

**Policies and Practices Manual
of the C&TSRR Commission**

Adopted March 29, 2012

For Public Release

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A. 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 VII). 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 X). 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.

B. 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 that works to the economic benefit of the region, (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 contracting for services necessary for the preservation, maintenance, and operation of a railroad system and passenger trains (see *Contracting for Goods and Services* and *Relationship with the Operator*);
4. Contracting with a qualified railroad Operator to manage the revenue-producing operations and properties of the C&TSRR and to promote its services to the public, including collaborating with the Operator to establish annual product, pricing, and marketing plans (see *Relationship with the Operator*);
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, the Operator, 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 legal requirements (see *Ethical Standards*); and

11. Conducting annual evaluations of the performance of the Commission and its contractors 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*).

C. 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 XI 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 add value and avoid 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

D. 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 at a date determined by the Commission. 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. The Vice-Chairman also serves as the Commission member to the Triad Committee.

Duties of the Secretary. The Secretary performs 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.

E. 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

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.

Compact.⁵ In addition, it's 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 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 telephonically 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 one day 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

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 by telephone and is eligible to join the discussion and vote.

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)

⁸ UC -- 1977 Agreement, Part C, I

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 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. Any Commission actions arising as a result of discussions in an Executive Session occur in an open meeting.

Minutes. The Secretary or his designee records the minutes of each meeting and within ten days circulates copies to Commissioners in order for the Commission to review and approve them. The approved minutes are preserved in a suitable manner and made available to the public, except for minutes of Executive Sessions which are 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.

F. 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 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);
- 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.

G. 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 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.

⁹ UC -- 1977 Agreement, Part B, III

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

H. Commission Office and Staff

The Commission employs such persons as are necessary to carry out the purposes of the Compact and agreements between the states.¹¹ The Commission's policy is to hire and delegate to an Executive Director (ED) the day-to-day business and administrative activities of the Commission with the ED reporting to the Commission under the direct supervision of the Chairman. This delegation may be made by formal job description, resolution, or at the direction of the Chairman, provided written authority to act on behalf of the Commission is conveyed to the ED. Furthermore, from time to time additional staff may be employed with the consent of the Commission and supervised by the ED as circumstances require, up to and including all people necessary to operate and maintain the C&TSRR.

The ED's primary responsibilities are to (a) manage the affairs and administrative, budgetary, and recordkeeping activities of the Commission; (b) promote and manage efforts to obtain funding from government and private sources; and (c) represent the Commission in day-to-day relations with (i) the public, (ii) government entities such as the FRA, the SHPO's, and funding agencies, and (iii) contractors such as the railroad's operator and the Friends; all as directed by the Commission in accordance with its policies. These duties, responsibilities, and delegated authority are more fully described in Appendix V. The ED submits periodic plans, budgets, and objectives to the Commission for approval, and the Commission's practice is to annually evaluate the ED's performance against these mutually-recognized criteria and to compensate the ED accordingly. The ED maintains the current Policies and Procedures Manual as modified by the Commission in its normal course of business. The ED serves at will and is subject to annual performance and compensation reviews by the Commission. At its discretion the Commission may enter into an employment contract with the ED.

The Commission's employment policies and practices are described in its Personnel Handbook, which is available at the Commission's office upon request. Like any other business the Commission's employment practices are subject to state and federal labor laws and regulations; however, under the terms of the Compact none of its employees are employees of either state.¹²

I. 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.¹³ 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.¹⁴

¹¹ UC -- 1977 Agreement, Part B, I (4) (b) (ii)

¹² PL -- 6-5-6 NMSA 1978 and 24-60-1902 CRS 1973

¹³ UC -- 1977 Agreement, Part B, I (4)

¹⁴ PL -- 6-5-6 NMSA 1978 and 24-60-1902 CRS 1973

As a matter of fair business practice, the Commission's contracting policy is for it and its staff 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).

Depending upon the size, scope, time constraints, and overall significance of the goods or services required, the Commission's practice 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 procurement is best served by the use of an RFI/RFP process (e.g., selection of an Operator) 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 contracts involving the use of Commission operating assets (e.g., locomotive rebuilding at a C&TSRR shop) the Commission's practice is to enter into sole source agreements with the Operator currently under contract to manage such necessary Commission facilities. A similar policy applies to the preservation and restoration of historic non-operating equipment which the Commission delegates to the Friends of the C&TSRR through an existing agreement (see Appendix VI).

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 that are executed after the adoption of this manual, require the signatures of all serving Commissioners in order to be valid. However, the Commission has delegated to the ED the authority to place orders and sign purchase orders and purchase agreements up to a maximum of \$25,000.

J. Historical Preservation and SHPO Oversight

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,¹⁵ 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.

With that designation 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.¹⁶ 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 and the railroad's operator, with pertinent SIS guidelines when working on historic properties.

The Commission intends to further promote recognition of the C&TSRR as a historical property of national significance, including support for efforts to designate the railroad as a National Historic Landmark.

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.

K. Relationship with the Operator

Since its inception in 1970 the C&TSRR has employed three different methods to operate railroad:

- lease the property and operating assets to an Operator,
- contract with an Operator to manage the operation, and

¹⁵ PL -- 16-5-1 NMSA 1978 and 24-60-1901 CRS 1973

¹⁶ 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."

- manage the operation of the railroad directly.

When contracting with an Operator the Commission may require the Operator to cover not only railroad train operations, but also such optional matters as capital projects (locomotives, track, etc.), coach transportation, and food and beverage services. Furthermore the Commission strongly encourages the Operator to hire and train qualified local residents.

