

CUMBRES TOLTEC OPERATING, LLC CONCESSION AGREEMENT

Agreement No. _____

Between

Cumbres Toltec Operating, LLC

("CTO, LLC")

and

("Concessionaire")

INTRODUCTION

This **Concession Agreement** ("Agreement") is made and entered into by and between the CTO, LLC, a New Mexico LLC, and _____, a _____ organized under the laws of _____ (the "Concessionaire").

Cumbres Toltec Operating, LLC ("CTO") is contractually authorized to operate the Railroad and manage day-to-day business activities.

Subject to the terms and conditions of this Agreement (including all Exhibits, which are incorporated by reference), the CTO, LLC grants Concessionaire a non-exclusive, non-possessory concession right to use certain Railroad property and/or facilities (the "Concession Facilities") for the purpose of operating the business described in Exhibit A (the "Business").

The intent of this Agreement is to enhance and expand the overall visitor experience of the Cumbres & Toltec Scenic Railroad while preserving the historic character, safety, and operational integrity of the Railroad.

DEFINITIONS

For purposes of this Agreement:

- **"Commission"** means the Cumbres & Toltec Scenic Railroad Commission and its authorized officers and representatives in its capacity as owner.
- **"CTO, LLC"** means Cumbres Toltec Operating, LLC, the entity engaged by the Commission to operate the Railroad and manage day-to-day operations, and any authorized officers, employees, or agents of CTO, LLC, acting within their authority and having agreement-signing authority
- **"Concessionaire"** means the person or entity granted rights under this Agreement to operate the Business at the Concession Facilities.

- **“Business”** means the concession operation described in Exhibit A, as amended from time to time in accordance with this Agreement.
- **“Concession Facilities”** means the physical areas, structures, utilities, and appurtenances described in Exhibit B that are made available to Concessionaire for the Business.
- **“Contractor”** means any person or company engaged by Concessionaire to provide labor, materials, or services in support of the Business.
- **Non-Possessory Use:** Concessionaire’s rights under this Agreement are not a lease and do not create any leasehold or possessory interest in the Concession Facilities. Concessionaire is not a tenant or lessee of the CTO, LLC.

1. TERM

1.1 Agreement Term

This Agreement commences on the Date of Execution (date of last signature) and continues until it expires or is terminated as provided herein.

1.2 Commencement and Expiration

Concessionaire shall commence operation of the Business on _____ (“Commencement Date”), or on the date this Agreement is fully executed by the CTO, LLC, whichever is later, and shall continue through _____, unless earlier terminated in accordance with this Agreement (the “Agreement Term”).

1.3 Renewal / Competitive Procurement

The CTO, LLC may, in its sole discretion:

- Elect to renew or extend this Agreement; or
- Elect not to renew and instead issue a competitive solicitation for the same or similar concession.

If the CTO, LLC, elects to competitively procure the concession, the Concessionaire may submit a proposal, but has no preferential rights. The CTO, LLC may terminate this Agreement without cause upon at least _____ days’ written notice if it awards a subsequent concession agreement to another party.

2. OPERATION OF THE BUSINESS

2.1 SCOPE OF OPERATION – CULINARY SERVICES

Concessionaire shall operate the Business as the primary culinary provider for the Cumbres & Toltec Scenic Railroad, delivering all food and beverage services necessary to fulfill planned and future culinary events and offerings. This includes, but is not limited to, daily food service, special events, group functions, charter activities, and themed or seasonal experiences.

Culinary operations may occur at one or more of the following locations: Osier, Cumbres Pass, Tanglefoot, Big Horn, on-train service, or such other locations as may be mutually agreed upon in writing by the parties from time to time. The specific locations, events, and service levels for each operating season will be coordinated with and approved by the CTO, LLC.

Concessionaire shall furnish all labor, management, and, except as otherwise expressly provided in Exhibit A, all equipment, furnishings, inventory, and supplies necessary for safe, efficient, and guest-focused operation of the culinary services. Concessionaire shall use commercially reasonable efforts to operate at a standard consistent with the Railroad's brand, guest expectations, and the historic character of the experience.

2.2 Additional Services

With prior written approval from the CTO, LLC, the Concessionaire may provide additional services or offerings directly related to the Business and compatible with Railroad operations, available space, and safety. Any approved expansion shall be documented in a written amendment to Exhibit A.

2.3 Pricing of Goods and Services

Concessionaire shall:

- Maintain a Price List (goods, services, rentals) with price ranges or specific rates;
- Display current prices conspicuously at the Concession Facilities; and
- Submit proposed updates to the Price List to CTO, LLC (or its designee) for review and approval on or before _____ of each contract year.

CTO, LLC, may approve, modify, or disapprove proposed price changes in its reasonable discretion to ensure fairness to visitors and consistency with Railroad positioning.

2.4 Personnel and Conduct

Concessionaire and all employees/agents shall:

- Be properly trained and qualified to operate the Business and all associated equipment;
- Conduct themselves in a professional, courteous, and guest-oriented manner;
- Maintain appearance standards reasonably acceptable to CTO, LLC; and
- Hold all required health, food handling, liquor (TBD), or other permits (if applicable).

