

**RESOLUTION NO. 2024-09
OF THE FRONT RANGE PASSENGER RAIL DISTRICT**

**ENTERING INTO A MEMORANDUM OF UNDERSTANDING WITH
THE CHEYENNE AREA METROPOLITAN PLANNING ORGANIZATION**

WHEREAS, pursuant to Section 32-22-101, *et. seq.*, C.R.S. (the “Act”), the Front Range Passenger Rail District (the “District”) was established as a body politic and corporate and a political subdivision of the state to research, develop, construct, operate, and maintain an interconnected passenger rail system within the front range that is competitive in terms of travel time for comparable trips with other modes of surface transportation; and

WHEREAS, Section 32-22-106(1)(c)(I)(A), C.R.S., authorizes the District to enter into memoranda of understanding and intergovernmental agreements with other governmental entities, including states that border Colorado; and

WHEREAS, Section 32-22-105(2)(d), C.R.S. authorizes the Board of Directors of the District (the “Board”) to pass resolutions necessary for the government and management of the affairs of the district and the execution of the District’s powers and duties; and

WHEREAS, the Board desires to enter into a memorandum of understanding with the Cheyenne Area Metropolitan Planning Organization (the “MOU”) to collaborate and study the extension of passenger rail service from Fort Collins to Cheyenne, Wyoming.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Front Range Passenger Rail District that the Board of Directors hereby approves the MOU, attached hereto as **Exhibit A**, and authorizes the General Manager to execute the MOU in substantially the form presented, with such non-material modifications as may be approved by the General Manager and District legal counsel.

APPROVED this 31st day of May 2024.

Christopher E Nevitt
Christopher E Nevitt (Jun 6, 2024 13:04 MDT)

Chair

ATTEST:

Joan Peck
Joan Peck (Jun 7, 2024 06:54 MDT)

Secretary

EXHIBIT A
MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is by and between the Cheyenne Area Metropolitan Planning Organization, an independent governmental agency existing under the laws of the State of Wyoming (“MPO”), located at 2101 O’Neil Avenue, Cheyenne, Wyoming 82001, and the Front Range Passenger Rail District (the “District”), located at 1800 W. 33rd Ave. Ste. 200, Denver, CO, 80211. The MPO and the District are collectively referred to as “Party” or “Parties.” This MOU shall become effective upon the date of the last signature affixed hereto.

WHEREAS, Wyo. Stat. § 16-1-104(f) permits the MPO to enter into an agreement with the District for the “purposes of operating a cooperative public transportation program to transport passengers on one or more routes beginning in, ending in or passing through Wyoming.” A “‘cooperative public transportation program’ means a not-for-profit program designed to transport passengers to and from work or to another location on a regularly scheduled basis using vehicles operated by an agency or a governmental entity of another state.”; and

WHEREAS, pursuant to § 32-22-106(1)(c)(I)(A), C.R.S., the District is empowered to enter into memoranda of understanding and intergovernmental agreements with other governmental entities, including states that border Colorado; and

WHEREAS, the District intends to research, develop, construct, operate, and maintain a cooperative public transportation program to transport passengers to and from Wyoming and Colorado in the form of a passenger rail system; and

WHEREAS, the MPO supports the District in the establishment of a passenger rail system between Wyoming and Colorado; and

WHEREAS, the Parties desire to collaborate and study the extension of passenger rail service from Fort Collins to Cheyenne.

NOW, THEREFORE, the Parties agree as follows:

1. Purpose. The purpose of this MOU is to form a collaboration between the MPO and the District and to jointly advocate for extending passenger rail from Fort Collins to Cheyenne.
2. Term. This MOU shall commence on the last date executed by the duly authorized representatives of the Parties to this MOU and shall remain in full force and effect until either party submits in writing its dissociation from the collaboration as set forth in Section 7.k of this MOU.
3. Payments. Neither Party shall have any obligation to make any payment of any kind to the other Party under this MOU.
4. Conditions. Pursuant to Wyo. Stat. 16-1-104(f), this MOU applies only to the operation of a cooperative public transportation program and is conditioned upon the District extending its governmental immunity to the MPO while operating a cooperative public transportation program.
5. Responsibilities of the District. The District shall:
 - a. In accordance with 32-22-104(g)(II), C.R.S., include a resident of Wyoming appointed by the Governor of Wyoming on the District's Board of Directors as an advisory nonvoting member. Notwithstanding any provision of this MOU, the Director representing the state of Wyoming shall retain all of the rights and obligations afforded to such individual as a director of the District's Board and shall not, for purposes of this MOU, be construed to be the representative of either Party unless such designation is made with specificity with respect to any such action taken by such director.
 - b. Share data and information pertaining to the progress being made on the subject of this MOU.

