or Primary views be kept without major obstructions or changes from new construction (or where construction must take place it would be very compatible with the existing historical structures). Views not listed do not render them unimportant but of lesser importance when viewing the overall yard area. There are numerous small scenes that contribute to the overall visitor's historic perspective. See the individual drawings for further explanation of each view or building area.

It does, however, demonstrate anticipated long range needs. Priorities (in the order of #1 being the highest) indicate potential use order and consideration for known needs. This does not preclude building in any other area but tries to establish acceptable areas for construction that preserve the site integrity and provide the best utility for the operation of the railroad.

These exhibits will be used when developing projects in the Chama main yard area.

Appendix IV (Cont'd)



Appendix IV (Cont'd)

Direction given by Ed Boles, NM SHPO, to the Friends of the C&TS to use the Commission's September 1994 Chama Yard Policy as a guide for appropriate uses of the property.



to: Bill Lock, Friends of
the C&TS
from: Ed Boles RR
re: Planning for car
repair facility at
Chama, NM.

This covers the analysis
prepared for the
C&TSRR Commission
last year. Please see
that the Friends
uses this as a guide
in locating a site
for the facility. Next
architecture. Thanks
for your call today.

Appendix V – Consent of Congress

S.2362

Title: A bill granting the consent and approval of Congress to the Cumbres and Toltec Scenic Railroad Compact.

Sponsor: Sen Domenici, Pete V. [NM] (introduced 8/3/1973) Cosponsors (4)

Latest Major Action: 10/24/1974 Public law 93-467.

SUMMARY AS OF:

10/24/1974

Interstate compact - Grants the consent of Congress to the Cumbres and Toltec Scenic Railroad Compact, as agreed to by the States of Colorado and New Mexico.

ALL ACTIONS:

8/3/1973: Referred to Senate Committee on the Judiciary.

3/21/1974: Reported to Senate, S. Rept. 93-740.

3/25/1974: Referred to House Committee on the Judiciary.

8/22/1974: Reported to House, amended, H. Rept. 93-1314.

9/16/1974: Measure passed House, amended.

10/9/1974: Senate agreed to House amendments.

10/24/1974: Signed by President.

10/24/1974: Public law 93-467.

COSPONSORS(4), ALPHABETICAL

Sen Domenici, Pete V. [NM]

Sen Dominick, Peter H. [CO]

Sen Haskell, Floyd K. [CO] - 1/3/1973

Sen Montoya, Joseph M. [NM]

COMMITTEE(S):

Committee/Subcommittee:	Activity:
<u>Senate Judiciary</u>	Referral, Reporting
<u>House Judiciary</u>	Referral, Reporting

Appendix VI – Colorado Enabling Statutes

(24-60-1901 through 24-60-1908 CRS 1973)

24-60-1901. Ratification of compact.

The general assembly hereby ratifies the compact designated as the "Cumbres and Toltec Scenic Railroad Compact" signed at the city and county of Denver, state of Colorado, on the 26th day of December, A.D. 1974, by John D. Vanderhoof, as governor of the state of Colorado, under authority of and in conformity with the provisions of an act of the general assembly of the state of Colorado, approved May 4, 1973, entitled "An Act Providing for the Adoption of the Cumbres and Toltec Scenic Railroad Compact.", the same being chapter 254 of the Session Laws of Colorado 1973, and signed at Santa Fe, state of New Mexico, on the 11th day of December, A.D. 1974, by Bruce King, as governor of the state of New Mexico, under legislative authority. The consent of congress was given by Public Law 93-467, approved October 24, A.D. 1974, by the senate and house of representatives of the United States of America. Said compact is as follows:

CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT

The state of New Mexico and the state of Colorado, desiring to provide for the joint acquisition, ownership and control of an interstate narrow gauge scenic railroad, known as the Cumbres and Toltec scenic railroad, within Rio Arriba county in New Mexico and Archuleta and Conejos counties in Colorado, to promote the public welfare by encouraging and facilitating recreation and by preserving, as a living museum for future generations, a mode of transportation that helped in the development and promotion of the territories and states, and to remove all causes of present and future controversy between them with respect thereto, and being moved by considerations of interstate comity, have agreed upon the following articles:

Article I

The states of New Mexico and Colorado agree jointly to acquire, own and make provision for the operation of the Cumbres and Toltec scenic railroad.

Article II

The states of New Mexico and Colorado hereby ratify and affirm the agreement of July 1, 1970, entered between the railroad authorities of the states.

Article III

The states of New Mexico and Colorado agree to make such amendments to the July 1, 1970, agreement and such other contracts, leases, franchises, concessions or other agreements as may hereafter appear to both states to be necessary and proper for the control, operation or disposition of the said railroad.

Article IV

The states of New Mexico and Colorado agree to the consideration of the enactment of such laws or constitutional amendments exempting the said railroad or its operations from various laws of both states as both states shall hereafter mutually find necessary and proper.

Article V

Nothing contained herein shall be construed so as to limit, abridge or affect the jurisdiction or authority, if any, of the interstate commerce commission over the said railroad, or the applicability, if any, of the tax laws of the United States to the said railroad or its operations.

24-60-1902. Interstate agency created.

It is hereby recognized, found, and determined that said compact creates an interstate agency known as the Cumbres and Toltec scenic railroad commission, an independent entity whose members and employees are not officers and employees of either of the states signatory to the compact.

24-60-1903. Appointment of members of compact commission.

After said compact becomes effective, the two Colorado members of the four-member Cumbres and Toltec scenic railroad commission shall be appointed by the governor and shall serve until revocation of their appointment by the governor, and, on behalf of the Cumbres and Toltec scenic railroad commission, the state of Colorado shall pay the necessary expenses and also compensation of said members in an amount which shall be fixed by the governor and when so fixed shall be changed only by action of the governor.

24-60-1904. Payment of expenses of compact commission.

The Colorado share of the expenses of the Cumbres and Toltec scenic railroad commission and the expenses and compensation of the Colorado members shall be paid out of funds appropriated by the general assembly.

24-60-1905. Commissioners exempt from civil liability.

No person appointed as a Colorado member of the Cumbres and Toltec scenic railroad commission pursuant to section 24-60-1903 shall be liable for any civil damages for acts or omissions in good faith occurring or carried out during the performance of his duties.

24-60-1906. Commission - authority to borrow money - authority to accept funds.

- (1) The Cumbres and Toltec scenic railroad commission may borrow money for the following purposes:
 - (a) To make emergency repairs, replacements, or additions to the railroad or to any equipment or facilities related to the operation of the railroad; and
 - (b) To make capital expenditures for the development or improvement of the railroad.

- (2) The Cumbres and Toltec scenic railroad commission shall not enter into an agreement to borrow money unless a majority of the members approve a resolution which:
 - (a) Specifies the amount of the loan;
 - (b) Specifies the purposes of the loan; and
 - (c) Authorizes the chairman of the commission to execute all documents on behalf of the commission which may be necessary to negotiate and execute a loan from a financial institution.

- (3) At no time shall the amount of the money borrowed by the Cumbres and Toltec scenic railroad commission pursuant to the provisions of this section exceed two hundred fifty thousand dollars.

- (4) No loan made to the Cumbres and Toltec scenic railroad commission pursuant to the provisions of this section shall create a debt of the state, nor shall such loan constitute a pledge of the general credit of the state or the commission. Such loan shall not constitute personal indebtedness of any member of the commission. No indebtedness entered into by the commission shall be secured by any type of security interest in the real or personal property of the railroad, nor shall such property be subject to any legal process to satisfy a judgment for the indebtedness in the event of nonpayment of the indebtedness.