The CTO, LLC may require staff to wear name tags and/or standardized attire so that guests can clearly identify the Concessionaire's employees.

2.5 Background Checks (If Required)

If required by CTO, LLC policy, or applicable law, Concessionaire shall perform criminal background checks on personnel who interact with Railroad guests, property, or sensitive areas. Background checks shall be at Concessionaire's expense and completed prior to an individual beginning work and periodically thereafter as specified by CTO, LLC. Concessionaire shall not allow individuals whose background presents a safety or security concern to work under this Agreement.

2.6 Compliance with Laws and Rules

Concessionaire shall comply with all applicable federal, Colorado, New Mexico, and local laws, codes, regulations, permits, and Railroad/CTO, LLC policies relating to:

- Use and occupancy of the Concession Facilities; and
- Operation of the Business.

Concessionaire shall not permit any nuisance, waste, or unsafe practice on or near the Concession Facilities.

2.7 Permits and Licenses

Concessionaire, at its sole cost, shall obtain and maintain all licenses, permits, and approvals required for the Business and its use of the Concession Facilities, including applicable tax registrations. Copies shall be provided to the CTO, LLC upon request.

2.8 Independent Contractor

Concessionaire operates the Business as an independent contractor, not as an employee, partner, joint venturer, or agent of CTO, LLC. Concessionaire:

- Has exclusive control over hiring, supervision, wages, hours, and working conditions of its employees and contractors;
- Is solely responsible for its debts, obligations, payroll, and taxes; and
- May not bind the CTO, LLC to any contractual or other obligation unless expressly authorized in writing.

3. FACILITIES

3.1 Non-Possessory Use

The CTO, LLC authorizes Concessionaire to use the Concession Facilities described in Exhibit B solely for the operation of the Business. This use is non-exclusive and non-possessory. Concessionaire may not exclude the CTO, LLC, other authorized users, or the visiting public from overlapping use as permitted by the CTO, LLC, so long as such use does not unreasonably interfere with Concessionaire's approved operations.

3.2 Condition of Facilities

Concessionaire accepts the Concession Facilities "as-is" in their condition as of the Commencement Date, subject to any conditions noted in Exhibit B. Concessionaire is responsible for inspecting the Facilities before commencing operations and identifying any material concerns in writing to CTO, LLC.

3.3 Access

Concessionaire shall have access to the Concession Facilities during agreed operating hours and such additional times as reasonably necessary for setup, closing, or maintenance, subject to Railroad schedules and safety rules. Access and parking locations for employees and service vehicles shall be as designated by CTO, LLC.

3.4 Parking

CTO, LLC may issue a limited number of concession parking passes or designations for Concessionaire's operations. All other vehicles, including employees and customers, are subject to posted policies, parking rules, and any applicable parking fees imposed by the CTO, LLC.

3.5 Maintenance and Repair – Minor

Concessionaire shall, at its sole cost:

- Keep the Concession Facilities in a safe, clean, sanitary, and inviting condition;

- Perform routine cleaning and minor repairs (e.g., interior touch-up, changing light bulbs, minor plumbing fixes, debris removal); and
- Promptly notify CTO, LLC in writing of any major repair needs beyond minor maintenance.

Damage caused by Concessionaire or its employees/agents beyond ordinary wear and tear shall be repaired at Concessionaire's expense to the reasonable satisfaction of CTO, LLC.

3.6 Signs and Advertising

All exterior signs, displays, and advertisements (on or adjacent to the Concession Facilities or Railroad property) must:

- Comply with CTO, LLC design standards, historic character, and branding guidelines; and
- Receive prior written approval from CTO, LLC

3.7 Sanitation and Waste

Concessionaire is responsible for:

- Cleanliness of interior and exterior areas under its control;
- Proper storage and disposal of trash, recyclables, and grease/food waste; and
- Compliance with all health code and environmental rules.

CTO, LLC may inspect sanitation conditions and require corrective action if standards are not met.

3.8 Hazardous Substances

Concessionaire shall not bring, store, or use hazardous materials on the Concession Facilities except as reasonably necessary for the Business (e.g., cleaning products, fuel) and in compliance with applicable law and CTO, LLC safety policies. Concessionaire is fully responsible for any hazardous substance release caused by its operations and shall bear all associated cleanup and remediation costs.

3.9 Personal Property and Surrender

Concessionaire's equipment, furnishings, and supplies remain Concessionaire's personal property unless otherwise agreed in writing. At the end of the Agreement Term, Concessionaire shall:

- Remove its personal property within 30 days;

- Repair any damage caused by its removal; and
- Leave the Concession Facilities clean and in substantially the same condition as at the Commencement Date, ordinary wear and tear excepted.

If Concessionaire fails to remove personal property within such time, the CTO, LLC may treat items as abandoned, remove and store them at Concessionaire's expense, or dispose of them.

4. FINANCIAL RECORDKEEPING AND AUDIT

4.1 Records

Concessionaire shall maintain true, complete, and accurate books and records of all revenues and expenses associated with the operation of the Business, including but not limited to:

- Daily sales reports;
- Individual transaction records;
- Annual financial statements; and
- Applicable tax returns and reports relating to the Business.