Since April 2003 the Commission's policy has been to contract for the operation of the railroad by means of a management services agreement with a qualified railroad Operator. Consequently, on January 1, 2012, the Commission entered into a five-year management services agreement with Heritage Railroad Management for the operation of the railroad. Under this agreement all operating revenues (primarily ticket revenues) are turned over by the Operator to the Commission, and the Commission compensates the Operator for expenses incidental to the operation of the railroad including payroll, purchases of goods and supplies, marketing services, and other related services. In return the Operator receives fixed and incentive fees for its management services. The Commission obtains and pays the premiums for liability and property insurance. While the financial risk remains with the Commission under these arrangements, the Commission maintains financial control over all of the operations of the railroad through mutually-agreed budgets, marketing plans, and related mechanisms as contracted with the Operator.

L. 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, delegating to that organization exclusive responsibility for the museum functions of the railroad as specified in the "General Operating Agreement" with the Friends adopted by the Commission in June 2008 (see Appendix VI for a copy of this agreement). 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. The assets include all historic, non-revenue rolling stock, historic equipment, tools and artifacts, and historic buildings and grounds belonging to Commission.

The Commission relies upon the Friends to organize and implement projects and initiatives that further the restoration and interpretation objectives of the Commission. Toward that end the Commission expects the Friends to develop detailed project plans for such work and, upon approval by the Commission, to submit such plans to the SHPO's of the two states, and subsequently to implement such projects.

The Commission and the Friends coordinate their activities to obtain funds from governmental and private sources for projects and initiatives intended to benefit the railroad.

The Commission further relies upon the Friends (a) to insure that its projects and initiatives comply with preservation standards applicable to the railroad's inclusion in the National Register of Historic Places and (b) to lead the Commission's efforts to nominate the C&TSRR as a National Historic Landmark.

The Commission policy is to delegate to the Friends the tasks of training and managing a cadre of volunteers qualified 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 Operator and the Commission.

In addition, the Commission has granted the Friends a license to access and use the properties of the C&TSRR necessary for the performance of the Friends' duties.

The Commission has established a "Triad Committee" comprised of one representative each from the Friends, the Manager (Operator) of the railroad, and the Commission in order to foster cooperation among these entities in matters relating to the Friends' authorized museum functions and docent activities. Preservation and interpretation activities involving revenue equipment do not fall under the purview of this committee. The vice chair of the Commission represents the Commission on this committee.

The Friends maintain and make available to the Commission records and documentation of the historical past of the C&TSRR and its antecedents.

M. 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 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 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 both states. The results must include a proposal from at least one firm in each state, . The Commission's policy is to select the proposal that best suits the Commission needs. The audit contract

¹⁷ UC -- 1977 Agreement, Part B, III

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.

Accounting Practices. The books of the Commission 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. The Commission's fiscal year begins on July 1st of each year and ends on the following June 30th.

Funds Management. The Commission authorizes and approves the selection and use of bank accounts necessary for the efficient operation of the C&TSRR.¹⁸ Such accounts are kept under the name of the Cumbres and Toltec Scenic Railroad Commission. Disbursements from such accounts require the authorization of the Chairman, Treasurer or other designated member of the Commission.¹⁹

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

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.

Historic Preservation Fund. In order to further the preservation, restoration, improvement, and interpretation of the assets of the C&TSRR, the Commission has created a fund to provide financial support for projects that further such efforts and enhance the services offered to the general public. The principal source of monies for this fund is a percentage surcharge levied on all ticket sales of the railroad, with that surcharge set at 5% for the 2012 season. This Historic Preservation Fund is managed by the Commission which, in consultation with the Operator and the Friends, determines how best to direct the use of monies available from the fund.

¹⁸ UC -- 1977 Agreement, Part B, III

¹⁹ UC -- 1977 Agreement, Part B, III

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

N. 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 free access to its records by the Governors or by their representatives.

O. Ethical Standards

The Commission's policy is to hold each Commissioner to a high ethical standard and be responsible for ensuring that ethics for the organization are maintained. Any concern or exception with regard to ethics involving any aspect of the Commission's operations 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 may not have a relationship with any entity with which the railroad or commission contracts and may not receive any financial compensation or other consideration from these entities.
- No Commissioner may profit from any transaction between himself, his immediate relatives or entities in which he owns an interest and the Commission or its contractors.
- Commissioners and direct employees of the Commission are obligated to reveal potential conflicts and recuse themselves from participating in discussions about or votes on resolutions of any kind before the Commission.

P. 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 has chosen to include the Operator as a "name insured", thus by agreement providing equivalent coverage for the Operator (this agreement is available at the Commission's office upon request). 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.

Q. 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 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 locomotives 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 the Operator and use of motor cars for fire patrols and other fire-fighting equipment owned by the railroad.

Emergencies. The Commission and the Operator maintain written 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.

R. FRA Oversight

The Commission recognizes that the Federal Railroad Administration (FRA) has primary jurisdiction over the railroad operations of the C&TS and requires its contractors and employees to comply with relevant FRA rules, regulations, and safety requirements. In situations wherein 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 of others.

S. 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 X.

T. Principal Office

The Commission's principal office is in Antonito, Colorado, which is open to the public during normal business hours.

U. Rules of Order

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

(The documents described below are available by accessing the web site: <http://www.cumbrestoltec.org/the-railroad/cats-commission/cats-railroad-governing-documents.html>).

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 Dominic 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 VII 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 extensive amendment, which establishes the C&TSRR Commission as an interstate agency and 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 X 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 XI 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 Compact 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 available by accessing the web site: <http://www.cumbrestoltec.org/the-railroad/cats-commission/cats-railroad-governing-documents.html>).

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.

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 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 contract for the operation of the railroad. The Commission's existing Management Agreement with American Heritage Railways, doing business as Historic Railroad Management, and any prior agreements with Operators fall within the scope of the Commission's powers which permit the Commission to contract for services necessary to carry out the purposes of the

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

Compact. Furthermore, the 1977 Agreement between the states declares that 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."²⁸

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

The General Operating Agreement with the Friends of the C&TSRR (and any prior agreements) 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...".²⁹ 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 ..."³⁰

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."³¹
2. The enabling statutes of the two states are also careful to specify that the Commission is not an organ 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...".³² 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."³³
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",³⁴ there is a reasonable expectation that such agreements might call for review and approval by state 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

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

²⁹ 16-5-1 NMSA 1978 and 24-60-1901 CRS 1973

³⁰ 1977 Agreement, Part B, I (4) (b) (iii)

³¹ 1977 Agreement, Part B, III

³² 24-60-1902 CRS 1973

³³ 16-5-6 NMSA 1978

³⁴ 1977 Agreement, Part B, I (4) (b) (ix)

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...".³⁵ This "independent agency" principle is further articulated in Appendix III which follows.