- (5) The Cumbres and Toltec scenic railroad commission may pledge as security for the repayment of any indebtedness incurred and outstanding under the authority of this section all of the railroad user fees authorized to be charged pursuant to section 24-60-1907.

- (6) The commission may accept gifts, grants, contributions, or other funds from any source for the repayment of any indebtedness incurred pursuant to this section.

24-60-1907. Railroad loan retirement fund - fees.

- (1) The Cumbres and Toltec scenic railroad commission may establish user fees to be charged to passengers on the railroad. The fee schedule may provide for different fees for different classes of passengers.

(2) All railroad fees collected pursuant to subsection (1) of this section shall be deposited into a railroad loan retirement fund, which fund shall be established in an appropriate financial institution. The commission may authorize the investment of moneys in the fund, and any income earned from such investment shall be retained in the fund. The moneys in the fund shall be used to repay any debts incurred by the commission pursuant to section 24-60-1906. While such debts are outstanding, the commission shall not reduce or eliminate any user fees that were in effect at the time the debt was incurred.

24-60-1908. Loans - tax-exempt.

Any interest charged and collected by a financial institution on any loan made to the Cumbres and Toltec scenic railroad commission is exempt from all taxes imposed by the state and its political subdivisions.

Appendix VII – NM Enabling Statutes

(16-5-1 through 16-5-13 NMSA 1978)

16-5-1. Execution of compact.

The legislature hereby approves and the governor is authorized to enter into a compact on behalf of this state with the state of Colorado in the form substantially as follows:

CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT

The state of New Mexico and the state of Colorado, desiring to provide for the joint acquisition, ownership and control of an interstate narrow gauge scenic railroad, known as the Cumbres and Toltec scenic railroad, within Rio Arriba county in New Mexico and Archuleta and Conejos counties in Colorado, to promote the public welfare by encouraging and facilitating recreation and by preserving, as a living museum for future generations, a mode of transportation that helped in the development and promotion of the territories and states, and to remove all causes of present and future controversy between them with respect thereto, and being moved by considerations of interstate comity, have agreed upon the following articles:

Article I

The states of New Mexico and Colorado agree jointly to acquire, own and make provision for the operation of the Cumbres and Toltec scenic railroad.

Article II

The states of New Mexico and Colorado hereby ratify and affirm the agreement of July 1, 1970, entered between the railroad authorities of the states.

Article III

The states of New Mexico and Colorado agree to make such amendments to the July 1, 1970 agreement and such other contracts, leases, franchises, concessions or other agreements as may hereafter appear to both states to be necessary and proper for the control, operation or disposition of the said railroad.

Article IV

The states of New Mexico and Colorado agree to the consideration of the enactment of such laws or constitutional amendments exempting the said railroad or its operations from various laws of both states as both states shall hereafter mutually find necessary and proper.

Article V

Nothing contained herein shall be construed so as to limit, abridge or affect the jurisdiction or authority, if any, of the interstate commerce commission

over the said railroad, or the applicability, if any, of the tax laws of the United States to the said railroad or its operations.

16-5-1.1. Short title.

[Sections 16-5-1](#) through [16-5-7](#) NMSA 1978 and Sections 1 through 7 of this act [[16-5-1.1](#), [16-5-8](#) through [16-5-13](#) NMSA 1978] may be cited as the "Cumbres and Toltec Scenic Railroad Act".

16-5-2. Ratification of compact.

The legislature hereby ratifies the "Cumbres and Toltec Scenic Railroad Compact" as it is set forth in [Section 16-5-1](#) NMSA 1978 (being Laws 1972, Chapter 19, Section 1) signed at the city and county of Santa Fe, state of New Mexico, on the 11th day of December, A.D. 1974, by Bruce King, as governor of the state of New Mexico, pursuant to [Section 16-5-1](#) NMSA 1978 and signed at the city and county of Denver, state of Colorado, on the 26th day of December, A.D. 1974, by John D. Vanderhoof, as governor of the state of Colorado, under authority of and in conformity with the provisions of Chapter 254 of the Session Laws of Colorado 1973. The consent of congress was given by Public Law 93-467, approved October 24, A.D. 1974, by the senate and house of representatives.

16-5-3. Cumbres and Toltec scenic railroad commission created.

There is created the "Cumbres and Toltec scenic railroad commission," an interstate agency authorized by the Cumbres and Toltec Scenic Railroad Compact. The commission shall be composed of four members, two of whom serve for the state of New Mexico and two of whom serve for the state of Colorado.

16-5-4. Appointment of members.

The two New Mexico members of the Cumbres and Toltec scenic railroad commission shall be appointed by the governor and shall serve at his pleasure. The members shall be reimbursed as provided in the Per Diem and Mileage Act [[10-8-1](#) through [10-8-8](#) NMSA 1978], but shall receive no other compensation, perquisite or allowance.

16-5-5. Payment of the expenses of commission.

The New Mexico share of the expenses of the commission and the reimbursement of the New Mexico members may be paid out of funds appropriated by the legislature and other revenue and user fees collected pursuant to [Section 16-5-11](#) NMSA 1978 not needed for railroad loan retirement. Fees and revenues collected by the commission are appropriated to the commission.

16-5-6. Exemptions.

The Cumbres and Toltec scenic railroad commission is exempt from compliance with the Personnel Act [10-9-1 NMSA 1978] and the Public Purchases Act.

16-5-7. Commission powers.

The Cumbres and Toltec scenic railroad commission shall have all powers necessary to effectuate the provisions of the Cumbres and Toltec Scenic Railroad Compact.

16-5-8. Definitions.

As used in the Cumbres and Toltec Scenic Railroad Act [16-5-1 to 16-5-13 NMSA 1978]:

- A. "commission" means the Cumbres and Toltec scenic railroad commission; and
- B. "railroad" means the Cumbres and Toltec scenic railroad.

16-5-9. Authority of commission to incur indebtedness.

- A. The commission has authority to incur indebtedness for the following purposes:
 - (1) expenditures to make emergency repairs, replacements or additions to the railroad's equipment or facilities; and
 - (2) capital expenditures for development, improvement and acquisition of facilities and equipment for the railroad.
- B. Before the authority to incur indebtedness may be exercised, a majority of the commission members shall vote in favor of a resolution that:
 - (1) specifies the amount of indebtedness to be incurred;
 - (2) specifies in detail the purposes for the loan; and
 - (3) authorizes the chairman of the commission to execute all documents on behalf of the commission to incur the indebtedness by negotiating a loan from a financial institution.
- C. The total indebtedness existing at any time under the authority granted in this section shall not exceed two hundred fifty thousand dollars (\$250,000).
- D. Any indebtedness incurred under the authority of this section shall not create a debt of the state or pledge the general credit of the state or commission. It shall not constitute personal indebtedness of any member of the commission. Except as provided in Subsection E of this section, the indebtedness shall not be secured by any type of security interest in the real or personal property of the railroad, nor shall that property be subject to any legal process to satisfy a judgment for the indebtedness in the event of nonpayment of the indebtedness.

E. The commission may pledge as security for the repayment of indebtedness incurred and outstanding under the authority of this section all of the railroad user fees authorized to be charged under Section 5 [16-5-11 NMSA 1978] of the Cumbres and Toltec Scenic Railroad Act.

16-5-10. Railroad loan retirement fund.

A. There is created the "railroad loan retirement fund". Railroad user fees authorized pursuant to the Cumbres and Toltec Scenic Railroad Act may be deposited in the fund by the commission. The commission shall by resolution authorize the placement of the fund in an appropriate financial institution and shall also authorize the investment of money in the fund. Income earned from investment of the fund shall become part of the fund.

