

Joint Service: Intergovernmental Agreement Fact Sheet

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- **Why did we workshop the IGA in May for eventual Summer adoption?**

- In order to get the best value for the public, BNSF needs to see an affirming action that shows the six public entities have agreed to govern one service together instead of providing multiple different services, separately, on BNSF's northern front range rail line. Adoption and execution of the IGA by the Parties will demonstrate their commitment to providing one joint service.
- The public entities' Boards are being asked to authorize their JSEOC Member to act in this matter. The Boards are being asked to authorize the execution of the IGA.
- The Board authorizations described here are needed to set up for a successful negotiation with BNSF.
- An appropriation or budget vote will not be required of the Boards until after a successful negotiation with BNSF. That negotiation will determine the terms and costs for the access agreement and the infrastructure upgrades needed for the characteristics of service that match the access agreement.
- After completion of a successful negotiation with BNSF, the Parties will be asked to adopt a Financial Plan (as defined in the IGA) which will be based on the actual costs of the Joint Service Project. These final costs then will be presented to the Boards for a binding appropriation or budget vote. Only then will the Parties be considering and approving amounts of individual Contributions (as defined in the IGA).

- **What is in the IGA?**

- Original Members of the Joint Service Executive Oversight Committee (JSEOC) are the following: The Governor or their designee, the General Manager and CEO of RTD or their designee, the Interim General Manager of FRPRD or their designee, the Executive Director of CDOT or their designee, the Director of CTIO or their designee, and the Director of Clean Transit Enterprise or their designee.

- Decisions made by the JSEOC regarding actions and operations on behalf of the Joint Service Project will be made by the Members of the JSEOC, with super majority voting rules. In other words, in any vote during this time, assuming there are 6 voting Members, the vote of 5 voting members will prevail.
- Appropriations or contracts approved by the JSEOC for the Joint Service Project will still need action by the Parties' Boards unless a Board has delegated its own authority to its JSEOC Member.
 - For example:
 - If CTIO were to issue bonds to finance the PTC on the line, then CTIO's Board would still need to approve that Bond issuance.
 - The IGA cannot compel CTIO's Board to act.
 - Nothing in the IGA can compel or impede actions by the CTIO Board. The CTIO Board maintains its statutory authority and its fiduciary duties.
 - Another example:
 - If RTD is to change its existing contract with DTO to accommodate the Joint Service trains on the B Line, or if RTD is contractually obligated to make an annual contribution to the operators of the Joint Service then the RTD Board would still need to approve that contract and follow their own procedures for that action.
- Once the Parties' Boards have adopted the Financial Plan and contracted to make Contributions to the Joint Service Project, then any Member may ask for a weighted vote based on the amount of Contributions made to the Joint Service Project (all capitalized terms as defined in the IGA.)
 - This weighted voting mechanism is for added protection for the interests of the Parties making large financial contributions to the Joint Service Project to ensure fiduciary fidelity to their organizations. The details of weighted voting are set forth in the IGA.
- **When are Governing Boards expected to adopt the IGA?**
 - The Joint Service Project team conducted workshops with each Parties' Board – CTIO, CTE, TC, RTD, FRPRD – in the month of May to introduce the IGA and workshop it with each Board and their corresponding Counsel.

- Counsel from each entity participated in drafting the IGA. It was a collaborative effort.
 - Beginning in April and through mid-June, Members and Working Groups of the JSEOC have been providing direct feedback on the IGA through multiple iterations.
 - Community and stakeholder engagement has been ongoing.
 - The IGA has been updated based upon further feedback, and a vote regarding adoption of the IGA will occur in June for each entity.
- **What is the JSEOC Doing?**
 - The JSEOC will jointly steer negotiations with BNSF and solicit an operator for passenger rail service. The JSEOC has one mission: to provide passenger rail service as soon as possible to the northern communities while laying the foundation for expansion of passenger rail once Front Range Passenger Rail successfully passes a ballot initiative to expand the service.
 - The JSEOC will strive to approve designs for and implement the Joint Service Project in a manner that will not render infeasible the interface of the Project with the existing operations of RTD.
 - The JSEOC will seek to make decisions and investments that will be mutually beneficial for the Joint Service Project and Front Range Passenger Rail District. The JSEOC will not approve any course of action with respect to the Joint Service Project that would have the effect of unreasonably and severely impairing the implementation or operation of the Front Range Passenger Rail system.
 - The IGA provides processes for termination of the IGA, withdrawal of a Party from the IGA, and creation by the JSEOC of a Transfer Plan (as defined in the IGA) with a vote of the Members.

FAQ:

- **Why are these the Members of the Joint Service Executive Oversight Committee?**
 - The Members of the JSEOC are the Governor and the executives of each of the 5 subdivisions of the state that are coming together to finance and govern a passenger rail service. The public entities (the “Parties”) are all legally independent entities. Each of the Parties has its own governance board. These governing boards are charged in state law with making the policy decisions, preparing and adopting the budget, and appropriating funds for those entities.

Each of these entities is contributing to the Joint Service Project or has a stake in the future of Joint Passenger Rail Service.

- Just as RTD is a subdivision of the state but has its own Board and budgets its own revenue sources, so are the other entities that make up the JSEOC. Two of the public entities, CTIO and CTE, also are “enterprises” for TABOR purposes. Unlike RTD, these enterprises must use their revenue generated from fees for the sole purpose of benefiting the payers of those fees.
- **What happens if one entity chooses not to adopt the Financial Plan and fund the service?**
 - Upon completion of a successful negotiation for access with BNSF, which would aim to include the negotiation list of needed infrastructure improvements for the characteristics of service agreed upon by all Parties, each of the JSEOC Members will be asked to approve adoption of the Financial Plan and make a binding commitment for Contributions to the Joint Service Project. The Members must have the approval of their Boards to adopt the plan and make the Contributions. If one of the Parties fails to do one or both of these things, it is unlikely that the remaining Parties would proceed, as there would likely not be enough funding to commence Joint Service.
- **What happens if there is a dispute among the Members of the JSEOC?**
 - Votes can be called to make decisions on how to execute the Joint Service Project. For instance, a decision to adopt the BNSF access agreement or to pursue purchases of rolling stock after the adoption of a Financial Plan can be made by a super majority vote, or a weighted vote, depending on the choice of the Members.
 - Disputes related to the IGA terms and conditions or powers of the JSEOC would go through the dispute resolution process set forth in the IGA.