

ORIGINAL

**MEMORANDUM OF UNDERSTANDING #220-M1610
(A Nonfinancial] Agreement)**

Between

EL DORADO COUNTY HISTORICAL MUSEUM

and

EL DORADO WESTERN RAILWAY FOUNDATION

Regarding

**EL DORADO WESTERN RAILROAD PROGRAM
DEVELOPMENT AND OPERATION**

THIS Memorandum of Understanding (MOU) is entered into by and between the El Dorado County Historical Museum (hereinafter referred to as “Museum”) and the El Dorado Western Railway Foundation (hereinafter referred to as “Foundation”) (collectively hereinafter referred to as the “Parties”). This MOU sets forth each agency’s role and responsibilities relative to the development and operation of the El Dorado Western Railroad Program.

R E C I T A L S

WHEREAS, the Museum is a division of the Library Department and is overseen by the El Dorado County Board of Supervisors with a well-established and long standing volunteer program including the El Dorado Western Railroad Program Volunteers; and the Museum Administrator, an employee of the County of El Dorado, in her capacity as General Manager of the El Dorado Western Railroad Program, manages the volunteer program, and approves projects and programs including those funded by the Foundation; and

WHEREAS, the Foundation is a 501(c)3 non-profit public benefit corporation with a Board of Directors and an Associate Membership program, and with the mission to support the El Dorado Western Railroad Program on the Sacramento Placerville Transportation Corridor (SPTC) in the County; and

WHEREAS, the El Dorado Western Railroad Program is a benefit to the County as a tourist destination by successfully providing railroad experiences for the public, increasing appreciation of the County's railroading history, and eventually providing a variety of ride experiences including full size railroad rolling stock; and as the County of El Dorado's designated agency for maintenance of the track structure in the SPTC in El Dorado County; and

WHEREAS, on November 8, 2010 the County of El Dorado approved the passenger railroad program operated by El Dorado Western Railroad volunteers using track inspection cars on the

SPTC as a passenger and historical demonstration railroad utilizing equipment, facilities and volunteers; and on June 17, 2014 the County of El Dorado approved the current operation and future plans of El Dorado Western Railroad Program as regulated of the Federal Railroad Administration (FRA) and the California Public Utilities Commission (CPUC); and

WHEREAS, the Foundation owns the various pieces of equipment which are used in the operation of the El Dorado Western Railroad Program, and in the repair, maintenance and improvements to the SPTC track and rail bed, and raises funds to help support the El Dorado Western Railroad Program operation which includes collecting donations in exchange for rides and expends those funds on costs associated with the operation, maintenance and improvements related to the program; and

WHEREAS, County has determined that it is necessary to obtain a Memorandum of Understanding with the Foundation to provide the Scope of Services as described; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State and local laws.

NOW THEREFORE, the parties hereto mutually agree as follows:

ARTICLE I

Scope of Services:

El Dorado Western Railway Foundation will:

1. Acquire and provide program-related equipment to the County Museum for program-related purposes, and financially support the maintenance, repair and restoration of such equipment.
2. Allow only authorized, trained, and certified personnel to operate and maintain the program-related equipment while on the SPTC.
3. Financially support maintenance, repair and restoration of the SPTC Track (which includes rail, ties, fasteners, ballast, underlying subgrade and rail access points/crossings).
4. Financially support the maintenance, repair and improvements to the facilities associated with the El Dorado Western Railroad Program, such as the El Dorado Station leased to the County and the Shingle Springs Depot.
5. Obtain County Staff approval in writing before acquiring equipment and material to be used for County Museum programs.
6. Raise funds through passenger tickets and other fundraisers for the purpose of developing and operating the El Dorado Western Railroad Program.
7. Provide documentation on the revenue and expenditures as it relates to the El Dorado Western Railroad Program.
8. Maintain current records and give timely reports to Museum staff of all equipment owned by the Foundation and used for the purpose of maintenance and operation of the El Dorado Western Railroad Program and the maintenance of the SPTC Track.

9. Make recommendations to Museum staff and volunteers for future growth and long range planning.

Museum Staff and Volunteers will:

1. Set the schedule and operate the El Dorado Western Railroad Program for the benefit of the public.
2. Collect money donations from passengers for deposit by the Foundation.
3. Recruit volunteers with the expertise needed to plan, repair, and operate the El Dorado Western Railroad Program and provide training opportunities as needed.
4. Maintain all required records for the operation of the El Dorado Western Railroad Program, including Federal Railroad Administration (FRA) and California Public Utilities Commission (CPUC) required documentation and El Dorado County required documentation such as volunteer records.
5. Repair, refurbish, and bring up to the standard necessary for FRA certification of the track.
6. Conduct track Maintenance of Way, which includes track repair and maintenance, brush and fuel reduction.
7. Lay additional track for operation and display; develop storage and maintenance facilities and occupy the El Dorado depot leased to the County by Ed Hagen (or successor) as the Visitors Center/Railroad Station and for other Railroad Park sponsored activities complying with the terms of the lease and maintaining the building in a clean and safe manner; and be responsible for implementation of security and maintenance of the these facilities.
8. Coordinate with the County Parks Division on track maintenance projects and planning the El Dorado County Historical Railroad Park.
9. Coordinate activity on the track within the boundaries of the El Dorado County Historical Railroad Park with other rail use groups.
10. Participate on committees and commissions as established by the Board of Supervisors representing the interests of rail use on future development within the SPTC Corridor.
11. Comply with procedures in the County Historical Museum Volunteer Handbook set forth by the Museum Administrator and approved by the Museum Commission.