4.2 Audit Rights

The CTO, LLC or its designated agents, may, during reasonable business hours and upon reasonable notice, inspect and audit Concessionaire's records related to the Business. Concessionaire shall cooperate fully, provide the requested records, and permit copying. If an audit reveals a material under-reporting of revenue or other financial discrepancy beyond an agreed threshold, Concessionaire shall:

- Pay any underpaid amounts plus applicable interest; and
- Reimburse the CTO, LLC for reasonable audit costs if the discrepancy exceeds the agreed threshold.

5. FEES, PAYMENTS, AND TAXES

5.1 Concession Fee

Concessionaire shall pay to the CTO, LLC, a Concession Fee for the rights granted under this Agreement. The Concession Fee structure shall be selected and completed here.

Option A – Flat Annual Fee

Concessionaire shall pay an annual Concession Fee of \$_____, due on or before _____ of each year during the Agreement Term.

Option B – Percentage of Gross Revenue

Concessionaire shall pay a Concession Fee equal to _____% of **Gross Revenue** from the Business during each contract year. Payment shall be due on or before _____ of each year, accompanied by a revenue report.

Option C – Hybrid / Other

Insert your own Exhibit to describe (e.g., minimum annual fee plus percentage of gross revenue, tiered structure, or other formula).

(Select one structure and delete the others in your final version.)

5.2 Definition of Gross Revenue

“Gross Revenue” means all revenue received or receivable from operation of the Business under this Agreement, excluding:

- Sales tax or similar transaction taxes collected and remitted; and
- Refunds, chargebacks, or bona fide credits to customers.

5.3 Utilities and Operating Expenses

Concessionaire is solely responsible for all costs and charges associated with its operations, including but not limited to:

- Utilities (electricity, water, gas, communications, etc.), if applicable;
- Trash and recycling services;
- Routine maintenance obligations under this Agreement; and
- All personnel and operating expenses.

If utilities or services are provided by the CTO, LLC and rebilled, Concessionaire shall reimburse them promptly upon invoice.

5.4 Taxes

Concessionaire shall pay all applicable federal, state (Colorado and/or New Mexico), and local taxes, fees, and assessments arising from or related to operation of the Business and use of the Concession Facilities, including any possessory-interest-type tax or other use-of-public-property tax, if applicable.

5.5 Manner of Payment

All payments due to the CTO, LLC shall be paid in U.S. dollars by check, ACH, or other form acceptable to the CTO, LLC and delivered to the address designated in Section 12.1 or to such other address or payee as the CTO, LLC may designate in writing.

5.6 Late Payments

Any amount not paid when due shall accrue interest at one percent (1%) per month (or the maximum rate allowed by law, if lower) from the due date until paid. The CTO, LLC may also charge a reasonable returned-check or failed-payment fee.

5.7 Performance Security (Optional)

Upon execution of this Agreement, Concessionaire shall provide:

- A performance bond, irrevocable letter of credit, or other security acceptable to the CTO, LLC in the amount of \$ _____,

to secure the Concessionaire's performance and payment obligations. The CTO, LLC, may draw upon such security in the event of default, without prejudice to other remedies.

6. INDEMNITY AND INSURANCE

6.1 Indemnity

To the fullest extent permitted by law, Concessionaire shall indemnify, defend, and hold harmless the CTO, LLC, and their respective officers, employees, and agents from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorney fees) arising out of or related to:

- The operation of the Business;
- The use or occupancy of the Concession Facilities by Concessionaire or its employees, contractors, or invitees; or

- Any act or omission of Concessionaire or its employees, agents, contractors, or invitees, except to the extent caused by the gross negligence or willful misconduct of the CTO, LLC.

6.2 Insurance Requirements

Concessionaire shall maintain, at its own expense, during the Agreement Term:

1. Commercial General Liability Insurance

- Minimum limits: not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; and
- The Commission and CTO, LLC shall be named as **additional insureds**.

2. Automobile Liability Insurance (if vehicles are used in operations)

- Minimum limits: not less than \$1,000,000 per accident (combined single limit).

3. Workers' Compensation / Employers' Liability

- As required by the states of Colorado and/or New Mexico.

4. Property / Contents Insurance (Recommended)

- For Concessionaire's equipment, inventory, and personal property.

Certificates of Insurance naming the Commission and CTO, LLC as additional insureds, where applicable, shall be provided prior to commencing operations and upon renewal or change of coverage. Policies shall provide at least 30 days' prior written notice of cancellation or material change.

7. CONCESSIONAIRE EQUIPMENT, FURNISHINGS, AND SUPPLIES

7.1 Provision and Maintenance

Except as identified in Exhibit A as provided by the CTO, LLC, Concessionaire shall furnish, at its cost:

- All equipment, furnishings, fixtures, and supplies necessary for the Business; and
- Maintain them in safe, clean, and good working order.

7.2 Title and Removal

Concessionaire retains title to its personal property. At the end of the Agreement Term, Concessionaire shall remove such property and repair any damage caused by its removal within 30 days, subject to Section 3.9.