³⁵ 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 can not 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

U

**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

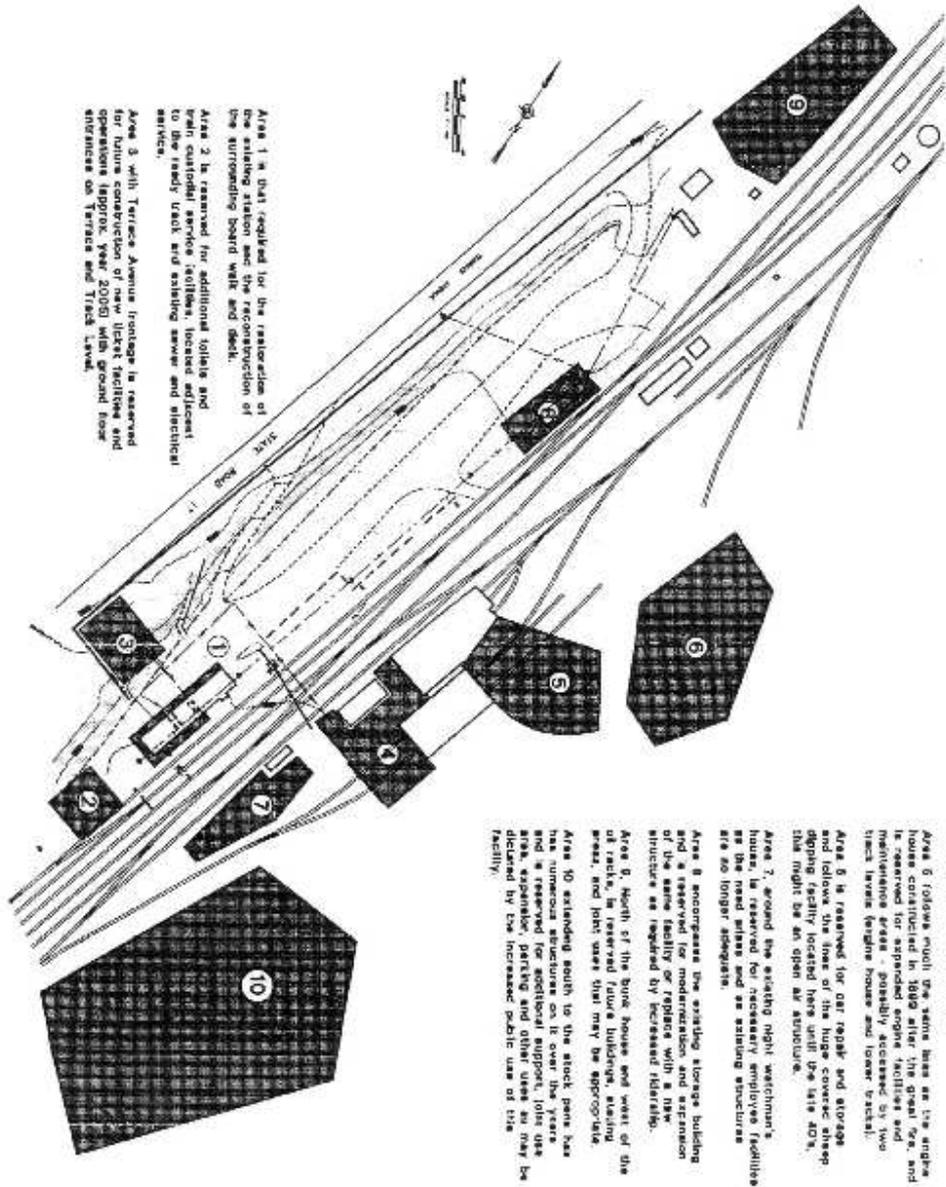
These two drawings reflect the unanimous decision of the Cumbres & Toltec Scenic Railroad Commission regarding views to preserve and locations on the site where probable construction will take place in Chama. The Commission's action was taken on September 9, 1994. These exhibits were necessary to demonstrate 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 visitors 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)



Area 1 is that required for the restoration of the existing station and the reconstruction of the surrounding board walk and deck.
 Area 2 is reserved for additional toilets and train custodial service facilities, located adjacent to the ready track and existing sewer and electrical services.
 Area 3 with Terrace Avenue footage is reserved for future construction of new utility facilities and entrances on Terrace and Track Level.

Area 4 is reserved for expanded shop 1a, 1b and engine house extensions.
 Area 5 follows much of same lines as the engine house constructed in 1989 after the great fire, and is reserved for expanded engine facilities and engine house extension. It will encompass two track levels engine house and locomotive track.
 Area 6 is reserved for car repair and storage and follows the line of the huge covered shop dipping facility located here until the late 40's. This might be an open air structure.
 Area 7, around the existing night watchman's house, is reserved for necessary employee facilities as the night watchman's existing structures are no longer adequate.
 Area 8 encompasses the existing storage building and a reserved for modernization and expansion of the same facility or replace with a new structure as required by increased ridership.
 Area 9, north of the bus house and west of the old tracks, is reserved future building, existing area, and job user that may be appropriate.
 Area 10 extending south to the stock pens has numerous structures on it over the years and is reserved for additional support, job user area, expansion, parking and other uses as may be declared by the increased public use of the facility.