B. The money in the railroad loan retirement fund is irrevocably pledged to the retirement of any indebtedness incurred by the commission under the authority of Section 16-5-9 NMSA 1978. During the time that any indebtedness is outstanding, the commission shall not reduce or eliminate any user fees that were in effect at the time the indebtedness was incurred.

16-5-11. Authorization to set and collect user fees.

The commission may establish user fees to be charged to passengers on the railroad. The fee schedule may provide for different fees for different classes of passengers.

16-5-12. Tax exemption of interest charged on loan.

Any interest charged and collected by a financial institution for extending a loan to the commission is exempt from all taxes imposed by the state and its political subdivisions.

16-5-13. Liberal interpretation.

The Cumbres and Toltec Scenic Railroad Act [16-5-1 to 16-5-13 NMSA 1978] shall be liberally construed to carry out its purpose.

Appendix VIII – 1977 Agreement

(Since there were only paper copies of the original of this document, this copy is an RTF file created from a PDF scanned image of an original paper copy. Furthermore the signature pages are imperfectly rendered.)

AMENDMENT TO
NARROW GAUGE RAILROAD AGREEMENT

THIS AMENDMENT, effective July 1, 1977, entered into between the State of Colorado and the State of New Mexico, hereinafter sometimes referred to as "States," acting by and through the Colorado Railroad Authority and New Mexico Railroad Authority.

WITNESSETH:

THAT WHEREAS, the States have heretofore entered into the NARROW GAUGE RAILROAD AGREEMENT, executed at Denver, Colorado, on June 30, 1970, by John A. Love, Governor, on behalf of the State of Colorado, and executed at Santa Fe, New Mexico, on July 1, 1970, by David F. Cargo, Governor, on behalf of the State of New Mexico; and

WHEREAS, the Legislature of the State of New Mexico at the Second Regular Session of the Thirtieth Legislature, 1972, enacted Senate Bill No. 42, approved by the Governor on February 17, 1972, authorizing the Governor of the State of New Mexico to enter into an interstate compact with the State of Colorado to be called the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT, hereinafter sometimes referred to as "COMPACT"; and

WHEREAS, the General Assembly of the State of Colorado enacted House Bill No. 1117 at the First Regular Session of the Forty-Ninth General Assembly, 1973, approved by the Governor on May 4, 1973, authorizing the Governor of the State of Colorado to enter into an interstate compact with the State of New Mexico to be called the CUMBRES AND

A.

TOLTEC SCENIC RAILROAD COMPACT; and

WHEREAS, the Congress of the United States of America, at the Second Regular Session of the Ninety-third Congress, 1974, enacted Senate Bill No. 2362, approved by the President of the United States on October 24, 1974, giving its consent to the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT; and

WHEREAS, Bruce King, Governor of the State of New Mexico, executed at Santa Fe, New Mexico, on December 11, 1974, an interstate compact with the State of Colorado entitled CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT; and

WHEREAS, John D. Vanderhoof, Governor of the State of Colorado, executed at Denver, Colorado, on December 26, 1974, said interstate compact with the State of New Mexico; and

WHEREAS, the Legislature of the State of New Mexico at the First Session of the Thirty-third Legislature, 1977, enacted Senate Bill No. 168, approved by the Governor on April 18, 1977, ratifying the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT, providing for appointment of two members of the Cumbres and Toltec Scenic Railroad Commission to represent the State of New Mexico, and terminating the New Mexico Railroad Authority, all effective July 1, 1977; and

WHEREAS, the General Assembly of the State of Colorado at the First Regular Session of the Fifty-first General Assembly, 1977, enacted Senate Bill No. 443, approved by the Governor on June 10, 1977, ratifying the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT, providing

B.

for appointment of two members to the Cumbres and Toltec Scenic Railroad Commission to represent the State of Colorado, terminating the Colorado Railroad Authority, all effective July 1, 1977; and

WHEREAS, New Mexico Railroad Authority and Colorado Railroad Authority, on behalf of the respective State of each, desire to amend the NARROW GAUGE RAILROAD AGREEMENT to conform it to the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT;

NOW, THEREFORE, in consideration of mutual covenants, the Colorado Railroad Authority and the New Mexico Railroad Authority agree that the NARROW GAUGE RAILROAD AGREEMENT is amended, modified and supplemented as follows:

PART A

General Provisions

ARTICLE I

Covenant to Purchase - Route

(1) The State of Colorado and the State of New Mexico do hereby covenant and agree to purchase, preserve and maintain, except as otherwise provided in this Agreement, a narrow gauge interstate railroad and adjoining properties, hereinafter referred to as the "Railroad." The States shall be guided in the construction, reconstruction, repair, maintenance and operation of the Railroad by the principles of preservation of the Railroad as an historic monument.

(2) The route and termini of the right-of-way of said Railroad shall encompass that portion of the narrow gauge railroad

C.

right-of-way of the Denver and Rio Grande Western Railroad Company between Antonito, Conejos County, Colorado, and Chama, Rio Arriba County, New Mexico, described as follows: Beginning at a point at Antonito, Conejos County, Colorado, at about I.C.C. Engineer's Station 1470+31 of Valuation Section Colorado 16A (Mile Post 280.85) and thence extending in a general westerly and south-westerly direction across parts of Colorado and New Mexico to a point at Chama, Rio Arriba County, New Mexico, at about I.C.C. Engineer's Station 4850+00 of Valuation Section New Mexico V2-F (Mile Post 344.86); and such other yards and properties connected therewith and part thereof as may be considered and purchased as part of such route-and termini and such personal property as may be usual in the operation of the Railroad.

ARTICLE II

Term of Agreement

(1) This AGREEMENT shall take effect July 1, 1977, and the duties and obligations imposed upon the Cumbres and Toltec Scenic Railroad Commission, hereinafter referred to as "Commission," by the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT, and/or this AGREEMENT, and/or legislation enacted by each State, in connection with the transfer by the Denver and Rio Grande Western Railroad Company of its right, title and interest in and to the railroad system, described in Article I of this AGREEMENT, to the Colorado Railroad Authority and the New Mexico Railroad Authority, hereinafter referred to as "Authorities," shall arise on July 1, 1977.

(2) The States, by this AGREEMENT, agree to receive and hold

title to all real and personal property acquired by the Authorities and/or their successors in interest, the Cumbres and Toltec Scenic Railroad Commission in the name of Cumbres and Toltec Scenic' Railroad Commission for and on behalf of the State of Colorado and for and on behalf of the State of New Mexico as tenants-in-common.

(3) (a) This AGREEMENT shall continue in effect until the occurrence of the first of the following:

(b) Cancellation by unanimous agreement of all members of the Commission;

(c) Cancellation by action of both members of the Commission from the same State, as provided in Article V (3)(c) of Part A of this AGREEMENT;

(d) Sale or salvage of all of the real and personal property of the Railroad, as provided in Article V(3)(b) of Part A of this AGREEMENT;

(e) Sale of the entire interest of one of the States to the other State; or

(f) Cancellation of the certificate of public convenience and necessity, granted to Authorities on April 23, 1971, by the Interstate Commerce Commission in Finance Docket No. 26232, except if cancellation is the result of deregulation of the business of interstate common carriage by railroad.

(4) Notwithstanding the provisions of Paragraph 3 of this Article, the provisions of Articles III, IV, V, VI, VII and VIII of Part A; Articles I, II, III and IV of Part B; and Article I of

Part C of this AGREEMENT shall remain in effect and be binding upon the Commission until such time as all of the real and personal property of the Railroad has been sold or salvaged. all liabilities, expenses and debts of the Railroad have been extinguished and all remaining funds distributed to each State in accordance-with the percentage of ownership of each State, as such percentage is set forth in Article III of Part A of this AGREEMENT.