8. IMPROVEMENTS

8.1 Improvements Requiring Approval

Concessionaire shall not construct, install, or materially alter any building, structure, utility connection, or fixed improvement on the Concession Facilities without prior written approval from the CTO, LLC. Concessionaire shall:

- Provide plans, specifications, cost estimates, and schedules;
- Obtain all necessary permits; and
- Perform work in a good and workmanlike manner consistent with applicable codes and Railroad safety standards.

Unless otherwise agreed in writing, approved permanent improvements become the property of the CTO, LLC upon completion.

8.2 Liens

Concessionaire shall keep the Concession Facilities free of all liens arising out of work performed, materials furnished, or obligations incurred by or for Concessionaire. Concessionaire shall promptly discharge any such lien at its expense and indemnify the Commission and CTO, LLC against related costs.

9. CTO, LLC RESERVED RIGHTS

The CTO, LLC expressly reserve the following rights:

1. Additional Activities and Vendors

The CTO, LLC may operate or authorize other concessions, vendors, or activities within Railroad property, provided such activities do not unreasonably interfere with the Business.

2. Inspection and Oversight

CTO, LLC shall have access to the Concession Facilities at all reasonable times to monitor compliance with this Agreement, inspect conditions, and ensure alignment with safety, operational, and guest-service standards.

3. Maintenance, Construction, and Closures

The CTO, LLC, may modify, repair, improve, or temporarily close portions of Railroad or Concession Facilities as needed for operations, safety, capital projects, or emergencies. Concessionaire acknowledges that Railroad operations, schedules, and such activities may impact visitor flow and Business performance and assumes such operational risks, provided actions are taken reasonably and, where practicable, with notice.

10. ASSIGNMENT AND TRANSFER

10.1 No Assignment Without Consent

Concessionaire shall not assign, transfer, sublicense, encumber, or otherwise convey any rights or obligations under this Agreement, in whole or in part, without the CTO, LLC's prior written consent, which may be granted or withheld in the CTO, LLC's sole discretion.

10.2 Change in Control

Any change in ownership or control of Concessionaire (e.g., sale of a majority interest, merger) shall be deemed an assignment requiring the CTO, LLC's consent.

10.3 Effect of Approved Assignment

Any approved assignee shall assume in writing all obligations of Concessionaire. Unless expressly released by the CTO, LLC in writing, Concessionaire shall remain jointly and severally liable with any assignee.

11. TERMINATION AND DEFAULT

11.1 Default by Concessionaire

A "Default" occurs if Concessionaire:

- Fails to pay any sum when due and does not cure within 15 days after written notice;
- Materially breaches any non-monetary term of this Agreement and does not begin to cure within 30 days after written notice and diligently pursue cure to completion;
- Abandons or ceases operating the Business for a period longer than 1 day without CTO, LLC approval; or
- Becomes insolvent, files for bankruptcy, or is placed in receivership.

11.2 Remedies

Upon Default, the CTO, LLC may, in its sole discretion, and without prejudice to other remedies:

1. Terminate this Agreement and require Concessionaire to vacate the Concession Facilities;
2. Authorize CTO, LLC to enter the Concession Facilities and take possession of them and any CTO, LLC-owned property;
3. Cause CTO, LLC or another contractor to perform Concessionaire's obligations and charge Concessionaire for all resulting costs; and/or
4. Recover all damages, including lost or underpaid Concession Fees, costs of securing replacement concession services, attorney fees, and other reasonable costs.

11.3 Termination for Convenience

The CTO, LLC may terminate this Agreement, in whole or in part, without cause upon not less than _____ days' prior written notice to Concessionaire. In such an event, the parties shall reconcile any amounts owed through the effective date of termination. Concessionaire shall not be entitled to lost profits or similar consequential damages.

11.4 Termination for Health and Safety

If CTO, LLC determines, in its reasonable judgment, that Concessionaire's acts, omissions, or conditions at the Concession Facilities pose an immediate threat to health, safety, or Railroad operations, CTO, LLC may immediately suspend operations in whole or in part. The CTO, LLC may thereafter terminate this Agreement if the issue is not promptly corrected or if the severity warrants termination.

12. MISCELLANEOUS

12.1 Notices

All notices or submissions under this Agreement shall be in writing and deemed given when delivered personally, sent by recognized overnight courier, or deposited in U.S. mail (certified or registered, postage prepaid) addressed as follows (or to such other address as a party may designate by notice):

To the CTO, LLC:

Cumbres & Toltec Operating, LLC

Attn: _____

Address: _____

To Concessionaire:

12.2 Exhibits

The following Exhibits are attached and incorporated into this Agreement:

- **Exhibit A** – Description of Business and Operations
- **Exhibit B** – Description of Concession Facilities and allocation of equipment/furnishings
- **Exhibit C** – Fee Structure and Financial Terms (if separate)

If there is a conflict between an Exhibit and the main body of this Agreement, the main body shall control, unless expressly stated otherwise.

12.3 Entire Agreement; Amendments

This Agreement, including its Exhibits, constitutes the entire agreement between the parties regarding the subject matter and supersedes all prior or contemporaneous agreements, proposals, or representations made by either party. Any amendment must be in writing and signed by the CTO, LLC, and Concessionaire

12.4 Governing Law and Venue

This Agreement shall be governed by the laws of the States of Colorado and New Mexico, as applicable to the CTO, LLC's enabling legislation and operations, without regard to conflict of law principles. Venue for any action arising under this Agreement shall be in a state or federal court of competent jurisdiction located in Rio Arriba County, New Mexico, or Conejos County, Colorado, as appropriate.

12.5 Severability

If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall remain in full force and effect, and the parties shall endeavor to replace the invalid provision with a valid one that most closely reflects their original intent.

12.6 Dispute Resolution (Optional)

The parties may agree to submit disputes to mediation or arbitration prior to litigation. Any arbitration shall be under mutually agreed-upon rules and shall not limit either party's right to seek injunctive relief in court.

12.7 Attorneys' Fees

In any proceeding arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, as allowed by law or awarded by the court or arbitrator.

12.8 Nondiscrimination

Concessionaire shall comply with all applicable federal, Colorado, and New Mexico nondiscrimination and equal opportunity laws, including laws prohibiting discrimination on the basis of race, color, religion, sex, national origin, disability, age, or any other protected class. Concessionaire shall not discriminate in any aspect of employment or service to the public under this Agreement.

13. SIGNATURES

CONCESSIONAIRE

By: _____
Name: _____
Title: _____
Date: _____

CUMBRES & TOLTEC Operating, LLC

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A – Description of Business (Culinary Operations Concession)

1. Description of Business

The Concessionaire is granted the right to operate culinary and food & beverage services in support of the Cumbres & Toltec Scenic Railroad (the “Railroad”). The scope of the Business includes:

- Preparing and serving meals, snacks, and beverages to Railroad guests and staff,
- Supporting regularly scheduled train operations,
- Supporting special events, charters, and themed trains, and
- Providing catering-style services for CTO, LLC-approved private or group events.

The Concessionaire will:

- Plan menus, recipes, and service formats in coordination with CTO, LLC;
- Manage all culinary staff and food service operations;
- Maintain consistent quality, safety, and guest service standards across all locations and events; and
- Comply with all applicable health codes and regulatory requirements in Colorado and New Mexico.

This Agreement does not grant any exclusive rights beyond the scope of culinary operations or to locations or events approved by CTO, LLC.

2. Locations of Service

Culinary operations under this Agreement may occur at one or more of the following locations, as determined by the CTO, LLC:

1. **Osier** – Primary mid-route dining location, typically for lunch service and special events.
2. **Cumbres Pass** – Food and beverage support for events, gatherings, and special trains.
3. **Tanglefoot** – Food and beverage service for designated events or experiences.
4. **Big Horn** – Food and beverage service for designated events or experiences.

5. **On-Train Service** – Onboard food and beverage service (e.g., snacks, boxed meals, beverage service, premium experiences) on scheduled trains and special trains as approved by CTO, LLC.
6. **Other Locations** – Any additional locations on or associated with the Railroad as may be mutually agreed to in writing by the parties.

The specific locations in use during a given operating season, along with service levels and schedules, will be confirmed in advance through the seasonal operating plan agreed upon between the Concessionaire and CTO, LLC.

3. Season and Hours of Operation

- **Season:**

The culinary operation season will generally track the Railroad's operating season, plus any shoulder-season events as requested by the CTO, LLC. The exact dates for each year will be specified in the annual operating plan agreed upon between the CTO, LLC and the Concessionaire.
- **Hours:**
 - Osier and other fixed locations: operating hours will align with scheduled train arrivals and departures, as well as event schedules.
 - On-train service: operating hours will align with train schedules and onboard service plans.
 - Special and private events: Hours will be mutually agreed upon in writing by the CTO, LLC, and Concessionaire.

The concessionaire shall be open and staffed for business at each agreed-upon location during the agreed-upon service windows, unless otherwise authorized by the CTO, LLC.

4. Equipment, Furnishings, and Supplies

(You can tighten this to match reality; I'll give you a neutral structure you can edit.)

1. **Provided by CTO, LLC (if any):**

The CTO, LLC may provide certain base infrastructure and/or fixed equipment (for example: built-in kitchen infrastructure at Osier, installed hoods, walk-in refrigeration, fixed counters, existing tables and chairs). Any such items will be listed in **Exhibit B**.
2. **Provided by Concessionaire:**

Except for items expressly listed as provided by the CTO, LLC in Exhibit B, Concessionaire

shall provide, at its own cost:

- All smallwares (pots, pans, utensils, knives, etc.);
- Portable or supplemental equipment required for service (e.g., hot boxes, warmers, portable bars, beverage equipment, POS terminals);
- All food, beverages, ingredients, paper products, and disposables;
- Staff uniforms, name tags, and any branded materials specific to the concession (subject to CTO, LLC approval for brand alignment).

3. Maintenance:

- Concessionaire shall maintain all Concessionaire-owned equipment, furnishings, and supplies in safe, clean, and good working condition.
- Concessionaire shall perform routine care on CTO, LLC-owned equipment as specified in Exhibit B or in CTO, LLC's written guidelines and promptly notify CTO, LLC of any major repair needs.

5. Marketing, Advertising, and Signage

1. Brand Alignment:

All menus, printed materials, naming conventions for special meals/events, and visual presentation of the food service experience shall be consistent with the Railroad's historic and experiential brand, subject to CTO, LLC approval.

2. Signage:

Any permanent or semi-permanent signage on Railroad property must be approved in writing by CTO, LLC prior to fabrication and installation, including:

- Exterior signage at Osier and other static locations;
- Menu boards, banners, and directional signs;
- On-train menu cards, tabletop materials, or tent cards.

3. Promotion:

- CTO, LLC may promote Concessionaire's culinary offerings on the Railroad's website, social channels, and printed materials.

- Concessionaire may, with CTO, LLC approval, reference the Cumbres & Toltec Scenic Railroad brand in its own marketing where related to this Agreement.

6. Pricing and Menus

1. Price List:

Concessionaire shall maintain a **Price List** for food, beverage, and event packages, including:

- Standard offerings (e.g., lunch at Osier, on-train snack service);
- Special menus (e.g., holiday trains, charter dinners, wine trains).

2. Approval Process:

- Initial Price List and menu concepts shall be submitted to CTO, LLC for review and approval prior to the start of operations.
- Proposed price and/or menu changes shall be submitted to CTO, LLC for approval on or before **[e.g., March 1]** of each year or as otherwise agreed in writing.
- CTO, LLC may approve, modify, or reject proposed changes to ensure alignment with guest expectations, Railroad positioning, and overall value proposition.

3. Display:

All prices must be clearly displayed at each service location and/or onboard, and any service charges or gratuity policies must be disclosed to guests in a clear and transparent manner.

7. Point of Contact

For Concessionaire:

- Primary Contact Name: _____
- Title: _____
- Phone: _____
- Email: _____
- 24/7 Operational or After-Hours Contact (if different):
 - Name: _____

- Phone: _____

For CTO, LLC (Operations Liaison):

- Name/Role: _____
- Phone: _____
- Email: _____

Day-to-day coordination (menus, schedules, staffing levels, event layouts, etc.) will primarily occur between the Concessionaire and CTO, LLC's designated operations liaison.

8. Grounds and Area Maintenance

Concessionaire shall:

- Keep all kitchen, service, and guest dining areas under its control clean, orderly, and sanitary at all times;
- Maintain outdoor areas immediately adjacent to its service points (e.g., patios, entrances, trash storage areas) in a neat and litter-free condition;
- Store waste, grease, recyclables, and other refuse in appropriate containers and at locations approved by CTO, LLC; and
- Follow all applicable health department, environmental, and safety regulations for food service operations.

9. Utilities

Responsibility for utilities will be as follows (adjust to reality):

- **CTO, LLC:** Base electricity, water, and sewer service at fixed Railroad facilities (e.g., Osier kitchen) as specified in Exhibit B.
- **Concessionaire Provided:**
 - Utilities for any portable/temporary equipment requiring external service (generators, propane, etc.), unless expressly provided by CTO, LLC;
 - Communications (e.g., internet / Starlink, phone) specific to Concessionaire's POS and back-office systems, unless otherwise agreed.

Allocation of utility costs, if any are re-billed, will be specified in Exhibit B or a separate written schedule agreed between the parties.

Exhibit B - Description of Concession Facilities, Access, and Equipment

This Exhibit identifies all facilities, spaces, equipment, and utilities that the CTO, LLC (owner) provides and that the Concessionaire is authorized to use in the operation of the culinary concession. All daily oversight, operational coordination, and performance monitoring shall be performed by the CTO, LLC.

1. Description of Facilities

The Concessionaire is authorized to use the following facilities, food preparation areas, service points, and event sites of the Cumbres & Toltec Scenic Railroad. These areas may be modified or supplemented in writing by CTO, LLC.

1.1 Osier Dining Facility (Primary Culinary Hub)

Location: Milepost 19.9 (midpoint between Chama, NM, and Antonito, CO)

Purpose: Main culinary venue for lunch service, group service, and scheduled dining events.

Included Areas

- Full commercial kitchen
- Food prep rooms
- Walk-in refrigerator and freezer
- Dry storage and pantry area
- Interior dining halls
- Outdoor dining decks (if applicable)
- Dishwashing area
- Employee restroom
- Utility and waste storage zones adjacent to the kitchen

Notes

- Osier is the primary “base kitchen” for culinary operations.

- Concessionaire may stage large-volume meals, transport meals to other venues, and perform all food production functions here.
- All Osier operations must be synchronized with the arrival/departure windows of scheduled trains and coordinated with the CTO, LLC.

1.2 Cumbres Pass Event Site (Special Events + Dining Service)

Location: Elevation ~10,015 ft, summit of the route

Purpose: Special events, pre-arranged culinary programs, group meals, seasonal experiences.

Included Areas

- Event staging areas designated by the CTO, LLC
- Temporary service zones (tents, tables, beverage stations)
- Access to on-site power (limited), if available
- Access to water (seasonal), if available
- Waste/recycling staging zones

Notes

- Concessionaire may be required to bring portable equipment, water, generators, or warming units.
- Weather variability requires flexibility; the CTO, LLC will determine operational feasibility.

1.3 Tanglefoot Event Area

Location: Near the Colorado/New Mexico border; historic reclamation and staging area

Purpose: Select culinary events, group gatherings, film/photo charters, thematic programs.