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 RR.
from: Ed Boles
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 – Exec. Dir. Duties

Duties, Responsibilities, and Goals of the Executive Director

The Executive Director (“ED”) is responsible for a variety of management functions, which include but are not limited to the following:

- A. Advise, counsel and assist the Commission in its efforts to manage the operation of the Cumbres & Toltec Scenic Railroad (“Railroad”). The ED is the liaison between the Commission, the Commission’s employees, the management company, and the “Friends of the Cumbres & Toltec Scenic Railroad,” a non-profit organization dedicated to preserving the Railroad’s historic assets and generally supporting the Commission and the Railroad. The ED acts on behalf of the Commission as the landlord of the Railroad property and enforcer of the agreement between the Commission and the management company. The ED is not the General Manager of the operation of the Railroad. The ED is also the liaison to the States of New Mexico and Colorado, funding sources, various contractors and consultants, the communities of Antonito, Chama, San Luis Valley, and Chama Valley. Good communication among all parties is crucial to keep everyone informed and working toward a common goal. The ED is the point of contact for any individual or entity that has business to conduct with the Commission. The ED must use professional judgment in dealing with people in a wide variety of situations. The ED needs to be objective and a good listener to the suggestions and complaints received.
- B. With the consent of the Commission, arrange for and oversee other Commission employees, consultants, or contractors of the Commission, including the management company, that the Commission selects and employs to manage the day to day operations of the Railroad; and provide the Commission with status reports, where and when necessary.
- C. Work at the Commission’s offices in Antonito, Colorado and any additional Commission properties, including the Railroad property in Chama, New Mexico.
- D. Organize Commission meetings, including issuing appropriate meeting notices, coordinating with Commissioners on drafting agendas, recording minutes, and maintaining records of the Commission. The ED is responsible for organizing and scheduling the Commission meetings. The ED is responsible for overseeing the recording of minutes of Commission meetings. The ED is the custodian of all the records in the Commission’s possession. The ED is responsible for supervising the Commission staff. The ED is responsible for maintaining the Commission facilities in Antonito, Colorado and Chama, New Mexico. The ED is responsible for any other duties required to accomplish the role of the Commission as the bi-state agency responsible for managing the Railroad, or other duties as assigned by the Commission.
- E. Coordinate the timely preparation and filing of audit reports, financial tax exemption applications, and other government reports for the commission.
- F. Coordinate the solicitation and use of state appropriations, Railroad revenue and grants on behalf of the Commission. Ensure all requests for funding from each state or source is submitted on time. Manage all bank accounts, expenditures and revenues held or used by the Commission. The ED is responsible for gathering information and making recommendations to the Commission with respect to funding sources and priorities. When the priorities are established, the ED is responsible for applying for funding from such sources as the States of New Mexico and Colorado, federal grants, state grants, and private foundation grants. The ED must establish a budget for the project and work with the Commission to obtain the necessary funding. The ED will be responsible to take the lead on behalf of the Commission for sourcing funding of projects other than from States, such as working with Mitch Butler.
- G. Manage specific construction, or railroad rehabilitation projects, and studies or planning projects as assigned by the Commission. When funds are received for a project, the ED solicits proposals from the appropriate consultants or contractors, makes recommendations to the Commission with respect to consultants and contractors, prepares the appropriate contract in cooperation with the New Mexico and/or Colorado Attorney General’s Office, participates in the design of the project and coordinates review by the New Mexico and/or Colorado State Historic Preservation Officers, puts the project out to

bid, coordinates the bid process with the appropriate architects and engineers, and makes a recommendation of the award of the bid to the selected contractor. The ED then develops the contract between the Commission and the contractor with the advice of the New Mexico and/or Colorado Attorney General's Office. The ED monitors the progress of construction and coordinates efforts of the architects/engineers and the contractor; works to solve problems that occur during construction; and is often managing multiple projects in varying stages of funding and construction at the same time. The Commission expects the ED to coordinate all projects with the management company and delegation of oversight to the management company is appropriate for projects directly tied to operations or requiring operational coordination.

H. The ED is responsible for ensuring a single source of financial information by coordinating with the management company, the consequence of which will be maintaining accounting records that clearly show the sources of funds and expenditures for each project or major element of a project. The records must be able to pass an annual audit by an independent Certified Public Accountant. The ED is responsible for fiscal control of the projects to keep them within approved funding and budgets. The ED is responsible for overseeing the cash flow to have the funds available to meet projects costs. The ED is responsible for investing funds in excess of short term needs to obtain interest income. The ED is responsible for completing and filing reports with the two states, federal and state grant agencies, and private foundations to show the progress of the projects, and assure these agencies the funds are being expended with the conditions of the appropriation or grant. The ED must be bondable. Financial reports must be furnished to the Commission on a monthly basis showing the financial condition of the Commission. The ED and staff will assist in reviewing all invoices to verify accuracy, prepares vouchers and checks for payment, but the Commission is responsible for signing all checks. The Executive Director shall have the authority to obtain information about the Commission's bank accounts and financial assets at all financial institutions, but not to sign checks.

I. Provide Commissioners with written Monthly Progress Reports identifying accomplishments for the month and a forecast of major events to take place the next month along with a monthly financial report.

J. Comply with all provisions of the Policies and Practices Manual, which supersedes the 1978 "Rules for the Internal Organization of the Cumbres & Toltec Scenic Railroad Commission," including provisions relating to signing of contracts or other instruments in writing by members of the Commission. The Executive Director shall have the authority to place orders, sign purchase orders and purchase agreements up to a maximum of \$25,000.

K. Oversee the management companies control of Commission's inventory of assets. Maintain all licenses, permits, rights and legal documents required of the Commission at the office of the Commission.

L. Comply with the Commission's Personnel Handbook, and as the Executive Director, enforce, maintain, administer, and with Commission approval, update the Personnel Handbook.

M. Collaborate effectively with all members of the Cumbres and Toltec Scenic Railroad Enterprise to grow the financial resources by \$1.5M to \$3.0M beyond the contributions from each state per year for every year this agreement is in place.

N. The Commission expects the Executive Director to anticipate and offer operational efficiency\cost reduction suggestions at each opportunity to include the Commission meetings and Commission office operations.

