

**RESOLUTION NO. 2024-03
OF THE FRONT RANGE PASSENGER RAIL DISTRICT
APPROVING CONTRACT FOR SERVICES WITH WPAI**

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 32-22-105(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, pursuant to Section 32-22-105(2)(g)-(h), C.R.S., the Board is authorized to appoint, hire, and retain professional consultants; to prescribe methods for the letting of contracts for labor, materials, or supplies; and to prescribe methods for the performance or furnishing of labor, materials, or supplies that may be required to carry out the purposes of the Act; and

WHEREAS, the Board desires for the District to enter into a contract with WPA Intelligence (“WPAi”) for the purpose of surveying District voters and providing the Board with advice based upon their research (the “Contract for Services”); and

WHEREAS, pursuant to Section V of the District’s Procurement and Purchasing Policy for Goods and Services (“Procurement Policy”), the District is authorized to enter into this Agreement without conducting competitive procurement because the Board has determined it is in the best interests of the District to procure by non-competitive proposal.

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 Contract for Services attached hereto as Exhibit A and ratifies any prior execution of the same.

APPROVED this 1st day of March 2024.

Christopher Nevitt
Christopher Nevitt (Mar 11, 2024 19:07 MDT)

Chair

ATTEST:

Joan Peck
Joan Peck (Mar 7, 2024 22:25 EST)

Secretary

EXHIBIT A
CONTRACT FOR SERVICES

CONTRACT FOR SERVICES

This CONTRACT FOR SERVICES (the “Contract”) is made and entered into as of this 23rd day of February, 2024, by and between WPA Intelligence (the “Consultant”) and the Front Range Passenger Rail District (the “District”) (each individually referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, pursuant to Section 32-22-101, *et. seq.*, C.R.S. (the “Act”), 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, except as otherwise specifically provided, the Board of Directors of the District (the “Board”) exercises and performs all powers, privileges, and duties vested in or imposed upon the District in the Act; and

WHEREAS, pursuant to Section 32-22-105(2)(g)-(h), C.R.S., the Board is further authorized to appoint, hire, and retain professional consultants; to prescribe methods for the letting of contracts for labor, materials, or supplies; and to prescribe methods for the performance or furnishing of labor, materials, or supplies that may be required to carry out the purposes of the Act; and

WHEREAS, pursuant to Section V of the District’s Procurement and Purchasing Policy for Goods and Services (“Procurement Policy”), the District is authorized to enter into this Contract without conducting competitive procurement; and

WHEREAS, pursuant to the Procurement Policy, the Board has determined that it is in the best interests of the District to select the Consultant to perform the Services by non-competitive proposal.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Consultant and the District hereby agree as follows:

TERMS AND CONDITIONS

1. Scope of Services. The Consultant shall perform the services described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Services”) in a professional manner, using the degree of skill and knowledge customarily employed by other professionals performing similar services.

Exhibit A may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Contract and terms set forth in Exhibit A, the terms in the body of this Contract shall

govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Contract (including Exhibit A) or through other authorization expressly delegated to or authorized by the District through its Board.

2. Period of Services and Termination. The period for providing the services and deliverables under this Contract shall commence on February 15, 2024. All services to be provided under this Contract are to be completed by Consultant no later than April 31, 2024. The Contract will terminate upon completion of the Services or unless earlier terminated. Either Party shall have the right to terminate this Contract at any time, with or without cause, by providing written notice of termination to the other Party and effective upon the date of such notice. Upon termination, