

Memorandum of Understanding:

Colorado Department of Transportation and the Southwest Chief and Front Range Passenger Rail Commission

Revised: 10/24/2019

This Memorandum of Understanding serves to detail the Intra-Agency Agreement (“IAA”) between Colorado Department of Transportation, (“CDOT”) and the Southwest Chief and Front Range Passenger Rail Commission (“SWC & FRPRC”). CDOT and SWC & FRPRC may hereinafter be referred to individually as “Party” and collectively as the “Parties.” The purpose of this agreement is to ensure mutual understanding and establish roles and responsibilities for the Front Range Passenger Rail Project Planning Phase (“Planning Phase”) of the Front Range Passenger Rail Project (“the Project”).

I. Recitals.

- A. The Colorado Department of Transportation (“CDOT”) is an agency of the State of Colorado authorized pursuant to C.R.S. § 43-1-105 to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local, and other state agencies.
- B. The Southwest Chief and Front Range Passenger Rail Commission, created by C.R.S. § 43-4-1001 within the Colorado Department of Transportation, is empowered to facilitate the future of front range passenger rail and develop legislation to facilitate the development of a front range passenger rail system providing passenger rail service in and along the Interstate 25 Corridor under powers granted to the Rail Commission pursuant to C.R.S § 43-4-1001(3)(II).
- C. The work of the SWC & FRPRC advances CDOT’s objectives by promoting and expanding the available transportation options, and integrating modal options for the State of Colorado.
- D. The “Planning Phase” includes activities and tasks related to the development of a Service Development Plan, Pre-NEPA, and NEPA tasks. The Planning Phase shall exist and continue until a Final Environmental Impact Statement (FEIS) has been issued and a Record of Decision has been published.
- E. The SWC & FRPRC, in accordance with C.R.S §43-4-1001, is tasked with and authorized to facilitate the future of a Front Range Passenger Rail system. This project consists of planning and preliminary engineering.
- F. The SWC & FRPRC currently anticipates that the funding for the initial phases of the Project will originate from State, or Federal sources.
- G. Additional state funding for the Planning phase will be subject to Fiscal Year appropriation by the Colorado legislature during future legislative sessions.
- H. CDOT and the SWC & FRPRC acknowledge that time is of the essence to complete this project. Both parties pledge to lead and respond in a timely fashion and to avoid unreasonable delays in order to maintain momentum.

II. Terms and Conditions.

A. Initial Project Planning Budget.

SB 18-001 allocated \$1.5 million in funds to the SWC & FRPRC to begin work on a Service Development Plan; CDOT has provided \$1.5 million as an in-kind contribution of additional state funds for the planning effort.

B. CDOT Responsibilities. Except as otherwise identified in this agreement, , CDOT shall support and advise the Planning Phase of the Project including, but not limited to, the following:

- i. CDOT will provide reasonable cooperation with SWC & FRPRC with regard to the funding and any continuing disclosure or other ongoing related obligations.
- ii. CDOT staff will provide procedural and subject matter expertise on overall transportation project development and delivery. This includes but is not limited to: planning, travel demand forecasting, document management, data collection, procurement, communications, engineering and design, financing, and agency coordination.
- iii. CDOT staff will partner with the SWC & FRPRC on high-level matters including consultant activities, CDOT activities, legislative and governance topics, and Front Range Passenger Rail public relations. CDOT will be consulted on decisions that impact project schedule, policy, budget, and goals.
- iv. CDOT staff will support the day-to-day activities of the consultant team and the development of a Service Development Plan and subsequent NEPA-related actions.
- v. CDOT staff will advise on decisions that relate to the day-to-day activities of the project, technical issues related to the planning phase, consultant agreements and contracts, and study parameters.
- vi. For subsequent phases, CDOT will be responsible for acquiring all rights-of-way, if any, necessary for the Project and for compliance with the Uniform Federal Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4601, et seq.) requirements.
- vii. If necessary in subsequent phases, CDOT will be responsible for obtaining the proper clearance or approval from any public or private utility company that may become involved in the Project.
- viii. CDOT will ensure that all work and agency coordination in connection with the Project is done in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (42 U.S.C § 4321, et seq.).