O. Maintain the Policies and Practices Manual for the Commission reflecting all current policies and practices that the Commission has adopted and follows in its normal course of business. Also maintain a file of all motions and resolutions passed by the Commission since initial adoption of the Policies and Practices Manual.

P. Any other reasonable matters related to the purposes of the Commission as the Commission may delegate to the Employee.

Appendix VI – Friends Agreement

GENERAL OPERATING AGREEMENT

BETWEEN

CUMBRES & TOLTEC SCENIC RAILROAD COMMISSION,

AND

FRIENDS OF THE CUMBRES & TOLTEC SCENIC RAILROAD,

INC.,

This General Operating Agreement [hereinafter referred to as “Agreement”] is made and entered into this ____ day of _____, 2008, by and between Cumbres & Toltec Scenic Railroad Commission, created by virtue of an Interstate Compact [hereinafter referred to as “Commission”] and Friends of the Cumbres & Toltec Scenic Railroad, Inc., a New Mexico non-profit corporation [hereinafter referred to as “Friends”]. Commission and Friends are sometimes hereinafter referred to as “Party” or “Parties”. The capitalized terms herein shall have the meanings specified in Section II, Definitions, below or as may be otherwise specified herein.

I. RECITALS

A. The States of Colorado and New Mexico acting through the Commission own and operate the 64-mile long portion of the former mainline of the Denver & Rio Grande Western narrow gauge railroad between Antonito, Colorado and Chama, New Mexico, now called the Cumbres & Toltec Scenic Railroad;

B. The Colorado State Legislature and the New Mexico State Legislature authorized the Commission to acquire, own, preserve, restore, develop and operate the Railroad and Railroad Property within the States of Colorado and New Mexico to promote the public welfare by encouraging tourism and 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 [hereinafter referred to as “Enabling Statutes”];

C. The Friends, a separate New Mexico non-profit corporation organized in 1988, operates as a tax exempt organization under section 501(c)(3) of the Internal Revenue Code with a mission to preserve, restore, interpret and support the operation of the Cumbres & Toltec Scenic Railroad as a living museum and in furtherance of those

purposes the Friends desires to access the Cumbres & Toltec Scenic Railroad and the Railroad Property;

D. The Commission and the Friends share the mission and goal of preserving, restoring, interpreting and operating the Railroad and Railroad Property as a national historic site and living museum for the benefit of the citizens of Colorado and New Mexico, both current and future generations, and for Railroad passengers and the general public;

E. This Agreement is for the purpose of more specifically defining the role and responsibilities that Friends has with regard to the Railroad and the Railroad Property. The Commission desires to designate the Friends as the custodian of the Museum Property with responsibility for the preservation, restoration, and interpretation of the Railroad and over the operation of the Museum Functions of the Railroad;

F. The Parties have previously entered into similar agreements governing the subject matter hereof and all such previous agreements (including, without limitation, those agreements referred to as Triad Agreements), referred to herein as the "Prior Agreements" are cancelled by this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and agreements herein and for other good and valuable consideration, **THE PARTIES HERETO AGREE AS FOLLOWS:**

II. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

A. "Railroad" means the Cumbres and Toltec Scenic Railroad.

B. "Railroad Property" means all real and personal property owned by Commission, including but not limited to Museum Property, the Railroad, locomotives, rolling stock, equipment, tools, rights of way, station facilities and related real and personal property.

C. "Museum Property" means historic, non-revenue rolling stock, historic equipment, tools and facilities and artifacts and historic buildings and grounds belonging to Commission or on Railroad Property pursuant to a loan, lease or use agreement. The parties may by written agreement from time to time designate additional items of Railroad Property as Museum Property, or may designate certain Railroad Property assets as not Museum Property.

D. "Custodian of Museum Property" means the party designated by Commission to have primary responsibility, as designated herein, for the preservation, care and maintenance of Museum Property, subject to the authority and control of the Commission.

E. “Manager” means the entity designated by the Commission under a separate agreement to manage and operate the Railroad

F. “Museum Functions” means ongoing functions of a historic preservation, restoration and interpretation focus associated with the Railroad, including but not limited to:

1. Providing qualified volunteers to provide historical interpreting services and information to train passengers, visitors to Railroad Property, interested people, and the general public;

2. Assisting Commission to develop and maintain an inventory of all Museum Property to include:

- a. ownership (if Commission is not the owner, the type of agreement under which Commission has use of the Museum Property);
- b. physical description;
- c. date acquired;
- d. approximate date of manufacture;
- e. pertinent, available historical data;
- f. recommendation as to whether the item constitutes a significant item of Museum Property for which a preservation schedule is advisable

3. Developing, on an ongoing basis, a specific preservation schedule for items of Museum Property designated by Commission as significant, detailing the item, the general current condition of the item, and what steps, if any, are proposed for preservation of the item.

4. Reporting to Manager and Commission any significant damage to or deterioration of Museum Properties and any conditions or actions that may put Museum Properties at risk of damage, deterioration, destruction or theft.

5. Monitoring the condition of all Museum Properties

6. Using best efforts to keep Museum Properties clean and in good repair, consistent with best practices associated with the age and condition of the item.

G. “Museum Projects” means activities other than Museum Functions, proposed by Friends and approved by Commission, to preserve, restore and develop Museum Properties, support Railroad operations and provide Railroad interpretation services to the public.

III. GENERAL PROVISIONS

A. Appointment In accordance with the terms of this Agreement, Commission appoints Friends as the Custodian of Museum Property,

B. License to enter on and use Railroad Property. Commission grants Friends and its members, employees, contractors, and guests a license to enter onto the Railroad Property to perform the responsibilities and functions described herein, subject to the terms and conditions contained in this Agreement. Except for Commission and Manager and their members, agents, contractors, and employees, all persons performing volunteer work on Museum Property or Museum Projects must be members of Friends and/or have written Friends' authorization to perform such work. In undertaking such work, Friends agrees to use due care and comply with the directions, regulations, and requirements of Manager and Commission and to adhere to all applicable state, federal and local laws and regulations while on Railroad Property.