Included Areas

- Outdoor event field designated by CTO, LLC
- Portable culinary staging footprint
- Portable power or generator hookups (if available)
- Beverage service area

Notes

- This is a rustic, undeveloped venue. Concessionaire must be fully self-contained unless otherwise agreed. Access is only available via the train or motorcar.
- All infrastructure beyond the land area is concessionaire-provided, unless the CTO, LLC specifies otherwise.

1.4 Big Horn Event Area

Location: Near milepost 285, Colorado

Purpose: Private events, culinary experiences, specialty trains, and seasonal programs.

Included Areas

- Outdoor service area
- CTO, LLC-designated staging footprint
- Access to the train platform for load-in/out
- Waste staging point

Notes

- Remote site; Concessionaire will provide the majority of equipment.
- CTO, LLC will confirm accessibility in advance for each event.

1.5 On-Train Service Areas

Purpose: Food & beverage service during scheduled trains, charters, dinner trains, premium experiences, etc.

Included Areas

- Designated onboard service counter or alcove (as approved by CTO, LLC)
- Galley or service cabinets (if applicable)
- Portable rolling service carts
- Onboard beverage service areas

- Storage areas assigned by the CTO, LLC

Notes

- All onboard operations must comply with fire safety, mobility, and storage rules provided by the CTO, LLC.
- Space is limited; the Concessionaire must use only compact, safe, and secure equipment.

1.6 Additional Locations (As Approved)

Any additional Railroad-owned facility or trackside event location may be added upon written agreement of both parties. CTO, LLC must approve all such uses in advance, including:

- Parking areas for mobile kitchens
- Themed locations (e.g., fall foliage events, nighttime sky events, music trains)
- Film or photography supporting events where food is required
- Producer or festival collaborations
- Community and sponsorship events

2. Site Access

2.1 General Access

The Concessionaire shall have access to the facilities during scheduled operating hours and at additional times as approved by CTO, LLC for setup, breakdown, delivery, cleaning, and event preparation.

2.2 Train-Assisted Access

Some locations (e.g., Osier, Tanglefoot, Big Horn) require access by rail equipment. CTO, LLC will coordinate:

- Load-in/load-out schedules
- Train movement
- Rail safety protocols

- Crew coordination

Concessionaire staff must comply with all Railroad safety requirements and remain in designated safe zones while on or near track or equipment.

2.3 Vehicle Access

Certain sites allow limited vehicle access (e.g., Osier via Forest Service roads). CTO, LLC will identify:

- Approved roadways
- Hours of access
- Safety standards
- Weather considerations
- Limitations for heavy vehicles

3. Fixtures

3.1 Fixtures Provided by CTO, LLC

(List may be expanded once CTO, LLC verifies equipment inventory.)

Osier:

- Installed hoods and fire suppression system
- Walk-in refrigerator and freezer
- Built-in counters and stainless-steel prep tables
- Installed sinks and dishwashing infrastructure
- Fixed dining tables, benches, or seating (if applicable)
- Installed lighting and electrical systems
- Permanent utilities (electricity, water, sewer)

Cumbres Pass, Tanglefoot, Big Horn:

- None, unless specifically stated in a written amendment
- Sites generally consist of land area only, with no fixed infrastructure

On-Train:

- Built-in service cabinets (if any)
- CTO, LLC-supplied rolling carts (if any)
- CTO, LLC-installed electrical outlets
- Fixed waste receptacles (where available)

Concessionaire acknowledges these fixtures remain CTO, LLC property.

4. Improvements

4.1 Allowed Improvements

Concessionaire may propose improvements at any location, but must obtain CTO, LLC's prior written approval. Improvements include:

- Portable or semi-portable structures
- Temporary coverings, tents, or staging supports
- Permanent modifications to kitchens or service areas
- New equipment requiring utility connections
- New signage or branding materials

4.2 Ownership

All approved permanent improvements become the property of the CTO, LLC upon installation.

Portable/temporary improvements remain Concessionaire property unless otherwise agreed in writing.

5. Utilities and Services

5.1 Provided by CTO, LLC (where available)

- Off-grid electricity infrastructure (Osier; limited elsewhere)
- Water (Osier; seasonal elsewhere)
- Sewer/septic (Osier)
- Trash removal at the Osier staging area
- Basic maintenance of CTO, LLC equipment

5.2 Provided by Concessionaire

- All propane, generator power & its fuel, or portable power if needed
- All portable water is required at remote sites
- Any additional waste removal needed beyond the standard Osier capacity
- All food-related consumables
- All culinary labor and operational staffing
- Any portable refrigeration, heating, or cooling equipment

6. Photographic Documentation

(Insert photos/maps after CTO, LLC provides them.)

- **Image 1:** Osier facility interior and exterior
- **Image 2:** Cumbres Pass designated event area
- **Image 3:** Tanglefoot staging footprint
- **Image 4:** Big Horn event area
- **Image 5:** On-train service area or designated service alcoves

Exhibit C - Fee Structure and Financial Terms (Vendor Proposal Template)

This Exhibit provides the required format and financial framework a prospective Concessionaire must use when submitting its fee proposal to the CTO, LLC. All proposed fees must be clear, consistent, and aligned with the Railroad's operational realities.