- ix. CDOT will ensure compliance with Federal Disadvantaged Business Enterprise requirements during the planning phase.
- x. In the event the Project involves modifications of a railroad company's facilities whereby the related work is to be accomplished by railroad company forces, CDOT shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that work without compliance. CDOT shall also establish a contract with the railroad company concerning federal aid projects involving railroad facilities.
- xi. Document Retention: Pursuant to C.R.S. § 24-106-106, CDOT shall maintain all documents related to the Planning Phase of the Project and make them available for inspection and review by the SWC & FRPRC and all federal agencies with an interest in the Project for a period of not less than six years after the completion of the work.

C. SWC & FRPRC Responsibilities.

- i. Oversee, Direct and Advise the Project Team, including consultant and CDOT staff.
- ii. SWC & FRPRC will be tasked as the decision-making authority on high-level matters including consultant activities, and Front Range Passenger Rail public relations. SWC & FRPRC will be consulted on decisions that profoundly impact the project schedule, budget, and goals.
- iii. SWC & FRPRC staff will be responsible for overseeing and managing the day-to-day activities of the selected consultant team and the development of a Service Development Plan and conducting stakeholder engagement.
- iv. SWC & FRPRC staff will be the decision-making authority on decisions that relate to the day-to-day activities of the project, technical issues related to the planning phase, consultant agreements and contracts, and study parameters.
- v. SWC & FRPRC shall maximize access to the various resources and constituents that are under the purview of Commissioners and their represented organizations.
- vi. SWC & FRPRC shall hire its own staff even though such staff will be CDOT employees.

D. Shared Responsibilities:

- i. CDOT and the SWC & FRPRC will cooperate with the disclosure of other ongoing related obligations.
- ii. CDOT and the SWC & FRPRC will not speak on behalf of either party. However, both parties will partner to ensure joint communication methods.

- iii. CDOT and the SWC & FRPRC will both be responsible as decision-making authority on legislative and governance topics that impact each parties' mission and function.
- iv. Escalation and Resolution Process: When an issue arises that would require review, discussion, investigation or resolution by both parties, the following process will be followed:
 1. Proactive identification and discussion of issues using the appropriate forums – avoids creating fire drills
 2. Make decisions at the front-line levels as much as possible
 3. Fair hearing of issues – put aside personal agendas
 4. Live by the precepts of the project vision and support final decision
 5. Escalate to next level if required – provide facts and alternative solutions
 6. Identified decision-makers are “equal” in authority for each level

III. Termination.

- A. By Parties. This agreement may be terminated at any time by mutual agreement of the Parties.
- B. By General Assembly. The Parties acknowledge the General Assembly has the power to terminate this Agreement and/or dissolve one or both Parties, except as any such action impairs the obligation of contracts entered into by either Party under this Agreement.
- C. Time. The terms and conditions of this agreement will become effective when executed by all the parties, and will be effective for three years, unless extended or terminated. At that time, a re-evaluation will be conducted by both parties whereupon the agreement may be extended another three years. The parties will determine whether the terms and conditions of this MOU are still satisfactory to each party and whether modifications are required.

IV. Amendment.

Amendments to this Agreement must be in writing and must be duly authorized and approved by CDOT and the SWC & FRPRC.

V. General Provisions.

A. Effective Date; Term.

This Agreement shall be effective as of the date first written above and shall continue until the earlier of (i) the useful life of the planning phase; (ii) the date SWC & FRPRC no longer operates the Project; and (iii) the Parties mutually agree to terminate the Agreement.

B. Modification.

This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as specifically provided otherwise herein, no modification of this Agreement shall be effective unless agreed to in writing by both parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

C. Severability.

The terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

D. Successors and Assigns.

Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

E. No Third Party Beneficiaries.

No third party beneficiary rights or benefits of any kind are expressly or impliedly provided herein. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person.

F. Governmental Immunity.

Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., or the Federal Tort Claims Act, 28 U.S.C. § 2871, et seq., as applicable now or hereafter amended.

G. Adherence to Laws.

At all times during the performance of this Agreement, the Parties shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established, including, but not limited to, federal and state laws respecting discrimination and unfair employment practices.

H. Availability of Funds.

All payments pursuant to this agreement are subject to and contingent upon the continuing availability of funds, appropriated for the purposes hereof. If any of said funds become unavailable, as determined by CDOT or the SWC & FRPRC, either Party may immediately terminate or seek to amend this agreement, subject to the provisions set forth in ____.

I. Choice of Law.

The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations, shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision, in whole or in part, shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

Colorado Department of Transportation Southwest Chief & Front Range
Passenger Rail

By

Steve Harelson, Chief Engineer

Date

By

Jill Gaebler, Chairman

Date