C. Triad Committee. The Parties shall endeavor to communicate and cooperate fully in the selection, implementation, and accomplishment of all Museum Functions and Museum Projects. To facilitate cooperation and communication the Parties hereby establish a committee [hereinafter referred to as "Triad Committee"] composed of one member designated by Commission, one member designated by Manager, and one member designated by Friends. The Triad Committee shall make recommendations to Commission, Manager, and Friends regarding Museum Projects and Museum Functions. The Triad Committee shall also study and make recommendations to the Parties concerning acquisitions of Museum Property. The Triad Committee shall meet at least semi-annually and more often if necessary in order to fulfill its function and shall be available to enhance good communication between the Parties.

D. Financial Responsibility. No Party hereunder will be obligated or indebted to any other Party without the advance approval of the Party to be charged with performance or payment. However, nothing contained herein shall preclude a Party from reimbursing another Party once a detailed description and accounting for such expenditure has been submitted and approved by the reimbursing Party.

E. Cooperation. The Parties pledge their best efforts to assist the other Parties to this Agreement in the fulfillment of their respective functions regarding the Railroad. Whenever possible Commission and Manager will give recognition to Friends for its Museum Functions and Museum Projects, especially in the utilization of a particular piece of non-revenue rolling stock, building, project, or other piece of Museum Property or when the Friends have contributed to the support or operation of a significant part of the Railroad.

F. Fundraising. The Parties agree to cooperate in fundraising for the benefit of the Railroad. Specifically, Friends agrees to assist Commission where possible in Commission's fundraising for the benefit of the operational sector and capital improvement projects for the Railroad. Commission agrees to assist Friends where possible in Friends' fundraising for the benefit of its Museum Functions and Museum Projects. Commission acknowledges that Friends will concentrate its fundraising on the private sector and for Museum Functions and Museum Projects within the scope of Friends' responsibilities as set forth herein.

IV. FRIENDS' AUTHORITY AND DUTIES

A. Museum Functions. Friends will perform Museum Functions with diligence and in accordance with the terms of this Agreement.

B. Museum Projects. Friends will develop, seek approval of, and undertake upon approval, Museum Projects in accordance with the terms of this Agreement.

C. Friends Agenda of Museum Functions and Museum Projects. Friends shall submit to Commission and Manager in writing an agenda for Commission approval of proposed additions to or modifications of Museum Functions as defined in this Agreement and proposals for Museum Projects [hereinafter "Friends Agenda"] in advance by March 31 of the year for which the Museum Functions or Museum Projects are being planned. Additional Friends Agenda items may be submitted after that date if the need arises. Friends shall pursue approved Museum Functions and/or Museum Projects approved by the Commission. Any modification to Museum Functions as defined in this Agreement shall be in the form of an amendment to this Agreement, signed by the Parties

D. Historic Review. Following Commission approval of a Museum Project and/or Museum Function, Friends will promptly submit sufficiently detailed plans of all proposed work to the New Mexico or Colorado Historical Preservation Offices [hereinafter referred to as SHPO] for their review, suggestions, and approval with a complete copy thereof to Commission. The Friends will furnish any additional information subsequently requested by SHPO's or by Commission. Museum Projects and Museum Functions requiring SHPO approval will not be undertaken without such approval.

E. Friends Property Inventory. An inventory of all personal property of Friends [excluding Functional Items as defined below, hereinafter Friends Property] located on Railroad Property as of the date of this Agreement is attached as Exhibit A and incorporated herein by reference. Appropriate donation, loan or lease agreement(s) with Commission covering any Friends Property located on Railroad Property as of the date of this Agreement are attached as Exhibit B and incorporated herein by reference. Any Friends Property not included on Exhibit A shall be placed on Railroad Property only after an appropriate donation, loan or lease agreement with Commission is executed and Exhibit A and B are amended. Any such donation, loan or lease agreement shall include an indication by Commission as to whether the item is "Museum Property", which indication shall be included in the amendment to Exhibit A. Any item of personal property brought onto Railroad Property by Friends that is not covered by an appropriate donation, loan or lease agreement with Commission must be removed at Friends expense upon written Commission request. Any item of personal property not so removed upon written Commission request may be deemed abandoned, and in such instance Commission may dispose of such property in accordance with applicable law.

1. Functional Items. Nothing contained in paragraph E above shall be construed to prevent Friends from storing, in locations on the Railroad approved by Commission and/or Manager, equipment, tools, vehicles, supplies, inventory, furniture, materials, and objects [hereinafter referred to as "Functional Items"] utilized by Friends

in the performance of its Museum Functions or Museum Projects; provided, however, neither Commission nor Manager shall be responsible for any loss or damage to Functional Items unless such loss is covered by Commission's or Manager's Insurance. Friends shall remove or relocate Functional Items from Railroad Property upon written Commission request or the Functional Items will be deemed abandoned and Commission may dispose of such Functional Items in accordance with applicable law.

F. Costs. All Museum Projects and Museum Functions undertaken by Friends shall be the sole responsibility of Friends. Any financial obligations incurred in such undertakings are the responsibility of Friends, unless other arrangements are made in writing prior to any such undertakings. Friends may request Commission funding or other assistance to purchase materials incorporated in Museum Functions or Museum Projects, and Commission at its discretion may grant such assistance as may be appropriate under the circumstances.

G. Independent-Volunteer Status. Friends and its members shall perform Museum Functions and Museum Projects contemplated under this Agreement on their own behalf. Members of Friends coming onto the Railroad are volunteers and are acting on behalf of Friends in that capacity and not on behalf of any other Party. In no event shall a member, guest, or contractor of Friends be considered an employee or agent of Manager, Commission, or the States of Colorado and New Mexico, and no such member acting under the authority of Friends shall accrue any of the benefits of employment with such entities. The services to be performed by Friends are those of an independent contractor. As set forth in this paragraph, neither Friends nor any of its members is an agent or employee of either Commission or Manager and shall not represent otherwise to third parties.