ARTICLE III

Percentage of Ownership

The percentage shown opposite the name of each State shall represent the proportionate interest of such State in the real and personal property of the Railroad, its profits and losses:

<u>Name</u>	<u>Percentage of Ownership</u>
State of Colorado	50%
State of New Mexico	50%

ARTICLE IV

Contributions

(1) Contributions for the purchase of the real and personal property of the Railroad from the Denver and Rio Grande Western Railroad Company and for the servicing, transporting, preserving and protecting of said personal property shall be made by the States in such proportions as to reflect the percentage of ownership of each State, as such percentage is set forth in Article III of Part A of this AGREEMENT.

(2) Subsequent contributions, subject to appropriations of the respective States, for the purchase of additional real and/or personal

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property of the Railroad and for the constructing, protecting, preserving, maintaining, repairing and rehabilitating all of the real and/or personal property of the Railroad shall be made by the States in such proportions as to reflect the percentage of ownership of each State, as such percentage is set forth in Article III of Part A of this AGREEMENT.

(3) Subsequent contributions, subject to the availability of funds, for the payment of all wages and salaries of all officers, employees and agents of the Commission shall be made by the States in such proportions as to reflect the percentage of ownership of each State, as such percentage is set forth in Article III of Part A of this AGREEMENT.

ARTICLE V

Sale or Salvage of Property

(1) Neither State shall petition any court of law for a partition of the real and/or personal property of the Railroad.

(2) Neither State shall, either directly or indirectly, encumber any or all of its interest in the real and/or personal property of the Railroad, except with the prior written approval of the other State.

(3) (a) Except as otherwise provided in Paragraphs (3) (b) through (3) (e) of this Article, neither State shall sell, give, assign, convey or otherwise transfer any or all of its interest in the real and/or personal property of the Railroad.

(b) The Commission, by unanimous agreement, may jointly salvage, sell, assign, convey or otherwise transfer title to any or all of the real and/or personal property of the Railroad.

(c) Either State, through the members of the Commission from that State, acting unilaterally, may in writing cancel this AGREEMENT at any time and compel a sale of all (but not part) of the real and personal property of the Railroad to a third party, or compel a salvage of all (but not part) of the personal property and a sale of the real property of the Railroad, except that the members of the Commission from the State not compelling sale or salvage shall have ninety (90) days after receipt of the written notice of such cancellation in which to elect to purchase on behalf of their State the interest of the State compelling sale or salvage in the real and/or personal property of the Railroad. The State electing to purchase shall cause an appraisal of such property to be made and shall serve such appraisal upon the State compelling sale or salvage which State shall have ninety (90) days to make its appraisal of the same and serve such appraisal upon the State electing to purchase, and the results of these appraisals shall be reviewed by the States to the end and purpose of arriving at a fair and reasonable appraisal of the values of the properties being transferred; however, if necessary, an appraisal by a third disinterested appraiser may be obtained. The value of the interest of the State compelling sale or salvage shall be its percentage of ownership, as set forth in Article III of Part A of this AGREEMENT, of the appraised value of all of the real and personal property of the

Railroad. The State electing to purchase shall have a period of eighteen (18) months after receipt of the written notice of cancellation, or such longer period as may be consented to by both members of the Commission from the State compelling sale, in which to complete purchase of the interest of the State compelling sale or salvage. In the event of such election, the State so electing shall pay all costs incurred by the States during such period. If the State electing to purchase does not so purchase within such eighteen-month period, or such longer period as agreed upon by the States, the Commission shall immediately proceed to cause sale or salvage of all of the real and personal property of the Railroad.

(d) In the event that a stalemate shall arise among the members of the Commission relating to the rehabilitation, preservation, operation or leasing of any or all of the real and/or personal property of the Railroad, then, in that event, either State may elect to cancel this AGREEMENT, as provided in Paragraph (3) (c) of this Article.

(e) Distribution of the proceeds to the States arising from the sale or salvage of the real and personal property of the Railroad shall be made as provided in Article VI of Part A of this AGREEMENT.

ARTICLE VI

Distribution of Proceeds on Sale or Salvage - Incurrence of Liabilities

(1) In the event that any or all of the real and/or personal property of the Railroad is sold or salvaged, the proceeds received by reason of such sale or salvage shall be allocated and distributed by the Commission to the State of Colorado and the State of New Mexico in

accordance with the percentage of ownership of each, as such percentage is set forth in Article III of Part A of this AGREEMENT; except that, before such allocation and distribution are made by the Commission, the proceeds shall be applied first to the discharge of any expenses, debts and liabilities incurred in collecting such proceeds and to the setting up of any reserves which the Commission may deem reasonably necessary for any contingent or unforeseen liabilities or obligations arising out of the sale or salvage of the real and/or personal property of the Railroad.

(2) If during the term of this AGREEMENT, or after its termination, any claim, liability or expense shall be asserted against the Railroad, or shall be asserted against or incurred by the Commission or by either State, or both States, as a result or consequence of the purchase, servicing, transporting, preserving, rehabilitating, protecting, repairing, maintaining, operating, or leasing of the real and/or personal property of the Railroad, the States shall bear any such claims, liabilities or expenses in such proportions as reflect the percentage of ownership of each State, as such percentage is set forth in Article III of Part A of this AGREEMENT. The States shall cooperate and consult with one another in defending any such claim, liability or expense and in making any settlement or compromise thereof. In the event of payment of any sum on account thereof, the States shall contribute the amount required in such proportions as to reflect the percentage of ownership of such State, as such percentage is set forth in Article III of Part A of this AGREEMENT. If any such claim,

one State, or the members of the Commission from only one State, and such State pays the amount in whole or in part, the other State shall, upon written request of the other State pay its proportionate amount thereof according to the percentage of ownership of each State, as such percentage is set forth in Article III of Part A of this AGREEMENT. The provisions of this Paragraph (2) are subject to the provisions of Article VII of Part A of this AGREEMENT.

(3) The members of the Commission from one State shall not incur any liability without the consent of the members of the Commission from the other State.

ARTICLE VII

Indemnity

Each State agrees to indemnify and hold harmless the other for its proportionate share of any debt, lien, judgment or charge of any nature arising from any act or omission of the State or State's members on the Commission, incurring such debt, lien, judgment or charge, except where such debt, lien, judgment or charge arises from the sole negligence of the other State or State's members on the Commission. It is understood that the obligations imposed by this condition are limited to those not prohibited from being assumed by the laws of the State.

ARTICLE VIII

Payment of Taxes

(1) The Commission shall total all tax assessments for the fiscal year. Taxes shall be allocated and paid by each State according to each State's percentage of ownership, as set forth in Article III of Part A of this Agreement.

(2) Each State shall deposit with the Commission sufficient funds representing its proportionate share of all taxes levied against the real and personal property of the Railroad at least thirty (30) days before the date payment of such taxes is due. In the event that either or both of the States shall fail to deposit funds representing its or their proportionate share or shares of the assessed taxes within the time provided in this Article, then the Commission may make such payment in full and the amount of such payment shall become a lien upon the interest of the defaulting State in the real and personal property of the Railroad.

(3) Where either State questions the validity of such taxes, the State in whose jurisdiction the taxes arise shall finally test such validity in its jurisdiction.