- c. Support the MPO in seeking funding opportunities for planning studies, for design and engineering, and for construction to extend passenger rail service from Fort Collins to Cheyenne.
 - d. Shall use reasonable efforts to assist the MPO with any subsequent applications for the purpose of including the extension of passenger rail service from Fort Collins to Cheyenne into the Federal Corridor ID program.
- 6. Responsibilities of the MPO. The MPO shall:
 - a. Send a representative that regularly attends, virtually or in person, monthly meetings of the District's Board of Directors.
 - b. Share data and information pertaining to the progress being made on the subject of this MOU.
 - c. Seek funding opportunities for planning studies, design and engineering, and construction to extend passenger rail service from Fort Collins to Cheyenne.
 - d. Initiate the application of the rail corridor from Fort Collins to Cheyenne into the Federal Corridor ID program.
- 7. General Provisions.
 - a. Amendments. Any changes, modifications, revisions, or amendments to this MOU which are mutually agreed upon by the Parties to this MOU shall be incorporated by written instrument, executed, and signed by all Parties to this MOU.
 - b. Assignment. No Party may assign or transfer the responsibilities or agreements made herein without the prior written consent of the non-assigning Party, which approval shall not be unreasonably withheld.

- c. Applicable Law. The construction, interpretation, and enforcement of this MOU shall be governed by the laws of the State of Colorado. The courts of the State of Colorado shall have jurisdiction over this MOU and the Parties, and the venue shall be in the City and County of Denver.
- d. Compliance with Laws. The Parties shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this MOU.
- e. Nondiscrimination. The Parties shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act, Wyo. Stat. § 27-9-105, *et seq.*, Colorado's nondiscrimination laws broadly contained in article 34 of Title 24, the Americans With Disabilities Act (ADA), as amended, 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto, and shall not discriminate against any individual on the grounds of age, sex, creed, color, race, religion, national origin, ancestry, pregnancy, or qualifying disability in connection with the performance under this MOU.
- f. Governmental Immunity.
 - i. No term or condition of this MOU shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, in the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b); Colorado's risk management statutes, § 24-30-1501, *et seq.*, C.R.S.; Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable laws. Designation of venue, choice of law, enforcement

actions, and similar provisions shall not be construed as a waiver of governmental immunity. The extension of the District's governmental immunity pursuant to Wyo. Stat. 16-1-104(f) shall not be construed as a waiver of governmental immunity.

- ii. Liability for claims for injuries to persons or property arising from the negligence of the Parties, their employees, and their officials shall be controlled and limited by the provisions set forth in Section 7.f.i.

g. Third-Party Beneficiary Rights. The Parties do not intend to create in any other individual or entity, the status of third-party beneficiary and this MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only between the Parties to this MOU and shall inure solely to the benefit of the Parties to this MOU. The provisions of this MOU are intended only to assist the Parties in determining and performing their obligations under this MOU. The Parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

h. Force Majeure. The performance of this MOU by the Parties shall be subject to force majeure including, but not limited to, acts of God, fire, flood, natural disaster, war or threat of war, acts or threats of terrorism, civil disorder, unauthorized strikes, governmental regulation or advisory, recognized health threats as determined by the World Health Organization, the Centers for Disease Control, or local

government authority or health agencies (including, but not limited to, the health threats of COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, or other similar occurrence beyond the control of the Parties, where any of those factors, circumstances, situations, or conditions or similar ones prevent, dissuade, or unreasonably delay the performance required by this MOU. This MOU may be cancelled by any Party, without liability, damages, fees, or penalty, and any unused deposits or amounts paid shall be refunded, for any one or more of the above reasons, by written notice to the other Party.

- i. Severability. If any provision of this MOU is found to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this MOU is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- j. Notice. All notices arising out of or from the provisions of this MOU shall be in writing and given to the Party either by regular mail or delivery in person.
- k. Termination. Any Party may terminate its participation in this MOU, with or without cause, by providing thirty (30) days written notice to the other Party.
- l. Prior Approval. This MOU shall not be effective and no services shall be performed under the terms of this MOU until it has approved by all necessary authorities. No payments shall be made under the terms of this MOU until such obligations are made by written amendment to the MOU.

m. Entirety of MOU. This MOU represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

8. Signatures. In witness whereof, the Parties to this MOU, through their duly authorized representatives, have executed this MOU on the days and dates set out below and certify that they have read, understood, and knowingly and voluntarily agreed to the terms and conditions therein.

Cheyenne Area MPO

Date

By: _____
Patrick Collins, Chair

(SEAL)
Attest:

Kristina F. Jones, City Clerk

Front Range Passenger Rail District

Date

By: _____
Andy Karsian, General Manager

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Final Audit Report

2024-06-07

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"Resolution No. 2024-09 ENTERING INTO MOU WITH CHEYENNE MPO" History

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