H. Insurance. Friends agree to secure a public liability insurance policy with a minimum limit of \$1,000,000.00 for each occurrence (or such other lower limit approved in writing by Commission). Commission and Manager shall be named insured on Friends' liability policy.

I. Dissolution. Friends agrees to use its best efforts to operate in such manner that will retain Friend's legal status as a tax exempt, non-profit organization pursuant to Section 501 (c)(3) of the Internal Revenue Code or any successor statute throughout the term of this Agreement. Except as provided hereinafter, upon dissolution of Friends for any reason, all remaining assets and property of Friends, subject to the discharge of valid obligations of Friends and to applicable provisions of law, shall be distributed to Commission, or its successor, provided the same is a tax-exempt institution described in Section 170(c)(1) of the Internal Revenue Code or any successor provision or any other provision of federal law, or if said Commission or its successor is no longer in existence, then such property shall be distributed among any one or more corporations, historical societies, trusts, community chests, funds or foundations described in Section 501 (c)(3) of the Internal revenue Code, or any successor provision, as determined by the Board of Directors of Friends prior to dissolution of Friends.

J. Applicable Laws. Friends will abide by all applicable state, federal and local laws and regulations, including without limitation those pertaining to fundraising and nondiscrimination.

K. Extent of Duties. Nothing contained in this Agreement, shall be interpreted to authorize Friends to perform the duties of Manager of the Railroad.

V. COMMISSION'S AUTHORITY AND DUTIES

A. Commission is the Party ultimately responsible for all Railroad operations and all Railroad Property, including Museum Property, and may require, on 30 days notice, an accounting from Friends as to the location, condition and status of any Museum Property for which Friends have assumed custodianship under this Agreement.

B. Commission will consider Friends Agenda, including requests for funding or cost sharing, and may approve it in its entirety, reject it in its entirety, or delete or modify aspects of Friends Agenda as it deems appropriate.

C. Friends will assist Commission in submitting plans for proposed work on the Museum Property to the State Historic Preservation Offices.

D. Commission will keep Museum Property in title to Commission or subject to a properly executed loan or lease agreement by Commission insured under Commission's general policy of property damage insurance and Friends shall not be responsible for such insurance coverage or the cost thereof.

VI. MANAGER'S AUTHORITY AND DUTIES

A. Management Agreement. Manager, as the party delegated responsibility under a separate agreement to use Railroad Property to operate primarily steam powered passenger excursion train, display historic and educational exhibits, provide related public services and make repairs or improvements to the Railroad, shall continue to perform these functions. Nothing contained in this Agreement shall be construed to govern, amend or alter the separate management agreement and, except as otherwise specifically provided herein; the provisions in this Agreement shall not apply to the operation of the Railroad or the Manager's property.

B. Protection and Security of Museum Property. Commission and/or Manager shall have the responsibility to secure and protect the Railroad, Railroad Property and Museum Property from harm or damage, including the responsibility to provide adequate security and insurance on and for the Railroad, Railroad Property and Museum Property.

C. Certificate of Roadworthiness. Commission or Manager shall be responsible and shall have the sole authority to determine the roadworthiness and compliance with all applicable laws, rules and regulations pertaining to any piece of historic rolling stock that is included as a Museum Property. Upon request by Friends and within a reasonable time, Commission or Manager shall certify such roadworthiness and compliance, or alternatively detail deficiencies that need to be repaired to become roadworthy. Such

pieces of non-revenue rolling stock included as Museum Property shall not be operated by Commission or Manager without such certification. Commission may delegate all or part of its responsibilities under this section C to Manager.

D. Use of Museum Property. Friends may authorize Manager to use Museum Property not ordinarily used in Manager's day-to-day operation of the Railroad; Museum Property shall not be used by Manager in the absence of such authorization. Use of Museum Property by Manager shall be conditioned, at the discretion of Friends, upon payment by Manager to Friends of a reasonable fee for such use. Any such fee received by Friends shall be placed in an earmarked account to be used by the Friends exclusively for the purchase of restoration materials for Museum Property. Museum Property utilized by Manager shall be returned after its use by Manager in its same condition, reasonable wear and tear excepted. Manager shall be responsible for any damage to Museum Property while being used by Manager. With Commission approval, Manager may assess a surcharge to be paid to Commission, on individuals or groups seeking to use Museum Property in charters or other uses outside the ordinary day-to-day operations of the Railroad ("Museum Surcharge"). The Commission, to the extent practicable, will use the Museum Surcharge to support Museum Functions and Museum Projects.

VII. ADMINISTRATIVE PROVISIONS

A. Hold Harmless. Friends will indemnify, save and hold harmless the State of Colorado, the State of New Mexico, Commission and Manager and their respective employees and agents from any and all claims, loss, damage, liability, and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by Friends, or its employees, agents, subcontractors or assignees in connection with this Agreement. This section shall survive expiration or termination of this Agreement. Each of the Parties hereto agrees to notify each other promptly of any such claim being made.

B. Liability. Within the limits and restrictions of the New Mexico Tort Claims Act, Section 41-4-1 et seq., N.M.S.A., 1978 Comp. and the Colorado Governmental Immunity Act, § 24-101-101, et seq., each Party agrees to be responsible for its own negligent acts or omissions which may occur during the performance of this Agreement and which results in claims by individuals or entities not a Party to this Agreement. The Parties hereby waive all right of subrogation from any other Party. This Agreement shall not, however, be in any manner construed as a waiver of sovereign immunity or other privileges or protections provided under federal or state law. Any Party served with such a claim shall give prompt notice to the remaining Parties in accordance with paragraph VII.H.4. of this Agreement.

C. Default. Time is of the essence for this Agreement. In the event any Party hereto should materially fail or refuse to perform according to the terms of this Agreement, the defaulting Party shall be allowed a period of ninety (90) days after written notification of such default within which time to cure such default. In the event that the defaulting party fails to cure such default within said period, the other party shall have the right to terminate this Agreement.