PART B

Cumbres and Toltec Scenic Railroad Commission

ARTICLE I

Powers of Commission

(1) The Cumbres and Toltec Scenic Railroad Commission, hereinafter and hereinafter referred to in this AGREEMENT as the "Commission," shall have such powers and duties as delegated to it by the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT, and/or by this AGREEMENT, and/or by legislation enacted in each State and approved by the Congress of the United States. The Commission shall consist of two members from each State, each of whom shall be appointed to the Commission as provided in the

respective laws of each State. The Commission shall be an interstate Commission acting as joint agent for both the State of Colorado and the State of New Mexico.

(2) The Commission shall select from among its members a Commission Chairman and Commission Vice-Chairman, one from Colorado and one from New Mexico, and in addition shall select from its members or from officers or employees of the Commission, a Secretary and a Treasurer.

(3) A majority of the Commission present shall constitute a quorum for the transaction of business. Each member of the Commission shall receive such compensation and reimbursement as may be provided in the laws of the State of which he is a member.

(4) (a) The Commission shall have all powers necessary to carry out the purposes of the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT, and this AGREEMENT, and it may, not by way of limitation:

- (b) (i) Sue and be sued in its own name;
- (ii) Employ such employees, or contract for other services, as may be necessary to carry out the purposes of the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT and. this AGREEMENT;
- (iii) Plan, establish, acquire, purchase, develop, construct, enlarge, improve, maintain, equip, operate, protect, and police a railroad system; lease and sell real or personal property, supplies, goods, materials,

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and commodities; and furnish and supply services and utilities incident to the operation of a railroad system, including the granting of franchises, concessions, and operation of facilities incident to the operation of a railroad system for the purposes specified in the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT and this AGREEMENT;

(iv) Use any available property it may own or control, or may, by purchase, gift, devise, lease, or otherwise acquire real or personal property or any interest therein for railroad purposes;

(v) Enter into contracts, leases, or other arrangements with any person, including another state or agency or authority thereof, for terms not exceeding ninety-nine (99) years, granting privilege of operating the railroad system, with or without operation or management of any related recreational facilities, on such terms and conditions as the Commission deems proper;

(vi) Promulgate and enforce rules and regulations for the orderly, safe, and sanitary operation of the railroad system and related facilities;

(vii) Accept title to a railroad system or any of the real or personal property of a railroad in the name

of and on behalf of the State of Colorado and the State of New Mexico;

(viii) Enter into mutual agreements for the joint operation of a railroad system or any related facilities;

(ix) Enter into agreements or contracts with, or accept grants from, federal agencies and state agencies and cooperate with any federal agency and state agency in obtaining funds or other assistance for the acquisition or operation of a railroad system; and,

(x) Accept and repay public and private money made available by loan or any other means to plan and accomplish in whole or in part purposes of the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT and this AGREEMENT.

ARTICLE II

Joint Bank Account

The Commission shall establish a bank account in the name of the Commission, to be maintained in alternate years in alternate States herein involved, and the members of the Commission shall cause drafts or warrants of their respective States to be issued in contemplation of the payment of expenses, debts and obligations incurred or to be incurred in the carrying out of the provisions of the CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT, and this AGREEMENT, subject to the availability of

funds. All drafts or warrants shall be deposited by the Commission in said joint bank account and no monies shall be paid out of said joint bank account except upon the signatures of the Chairman or Vice-Chairman and Treasurer of the Commission. The Commission, by unanimous vote, may establish such additional bank accounts as may be needed.

ARTICLE III

Books of Accounts of Commission

Full and complete books of account shall be kept and maintained by the Commission at all times. Such books of account shall be public records and subject to inspection during regular business hours by any citizen of the State of Colorado or the State Of New Mexico. The books of account shall be subject to audit by the State Auditor of Colorado and the State Auditor of New Mexico.

ARTICLE IV

Incurrence of Debt

The Commission shall at no time incur debt exceeding the total amount of funds then appropriated or-available to the Commission.

PART C

Amendments

ARTICLE I

This AGREEMENT may be amended from time to time by the unanimous agreement of all members of the Commission.

IN WITNESS WHEREOF, the New Mexico Railroad Authority has executed this AMENDMENT TO NARROW GAUGE RAILROAD AGREEMENT in quadruplicate this [30th] day of [June], 1977.

New Mexico Railroad Authority

By 

Chairman

By [Illegible]
Secretary, and Chairman of
The Joint Executive Committee "

Approved:

By [Illegible]

Department of Finance and
Administration

Approved: "As to form and legal sufficiency this [29] day of
[June], 1977.

Office of the Attorney General

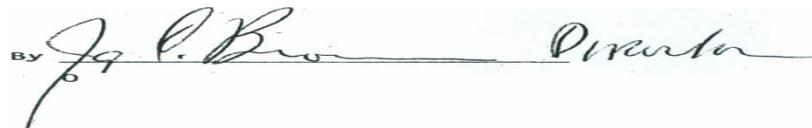
By [s/Robert E. Robles]

IN WITNESS WHEREOF, the Colorado Railroad Authority has
executed this AMENDMENT TO NARROW GAUGE RAILROAD AGREEMENT in quadru-
plicate this 24th day of June, 1977.

State of Colorado
Richard D. Lamm, Governor,
and Chairman of the
Colorado Railroad Authority

N.
Approved:

By 
State Controller

By 

Office of State
Planning and
Budgeting
STATE BUILDINGS

DIVISION

By (not signed)

John A. Davis
Deputy Director

Approved as to form:
Attorney General

Appendix IX – 2006 Governors’ Memorandum***(Executed November 2006)***

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into by and between the Office of the Governor, State of New Mexico (“New Mexico”) and the Office of the Governor, State of Colorado (“Colorado”), concerning the Cumbres and Toltec Scenic Railroad (“the Railroad”).

Whereas, the Railroad is a valuable historic landmark for the State of New Mexico and the State of Colorado that must be maintained and preserved, and

Whereas, the State of New Mexico and the State of Colorado entered into the Cumbres and Toltec Scenic Railroad Compact, dated December 11, 1974 (the “Compact”), and

Whereas, the United States Congress, pursuant to Article I, Section 10, Clause 3 of the United States Constitution, consented to the Compact, by and through Public Law 93-467 (1974), and

Whereas, the State of New Mexico, by and through NMSA 1978 § 16-5-1, ratified the Compact, and

Whereas, the State of Colorado, by and through C.R.S. § 24-60-1901, ratified the Compact, and

Whereas, the Compact and state laws established the Cumbres and Toltec Scenic Railroad Commission, with two commissioners appointed by the Governor of each state, and

Whereas, the Commissioners of each state serve at the pleasure of the Governor, and

Whereas, Article III of the Compact expressly authorizes New Mexico and Colorado to enter into “such other contracts, leases, franchises, concessions, or other agreements as may hereafter appear to both States to be necessary and proper,” and

Whereas, after careful review and assessment, New Mexico and Colorado believe that an agreement between the states is immediately necessary to reorganize the Commission as a professionally qualified governing body, and

Whereas, New Mexico and Colorado find that, while the Cumbres & Toltec Scenic Railroad is a historic landmark, it is also a competitive business competing with other railroads and other regional attractions. That after careful assessment, New Mexico and Colorado have determined that the

future sustainability and success of this business now requires professional oversight. That this oversight can only be achieved by appointing commissioners with significant experience in an oversight role of a major business enterprise, and

Whereas, New Mexico and Colorado have found that the citizen commission have managed the railroad to the best of their ability but the long-term success and viability of the railroad now requires substantial business management expertise.

NOW, THEREFORE, the Governor of the State of New Mexico and the Governor of the State of Colorado hereby agree as follows:

1. That New Mexico and Colorado shall thank the incumbent commissioners for their dedicated and meritorious service and immediately replace them with members that have at least five (5) years experience in a substantial oversight role over a major business enterprise.
2. That future commissioners appointed by either Governor shall each have the minimum qualifications of at least five (5) years experience in a substantial oversight role over a major business enterprise.
3. That the Commission shall serve an oversight role on the model of a board of directors to a corporation.
4. That each Governor shall direct the state's primary economic development official to designate one representative to serve as a marketing liaison to the Commission. These representatives shall provide assistance, expertise and professional resources to the Commission in order to most effectively promote the state owned railroad. These representatives shall be available as requested by the Commission but shall attend, at a minimum, a Commission meeting before the Railroad opens each season and a meeting after the Railroad closes each season. This arrangement will ensure that the states, as owners of the railroad, provide adequate professional resources for the Railroad to compete.
5. That each Governor shall direct the state's Department of Transportation to provide expertise and resources as deemed necessary and requested by the Commission. This arrangement will ensure that the states, as owners of the railroad, provide adequate professional resources for the Railroad to compete.
6. This Memorandum of Understanding shall be effective upon signature of the Governor of each state.
7. Nothing in this Memorandum of Understanding is intended to conflict with the Compact, state or federal laws, or the Narrow Gauge Railroad Agreement of 1977. To the extent any part of this Memorandum of Agreement does conflict, that part is rendered invalid and the remaining sections of this document are not affected.

Signed:

Bill Richardson
Governor
State of New Mexico

Date

Bill Owens
Governor
State of Colorado

Date

Appendix X – Minutes Guidelines

Since the meeting minutes are the legal record of the proceedings and actions of the C&TSRR Commission they should be clear, accurate, and conform to the following conventions.

A. Contents and Form of Minutes.

1. Lead paragraph. Specify the type of Commission meeting (regular, special, etc.); the date, time and place of the meeting; the name of the presiding officer, the names and titles of the Commissioners present; the establishment of a quorum; and record the action taken on the minutes of the Commission's previous meeting.
2. Motions. Each Motion should be a separate paragraph containing the exact wording of the motion, whether it passed or failed, and in what way it was disposed, along with the names of the maker of the Motion and the seconder, and the record should show how each Commissioner voted. Any points of order or appeals should also be recorded. For convenience, a lengthy motion may be made a part of minutes by attaching it to the minutes that reference it. The maker of any motion shall provide the final text, whether the motion is adopted or not, for inclusion in the minutes.
3. Reports. Written reports accepted by the Commission at Commission meetings are available on request from the Commission office.
4. Executive Sessions. The meeting minutes should record when the Commission goes into Executive Session and when it returns. (Minutes of Executive Sessions are preserved but not available to the public).
5. Last paragraph. Specify the hour of adjournment.

B. What Is Not Included.

Minutes are a record of what was **done** at the meeting, not what was **said** at the meeting, so comments by participants should not be included. Avoid any opinions or interpretations of the secretary and any judgmental phrases (e.g., "heated debate" "valuable comment"). Withdrawn motions are also not included.

C. Attachments.

The official copy of the minutes should have attached to it the original signed copy of Reports by Commissioners, Commission staff, contractors, advisors, and any other parties appearing before the Commission, as well as any official correspondence addressed to the Commission.

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D. Approval of the Minutes.

If the minutes have been distributed to the members before the next meeting then the approval process can be brief. The presiding officer simply states "Are there any corrections to the minutes as circulated?" If there are none, or after all corrections have been made, the presiding officer may say "If there is no objection, the minutes will be approved as circulated (or as corrected)."

E. Signatures.

After the minutes have been corrected and approved by the Commission, they should be signed by the Secretary and can be signed by the Chairman. The word "approved" and the date of the approval should also be included

F. Minutes Book.

The official copy of the minutes, including attachments, should be entered in a Minutes Book and kept by the Secretary. As the property of the Commission the official copy of the minutes is kept at the Commission's office in Antonito.

G. Copies of the Minutes.

Commissioners receive a copy of the minutes, including all attachments. Copies distributed to interested parties should also contain any attachments or brief summaries of the attachments may be substituted.

Appendix XI - Addenda to 1977 Agreement

A. Disposal of Property, Adopted April 30, 2016.

In accordance with PART C, Article I, of the July 1977 Amendment to the Narrow Gauge Agreement, the Commission by a unanimous vote of all of its members hereby amends Part A, Article V (3) (b), of said Agreement to provide a more flexible policy regarding its authority to "salvage, sell, assign, convey or otherwise transfer title to any or all of the real and/or personal property of the Railroad" (i.e., collectively, "disposal of C&TSRR Property").

C&TSRR Property is hereby classified into three distinct categories, each subject to different specific requirements and authorizations regarding any contemplated disposal:

- Category A. A unanimous vote of all members of the Commission at a duly constituted meeting of the Commission is hereby required for disposing of any C&TSRR land, "Contributing Resources" listed in the National Register, locomotives and rolling stock, or other C&TSRR Property subsequently designated by the Commission.
- Category B. The President of the Cumbres Toltec Operating is hereby authorized to dispose of any C&TSRR Property not in Category A consisting of commodity-like items such as parts, materials, used shop machinery, used motor vehicles, and scrap that has a market value of less than \$10,000. Any sales must be subsequently reported to the Commission in a timely manner.
- Category C. The President of the CTO is hereby authorized to initiate the disposal of any C&TSRR Property not falling in Category A or Category B, with final disposition subject to a thirty-day waiting period to permit the Commission at a duly constituted meeting to consider modification or cancellation of such a disposition.

Any proceeds received from such disposal shall be retained by the Commission for use by the Railroad.

B. Accounting Practices and Controls, Adopted January 28, 2017.

In accordance with PART C, Article I, of the July 1977 Amendment to the Narrow Gauge Agreement, the Commission by a unanimous vote of all of its members hereby amends Part B, Articles II and III, of said Agreement to require the Commission maintain its accounts and several funds in accordance with *Generally Accepted Accounting Principles* (GAAP) for government entities and with the accounting principles and standards established by the *Government Accounting Standards Board* (GASB), including accounting for all receipts, disbursements, and any other financial transactions.

Furthermore, the Commission shall adopt and maintain internal accounting controls that conform to GAAP and GASB standards as these may be amended from time-to-time and recommended to the Commission by the designated financial auditors of

the states. These adopted controls shall supersede the original provisions of Articles II and III to the extent that those provisions do not conform to the adopted controls.

Appendix XII – CTO Operating Agreement, August 5, 2017³⁸

OPERATING AGREEMENT
CUMBRES TOLTEC OPERATING, LLC

This Operating Agreement (the "Agreement") of the **Cumbres Toltec Operating, LLC**, a New Mexico limited liability company, (the "CTO") is executed by the **Cumbres & Toltec Scenic Railroad Commission** (the "Commission") acting as the sole member of CTO, and is effective as of _____, 2017.

WHEREAS, the States of Colorado and New Mexico (the "States") acting through the Commission jointly own the Railroad, a 64-mile long portion of the former mainline of the Denver & Rio Grande Western narrow-gauge railroad between Antonito, Colorado, and Chama, New Mexico (the "Railroad");

WHEREAS, the Commission has been created by virtue of the governing documents of the Interstate Compact between the States of Colorado and New Mexico which are the Railroad's owners as tenants-in-common (the "Compact");

WHEREAS, the States have authorized the Commission to preserve the Railroad as a living museum and to operate the Railroad in order to promote the public welfare by encouraging tourism and by facilitating the use of recreational and educational facilities in the remote areas of the States, Section 24-60-1701 and 24-60-1901, *et seq*, C.R.S. and NMSA 1978, § 16-5-1 through 16-5-13 (the "Enabling Statutes");

WHEREAS, the Commission has registered CTO in compliance with the New Mexico Limited Liability Company Act (the "NM LLC Act") as a wholly-owned, limited liability company under the powers granted to it by the States in the Compact; and

WHEREAS, the Commission wishes CTO to be responsible for railroad operations and administrative support of the activities of Commission and the Railroad.