ARTICLE II

Term: This MOU shall become effective upon final execution by both parties hereto and shall expire after one year. The MOU may be renewed for five additional terms.

ARTICLE III

Compensation: This MOU is a non-financial agreement.

ARTICLE IV

Taxes: Foundation certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Foundation to County. Foundation agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE V

Changes to MOU: This MOU may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing.

ARTICLE VI

Foundation to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Foundation shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Foundation's responsibilities to County during term hereof.

ARTICLE VII

Assignment and Delegation: Foundation is engaged by County for its unique qualifications and skills as well as those of its personnel. Foundation shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VIII

Independent Contractor/Liability: Foundation is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Foundation exclusively assumes responsibility for acts of its employees, associates, and subContractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Foundation shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Foundation or its employees.

ARTICLE IX

Default, Termination and Cancellation: Either party may terminate this MOU upon twenty-one (21) days written notice

ARTICLE X

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notice to Museum shall be addressed as follows:

EL DORADO COUNTY
HISTORICAL MUSEUM
104 PLACERVILLE DRIVE
PLACERVILLE, CA 95667
ATTN: MARY CORY, MUSEUM ADMINISTRATOR

or to such other location as the COUNTY directs.

Notices to the EDWRF shall be addressed as follows:

EL DORADO WESTERN RAILWAY FOUNDATION
c/o EL DORADO COUNTY HISTORICAL MUSEUM
104 PLACERVILLE DRIVE
PLACERVILLE, CA 95667
ATTN: EDWARD CUNHA, PRESIDENT

or to such other location as EDWRF directs.

ARTICLE XI

Indemnity: The Foundation shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Foundation's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Foundation, subContractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Foundation to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XII

Insurance:

Foundation shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that the Foundation maintains insurance that meets the following requirements:

- A Full Worker's Compensation and Employer's Liability Insurance covering all employees of Foundation as required by law in the State of California.
- B Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Foundation in the performance of the Agreement.

- D In the event Foundation is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E Foundation shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G Foundation agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Foundation agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Foundation agrees that no work or services shall be performed prior to the giving of such approval. In the event the Foundation fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H The certificate of insurance must include the following provisions stating that:
- 1 The insurer will not cancel the insured's coverage without prior written notice to County, and;
 - 2 The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I The Foundation's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Foundation's insurance and shall not contribute with it.
- J Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Foundation shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- K Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M Foundation's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N In the event Foundation cannot provide an occurrence policy, Foundation shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XIII

Administrator: The County Officer or employee with responsibility for administering this MOU on behalf of the County is Mary Cory, Museum Administrator, or successor.

ARTICLE XIV

Authorized Signatures: The parties to this MOU represent that the undersigned individuals executing this MOU on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XV

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XVI

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XVII


No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

ARTICLE XVIII

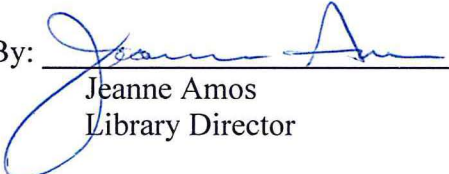
Entire Agreement: This document and the documents referred to herein are the entire agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding # 220-M1610 on the dates indicated below.

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

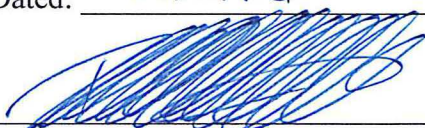
By:  Dated: 5/18/2016
Mary Cory
Museum Administrator

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By:  Dated: 5/12/2016
Jeanne Amos
Library Director

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

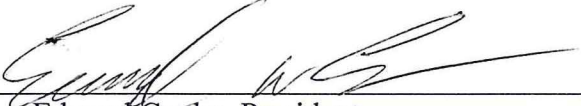
-- COUNTY OF EL DORADO --

Dated: 5/10/16
By: 
Chair
Board of Supervisors
"County"

ATTEST:
James S. Mitrison
Clerk of the Board of Supervisors

By:  Dated: 5/10/16
Deputy Clerk

-- EL DORADO WESTERN RAILWAY FOUNDATION --

By:  Dated: 5-16-19
Edward Cunha, President