D. Voluntary Termination. This Agreement may be terminated by Commission or Friends without cause at any time upon one year's written notice given to the other Party.

E. Effect of Termination. Upon termination of this Agreement pursuant to paragraphs VII.C. or D. hereinabove, all of the outstanding debts and obligations by and between the Parties to this Agreement shall be paid as provided in this Agreement, except those arising under paragraph VII.A. Hold Harmless. The parties agree that this agreement does not and will not impose any indebtedness on the Commission or the States of Colorado or New Mexico. The Friends shall not bind or purport to bind the Commission or the States of New Mexico or Colorado for any obligating duty or act not expressly assumed and undertaken by the Commission in this agreement. Upon termination, all of the assets of Friends shall remain with and continue to be owned by Friends notwithstanding the terms of this Agreement.

F. Choice of Law. The Laws of the State of New Mexico shall be applied in the interpretation, execution and enforcement of this contract.

G. Term of Agreement. The initial term of this Agreement shall commence on the date set forth herein and end on December 31, 2010, with additional three-year extensions by mutual written consent of the Parties.

H. Additional Conditions. The Parties further agree to the following terms and conditions:

1. Neither Friends nor Manager shall assign any of its rights or delegate any of its duties imposed pursuant to the provisions of this Agreement (other than to members or agents) without obtaining the prior written consent of Commission.

2. This Agreement may not be enlarged, modified, or altered except in writing and any such amendments must be signed by the Parties hereto prior to their taking effect.

3. No waiver or breach of this Agreement shall be held or construed to be a waiver of any subsequent breach thereof.

4. Any notice required or desired to be given under the provisions of this Agreement shall be considered given properly deposited in the United States mail, postage prepaid, to the Parties at the following addresses:

Commission, P.O. Box 561, Antonito, CO 81120
Friends, 6005 Osuna Rd. NE, Albuquerque, NM 87109

5. This Agreement shall be binding upon and inure to the benefit of each Party hereto and their respective successors and assigns.

6. The Parties agree that this Agreement shall in all respects completely supersede all prior Triad Agreements between the Parties, all of which prior Agreements are hereby cancelled.

VIII. Other Requirements.

1. The Friends will maintain a financial accounting system considered adequate under customarily and currently accepted accounting standards as applied to not-for-profit organizations, which system shall include appropriate donor information files. The Friends financial statements shall be audited annually in accordance with generally accepted accounting standards by an independent public accountant and copies of the audited financial statements, including the audit report thereon, shall be provided to the Commission upon completion. Upon the written request of the Commission, the Friends shall make the audit working papers available for review by the Commission for a period of three years following the audit report date. Although aggregate contribution, revenue and grant information is included in the Friends' financial statements, in no event will the audited or un-audited financial statements, audit report, working papers or any other material provided to the Commission include a list or description of individual or specific Friend's donors or donations. The Friends shall also provide to the Commission within sixty (60) days after the end of each calendar quarter copies of the Friends unaudited quarterly financial statements, including a balance sheet and income statement.

2. Funds or property transferred to the Commission by the Friends are considered subject to applicable state laws and regulations, except to the extent of any specific conditions of such transfer by the Friends that are acceptable to the Commission and do not require actions that are punishable as crimes under applicable law.

3. The Friends has furnished copies of its current articles of incorporation and bylaws to the Commission and the Commission has reviewed them and finds them acceptable. The Friends will keep its articles of incorporation and bylaws current and consistent with one another and provide copies of any amendments to its articles of incorporation or bylaws to the Commission within 30 days after the effective date thereof. The Commission shall keep copies of such documents and all amendments thereto in its files.

4. In the event Commission provides any goods or services to Friends, such goods or services shall be provided pursuant to this Agreement based on the consideration described herein, or shall be provided under a separate written agreement which specifies, if applicable, the separate compensation provided by the Friends to the Commission under such circumstances.

5. The standard described in Section 6-8-10 NMSA 1978 (the Uniform Prudent Investor Act) shall be used by Friends for evaluating its investments, provided that this paragraph shall not prohibit the use by Friends of additional standards not inconsistent with Section 6-8-10 for evaluating its investments.

6. Nothing in this section VIII shall be construed to require or imply that the Friends, its records or actions are subject to any state, federal or local open or public meetings laws or that its records are open or public records or subject to disclosure under any state, federal or local public records law. Provided, however, that Friends audited financial statements and other material provided to the Commission under paragraph one above, may be considered by the Commission to be public records subject to applicable laws.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding the date and year first above written.

COMMISSION:
CUMBRES & TOLTEC SCENIC RAILROAD COMMISSION

By: _____
Randy Randall, Chairman

FRIENDS:
FRIENDS OF THE CUMBRES & TOLTEC SCENIC
RAILROAD, INC., a New Mexico non-profit Corporation

By: _____
Tim Tennant, President

Appendix VII – 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 VIII – 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 IX – 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.

16-5-6. 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 X – 1977 Agreement

(Since there are only paper copies of this document, this is a scanned image that has been mapped into the Manual, hence its poor visual quality).

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

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

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 terminf of the right-of-way of said Railroad shall encompass that portion of the narrow gauge railroad

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

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,

- 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 *Pina Zavala*
Chairman

By *[Signature]*
Secretary, and Chairman of
the Joint Executive Committee

Approved:

By *[Signature]*
Department of Finance and
Administration

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

Office of the Attorney General

By *[Signature]*

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

By *[Signature]*

Approved:

By *[Signature]*

State Controller

By *[Signature]* *[Signature]*

Office of State Planning and
Budgeting
STATE BUILDINGS DIVISION

By _____

John A. Davis
Deputy Director

Approved as to form:

Attorney General

[Signature]
J. D. MacFarlane,
A. H. JEWELL, JR.,
Assistant Solicitor General
General Legal Services

Appendix XI – 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