

Joint Service: Intergovernmental Agreement Fact Sheet

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- **Why should 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 Members of the JSEOC 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: 1) the execution of the IGA and 2) the adoption of a resolution that there is the intent to commit to fund the joint service. Both actions are fully contingent on the completion of the joint service study, the successful completion of an access agreement negotiation with BNSF, and the availability of funds as required by the Financial Plan (defined in the IGA.)
- The Board authorizations described here are needed to set up for a successful negotiation with BNSF.
- An appropriation vote will not be required 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. These final costs then will be presented to the Boards for a binding appropriation vote. At this time, we are seeking a fully contingent resolution of intent to appropriate funds to joint service, without a dollar amount.
- After completion of a successful negotiation with BNSF, the Boards will be asked to adopt the Financial Plan (as defined in the IGA) which will be based on the actual costs of the Joint Service Project. Only then will the Boards be considering and approving definitive financial amounts.

- **What is in the IGA?**

- 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 regarding the actions and operations of Joint Service will be made by the Members of the JSEOC. It is anticipated that decisions will be made with a 50%+1 voting rule during the continuation of the Joint Service study and into the negotiations with BNSF. In other words, a vote during this time period of 4 voting members will prevail.
- Appropriations or contracts entered into by the JSEOC for the Joint Service Project will still need action by the public entities' 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 joint service IGA cannot compel CTIO's Board to act.
 - Nothing in the joint service 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 modify its existing concessionaire agreement 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 make that appropriation and follow their own procedures for that action.
- Once the public entities' Boards have adopted the Financial Plan and made an appropriation to the Joint Service Project, it is expected that the JSEOC will make decisions by the 50%+1 rule, but consideration is being given to a weighted vote based on Contributions made to the Joint Service Project (all capitalized terms as defined in the IGA.)
 - This weighted voting mechanism could be added protection for the interests of the public entities making large financial contributions to the Joint Service Project to ensure fiduciary fidelity to their organizations.
- **When are Governing Boards expected to adopt the IGA?**
 - The Joint Service Project team will conduct workshops with each 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 is helping draft the IGA. It is a collaborative effort.
 - Beginning in April and through early May, Members of the JSEOC have been providing direct feedback on the IGA through multiple iterations.
 - Following the workshops, the IGA will be updated based upon further feedback, and adoption of the IGA will occur between June and July for each entity.
 - The dates of the workshops:
 - May 14: CDOT Transportation Commission, CTIO, and CTE Boards
 - May 23: Front Range Passenger Rail Board ("FRPRD")
 - May 28: Regional Transportation District ("RTD")
- **What is the JSEOC Doing?**
 - The JSEOC will jointly design the study, 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 IGA provides that the JSEOC will strive to approve designs for and implement the Project in a manner that will not render infeasible the interface of the Project with the existing operations of RTD and will not be inconsistent with the future plans for Front Range Passenger Rail.

- The IGA provides for transfer of interests, assets, and obligations of any Party, the intent of which is to ensure that there always will be only one access agreement and one operator on the northern front range sub owned by BNSF.

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 subdivisions of the state that are coming together to finance and govern a passenger rail service. The public entities are all legally independent entities. Each of the public entities 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 or has a stake in the future of joint service.
 - Just as RTD is a subdivision of the state but has its own board and makes independent appropriations with 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. 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 adopt the Financial Plan and make a binding appropriation for joint service. The Members must have the authorization of their Boards to adopt the plan and make the appropriation. If one of the public entities fails to do one or both of these things, it is unlikely that the remaining public entities 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?**
 - The IGA currently anticipates that votes can be called to make a decision, either via the 50%+1 rule or, if the dispute is after the adoption of the Financial Plan the Members can ask for a weighted vote.