NOW THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the Commission hereby agrees as follows:

ARTICLE I

DEFINED TERMS

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Article I shall, for the purposes of this Agreement, have the meanings specified herein.

³⁸ This is the text of the agreement approved by the Commission at its August 5, 2017, meeting and executed by the parties at that time.

"Covered Person" means the Commission; any members, employees, or agents of the Commission; and the General Manager, any employees, or agents of CTO.

"C&TSRR" means the Cumbres and Toltec Scenic Railroad formed under the terms of the Compact.

"General Manager" means the person appointed by the Commission to manage CTO.

"Manual" means the current version of the Commission's Policies and Practices Manual as such may be revised from time to time. As a public document copies of the Manual are available on request from the offices of the Commission or CTO. Specific provisions of the Manual are incorporated by reference in this Agreement.

ARTICLE II

INTENT OF THE PARTIES, FORMATION AND TERM

Section 2.1 Formation. CTO was formed as a limited liability company pursuant to the provisions of the NM LLC Act, and the rights, duties and liabilities of the Commission shall be as provided in the NM LLC Act, but subject to the limitations imposed by the governing documents of the Compact.

Section 2.2 Term. The term of CTO commences on the date this agreement is executed and continues in existence perpetually, unless CTO is dissolved by the Commission.

Section 2.3 Registered Agent and Principal Place of Business. The street address of the initial registered office and principal place of business of CTO is 500 S. Terrace Ave., Chama, NM 87520, and the Commission is the initial registered agent of CTO.

Section 2.4 Qualification in Other Jurisdictions. The Commission shall cause CTO to be qualified, formed, or registered to the extent required by the laws of any other jurisdiction in which CTO transacts business.

ARTICLE III

DUTIES AND RESPONSIBILITIES OF CTO

Section 3.1 Relationship with the Commission. The Commission remains responsible for all matters of governance and policy, but assigns to the General Manager responsibility for the day-to-day railroad operations of CTO and administrative support of the Commission. All assets of the railroad are held in the name of the Commission, with no assets held separately by CTO.

The Commission shall assign one of its Commissioners to provide liaison with the General Manager for matters pertaining to CTO activities. In its capacity as the sole member of CTO, the Commission shall hold periodic working sessions with the CTO General Manager and various staffers in order to ensure that CTO's activities are

being performed in a manner consistent with the Commission's policies, objectives, and other requirements specified in the Manual.

Section 3.2 Railroad Operations. CTO's primary responsibility is to operate and maintain the C&TSRR, these functions having been provided in the past by outside contractors under lease agreements or management services contracts. In order to do this CTO performs the functions typically associated with operating steam-powered tourist trains carrying passengers over a railroad right-of-way connecting Chama, NM, and Antonito, CO, along with all of the other ancillary functions necessary to provide such services, and in a manner consistent with the provisions of the Interstate Compact between Colorado and New Mexico and in keeping with the railroad's status as a National Historic Landmark.

CTO's operating duties include: (a) operating trains and related services necessary to transport the public in a safe manner, (b) providing a quality service for its customers, (c) providing reservation and office services and systems for such train service, (d) marketing the railroad's offerings, (e) maintaining and preserving locomotives, rolling stock, structures, buildings, track, right-of-way, and other assets involved in the operation of the railroad, and (f) managing the railroad's day-to-day operations in a sound, businesslike manner.

Section 3.3 Administrative Support. CTO (a) manages the administrative, budgetary, financial, and recordkeeping activities of the Commission; (b) processes and controls receipts and disbursements, (c) submits periodic plans, budgets, financial reports, and operational objectives to the Commission for approval; (d) promotes and manages efforts to obtain funding from government and private sources as directed by the Commission; (e) establishes and maintains all business and administrative systems to assure the C&TSRR's compliance with all local, state and federal regulations; (f) represents the Commission in day-to-day relations with (i) the public, (ii) government entities such as the FRA and funding agencies, and (iii) contractors such as the Friends, the dining concessionaire at Osier, and the bus service; all as directed by the Commission in accordance with its policies and practices which are more fully described in the Manual.

Section 3.4 Other Related Duties. CTO shall engage in such other business and activities and do any and all other acts and things that the Commission may deem necessary, appropriate, or advisable from time to time in furtherance of the purposes of CTO as set forth in this Article.

Section 3.5 Employment Policies. CTO employs all the staff necessary to carry out the administrative support functions, railroad operations functions, and other related duties assigned to it by the Commission. Accordingly, the Commission has delegated to CTO responsibility for implementing the employment policies and practices described in the railroad's Employee Handbook, which is available at the Commission's office upon request. This handbook describes the railroad's HR policies and practices including terms of employment, ethical standards, payroll practices, benefit programs, working conditions, employee conduct, disciplinary procedures, etc. Like any other business CTO's employment practices are subject

to state and federal labor laws and regulations. Furthermore, consistent with the terms of the Compact, none of its employees is an employee of either state.

ARTICLE IV MANAGEMENT

Section 4.1 Duties of the General Manager. Reporting directly to the Chairman of the Commission, the General Manager shall have full authority to manage the business and affairs of CTO and to perform activities customary or incident to the management of CTO in a manner consistent with the provisions of the Compact and the Enabling Statutes and the provisions of the Manual.

Section 4.2 Number, Tenure and Qualifications. CTO shall have one General Manager, who shall be appointed by an affirmative vote the Commission. A General Manager shall hold office until a successor shall be appointed, or until the General Manager's earlier withdrawal, resignation or removal.

Section 4.3 Title of General Manager. The Commission may at its discretion confer the title of "President of the C&TSRR" upon the General Manager.

Section 4.4 Resignation. A General Manager of CTO may resign from the position of General Manager at any time by giving written notice to the Commission, and said resignation shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice.

Section 4.5 Removal. A General Manager may be removed at any time, with or without cause, by an affirmative vote of the Commission.

Section 4.6 Vacancies. Any vacancy in the position of General Manager shall be filled by the Commission by affirmative vote of the Commission.

Section 4.7 Delegation of Authority, Officers. The General Manager shall have the power to delegate authority to such officers, employees, agents and representatives of CTO as the General Manager may from time to time deem appropriate. Any delegation of authority to take any action must be approved in the same manner as would be required for the General Manager to approve such action directly. The salaries of all officers and agents of CTO shall be fixed by the General Manager.

ARTICLE V BOOKS, RECORDS, AND FINANCIALS

Section 5.1 General. In order to fulfill its duties and responsibilities as described in Article III, CTO shall support and comply with the books, records, and financial reporting requirements of the Compact and any other related policies and practices described in the Manual as these may be revised from time to time. Particularly pertinent are provisions in the Manual that set forth the Commission's policies and practices regarding (a) Books and Records, (b) Budgets, Accounting, Finances, and Audits, (c) Contracting for Goods and Services, (d) Reports to the Governors, (e) Ethical Standards, (f) Risk Management and Insurance, (g) Safety and Emergencies, and (h) FRA Oversight.

Section 5.2 NM LLC Act Requirements. CTO shall maintain at its registered office and principal place of business all records and materials CTO is required to maintain at such location under the NM LLC Act and available for inspection by the Commission.

ARTICLE VI

TAX MATTERS

Section 6.1 Taxation of CTO. CTO shall be treated as a disregarded entity for U.S. federal income tax purposes because it has only one member, the Commission.

Section 6.2 Federal Tax Returns. CTO shall generate for each Fiscal Year (or part thereof), Federal tax returns for the Commission, CTO, and any other subsidiary in compliance with the provisions of the IRS Code and any required state and local tax returns.

Section 6.3 Tax Matters Representative. The Commission shall act as Tax Matters Representative of CTO for purposes of §6231(a)(7) of the IRS Code and shall have the power to manage and control any administrative proceeding at the CTO level with the IRS.

ARTICLE VII

LIABILITY, EXCULPATION AND INDEMNIFICATION

Section 7.1 Liability. No Covered Person shall be obligated personally for any debt, obligation or liability of CTO solely by reason of being a Covered Person.

Section 7.2 Exculpation. No Covered Person shall be liable to CTO or other Covered Persons for any loss, damage or claim incurred by reason of any act performed or omitted by such Covered Person in good faith on behalf of CTO and in a manner reasonably believed to be within the scope of authority conferred on a Covered Person by this Agreement; provided that no Covered Person shall be released from liability for any such loss, damage or claim incurred by reason of a Covered Person's gross negligence or willful misconduct.

Section 7.3 Termination. An affirmative vote of the Commission shall be required to dissolve CTO.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

Section 8.1 The Commission. The Commission hereby represents and warrants to CTO that (a) the Commission is duly organized, validly existing, and in good standing under the provisions of the Compact, and that (b) the Commission has all the powers and authority required under the Compact to execute this Agreement.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit of all of the parties and, to the extent permitted by this Agreement, their successors, legal representatives and assigns.

Section 9.2 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Section 9.3 Governing Law. This Agreement and the rights of the parties hereunder shall be interpreted in accordance and Jurisdiction with the laws of the State of New Mexico, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CUMBRES TOLTEC OPERATING LLC

By: _____, General Manager

CUMBRES & TOLTEC SCENIC RAILROAD COMMISSION

By: _____, Commissioner

By: _____, Commissioner

By: _____, Commissioner

By: _____, Commissioner

**Appendix XIII, Memorandum of Understanding
between the Commission and the Friends, May 13, 2017³⁹**

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into this _____ day of _____, 2017, between the Cumbres & Toltec Scenic Railroad Commission (the "Commission"), created by virtue of an Interstate Compact between the States of Colorado and New Mexico (the "Compact"), and the Friends of the Cumbres & Toltec Scenic Railroad, Inc., a separate New Mexico, tax-exempt, non-profit corporation (the "Friends") concerning the preservation, restoration, and interpretation of the historic properties of the Cumbres and Toltec Scenic Railroad ("the Railroad"). The Commission and the Friends are sometimes referred to herein as the "Parties".

RECITALS

- A. The States of Colorado and New Mexico (the "States") acting through the Commission jointly own the Railroad, a 64-mile long portion of the former mainline of the Denver & Rio Grande Western narrow-gauge railroad between Antonito, Colorado, and Chama, New Mexico (the "Railroad");
- B. The Railroad was accepted into the National Register of Historic Places as a property of National Significance in 2007 and was designated a National Historic Landmark by the U.S. Department of the Interior in 2012;
- C. The States have authorized the Commission to preserve the Railroad as a living museum and to operate the Railroad in order to promote the public welfare by encouraging tourism and by facilitating the use of recreational and educational facilities in the remote areas of the States, Section 24-60-1701 and 24-60-1901, et seq, C.R.S. and NMSA 1978, § 16-5-1 through 16-5-13 (the "Enabling Statutes");
- D. While the Commission remains ultimately responsible to the States as owners of the Railroad, in order to implement its historic, preservation responsibilities the Commission wishes to establish a strategic relationship with the Friends, delegating to that organization responsibility for the museum functions of the railroad in accordance with the Enabling Statutes and the powers granted to it by the States and subject to the overall decision-making authority of the Commission.
- E. In December 2012 the Commission registered Cumbres Toltec Operating, LLC (the "CTO"), a wholly-owned subsidiary responsible for railroad operations and administrative support of the activities of Commission. CTO's sole member is the Commission, with its four Commissioners serving as the CTO board.
- F. Under the terms of the Compact the Commission has the authority to enter into this Memorandum of Understanding.

³⁹ This is the text of the agreement approved by the Commission at its May 13, 2017, meeting and executed by the parties at that time.

NOW, THEREFORE, the Parties hereby agree as follows:

1. The Friends shall organize and implement projects and initiatives that further the restoration and interpretation objectives of the Parties. Toward that end the Friends shall annually submit project plans for such proposed work (e.g., the Friends "Restoration Plan and Schedule") for a given year to the Commission and to CTO at the Commission's fourth quarter meeting (typically the end of October) in the year prior to the given year. The Commission retains the right to disapprove specific projects proposed by the Friends. The Friends shall also provide the Commission and CTO with a report on the project activities accomplished annually by the Friends (e.g., the "Team Leader Reports").
2. The Friends shall be the custodian of all historic non-revenue assets of the C&TSRR with primary responsibility for the preservation, restoration, record-keeping, and interpretation of such assets, as well as the operation of these museum functions; all subordinate to the overall decision-making authority of the Commission. The assets include all historic, non-revenue rolling stock, historic equipment, tools and artifacts, and historic buildings, structures, and grounds belonging to Commission.
3. The Parties shall coordinate their activities to obtain funds from governmental and private sources for projects and initiatives intended to benefit the railroad. Nothing in this Memorandum requires either Party to fund any activities by the other Party unless otherwise agreed through separate agreement.
4. The Friends agree that projects and initiatives undertaken on behalf of the Commission shall comply with preservation standards applicable to the Railroad's inclusion in the National Register of Historic Places and its designation as a National Historic Landmark. For projects requiring review by the SHPO of either of the States, the Friends shall suggest the preservation standard to be applicable, and, prior to submission to the SHPO, shall provide the Commission with copies of all relevant proposals, reports, and related correspondence in a timely manner.
5. The Friends agree to train and manage a qualified cadre of volunteers to provide historical interpreting services and information as docents to train passengers, visitors, and the public in general, subject to the volunteers complying with the directions, regulations, and requirements of the Commission and CTO.
6. The Commission authorizes the Friends and its members and contractors to have access and use of the properties of the C&TSRR in order for the Friends to carry out its designated museum functions, restoration projects, and docent responsibilities. In undertaking such work, the Friends agrees to use due care and comply with the requirements of the Commission and CTO while on the Railroad's property. Furthermore, the Friends agrees to maintain a General Liability Umbrella insurance policy covering its members when engaged in activities at the Railroad that are sanctioned by the Friends with a minimum limit of \$1,000,000.00 for each occurrence and a general aggregate limit of \$2,000,000.00, and with the Commission a "name insured".

7. The Friends agrees that, since the activities of the Friends on Railroad property require close and frequent coordination with CTO operations for business and safety reasons, the Commission has delegated to CTO the responsibility for such on-going coordination with the Friends, with the Commission retaining responsibility for policy matters.

8. As the need may arise from time to time, the Parties agree to convene an ad hoc committee in a timely manner that is comprised of a representative of the Commission, a representative of CTO, and a representative of the Friends to ensure effective coordination between the parties, and as a mechanism to mediate any disagreements.

9. The Parties agree to maintain and make available to each other the records and documentation of the historical past of the C&TSRR and its antecedents.

10. Nothing in this Memorandum of Understanding is intended to conflict with the Compact or the Enabling Statutes. To the extent any part does, that part is rendered invalid and the remaining sections of this document remain intact.

11. This Memorandum of Understanding shall be effective upon the signature of the Parties.

Signed:

For the Commission:

(Date)

For the Friends:

(Date)