CTO, LLC will evaluate each component for fairness, sustainability, guest impact, and operational compatibility.

1. Overview of Proposed Financial Model

Vendor must summarize the financial structure using the following format:

1.1 Summary of Proposed Fee Structure

- Fixed Annual Fee: \$_____
- % of Gross Sales Fee: _____%
- Hybrid Model Fee (if applicable):
 - Base Fee: \$_____
 - % Fee: _____%
- Any Other Proposed Financial Mechanism:
 - _____

1.2 Explanation of Rationale

Vendor must provide a short narrative explaining why this fee model is appropriate for the Railroad, including:

- Operational costs
- Seasonal fluctuations
- Risk distribution
- Service levels
- Guest experience expectations

2. Definitions

To ensure clarity, all proposals must be calculated using the following standardized definitions:

2.1 Gross Sales

Gross Sales means all revenue received or receivable by the Concessionaire from:

- Food sales
- Beverage sales
- On-train service sales
- Catering or group events
- Special event dining
- Any culinary product sold under this Agreement

Gross Sales **shall not** exclude credit card fees, staff meals, or complimentary items unless approved by the CTO, LLC.

2.2 Net Sales

Net Sales = Gross Sales minus sales tax only.

2.3 Commissions / Pass-Through Fees

Any commissions, platform fees, or credit card processing fees must be disclosed.

3. Required Pricing Proposal Components

Vendor must submit the following as part of its financial offer:

3.1 Fixed Annual Fee (if proposed)

If proposing a fixed fee, vendor must provide:

- Annual Amount: \$_____

- Seasonal Allocation (if different by period)
- Justification for fixed structure
- Assumptions used

3.2 Percentage of Gross Sales (if proposed)

Vendor must propose:

- Percentage Rate: _____%
- Applicable to which categories:
 - Food
 - Beverage
 - Event catering
 - On-train service
 - All categories
- Estimated annual concession fee based on projected sales
- Methodology and assumptions

3.3 Hybrid Fee Model (combination)

If proposing a hybrid model, the vendor must explain:

- Base Annual Fee: \$_____
- Percentage Fee: _____%
- Why a hybrid structure supports:
 - Vendor viability
 - Railroad revenue
 - Long-term partnership

3.4 Minimum Annual Guarantee (MAG)

Vendor may propose:

- MAG Amount: \$_____
- Seasonality adjustments
- Reconciliation method (monthly, quarterly, annual)

3.5 Capital or Infrastructure Contributions

Vendor must disclose any willingness to invest in:

- Equipment
- Fixtures
- Facility improvements
- Portable infrastructure
- Technology
- Kitchens, prep areas, or remote site enhancements
- Plates, Silverware, Plastic Glasses for serviceware.

Proposal must include:

- Investment Amount: \$_____
- Proposed amortization period
- Ownership terms (CTO, LLC retains ownership unless negotiated otherwise)

4. Menu Pricing & Cost Assumptions

Vendor must attach (as Exhibit C-1):

4.1 Proposed Menu Prices

For:

- Osier
- On-train service
- Special events
- Private charters
- Holiday trains
- Premium trains (e.g., wine or dinner trains)

4.2 Food Cost Model

Vendor must disclose:

- Target food cost %
- Cost per meal (Osier)
- Cost per guest (onboard)
- Special event cost structures
- Supply chain assumptions

5. Staffing & Labor Cost Model

Vendor must provide:

- Staffing plan
- Labor cost assumptions
- Hourly wage ranges
- Overtime assumptions
- Seasonal hiring strategy

- Staffing requirements for:
 - Osier
 - Cumbres Pass
 - Tanglefoot
 - Big Horn
 - On-train service
 - Special events

6. Financial Reporting Format

Vendor must propose a reporting structure aligned with the CTO, LLC's requirements:

6.1 Monthly Reporting

- Gross sales by category
- Net sales
- Concession fee calculation
- Inventory usage summary
- Labor summary
- Special event reconciliation
- Refunds/guest recovery issues
- Operating challenges

6.2 Annual Report

- Total sales by category
- Total concession fees paid

- Financial performance analysis
- Operational improvement recommendations

7. Payment Terms

Vendor must agree to:

7.1 Payment Schedule

- Monthly, due on the 10th of the following month
- Delinquent after the 15th

7.2 Accepted Payment Methods

- ACH
- EFT
- Wire
- Check (by prior approval)

7.3 Late Fees

A late fee of ___% per month shall apply to unpaid balances.

8. Reconciliation & Audit Rights

The CTO, LLC may:

- Perform audits with 7 days' notice
- Review POS data, bank statements, and financial statements
- Verify sales tax reporting
- Reconcile discrepancies

- Require corrective action

Vendor must maintain complete financial records for a minimum of 5 years.

9. Optional Add-On Financial Structures

The vendor may propose additional financial structures, such as:

- Revenue share for premium trains
- Performance incentive bonuses
- Guest satisfaction score bonuses
- Multi-year investment credits
- Off-season guarantees

Each must include a rationale and full financial details.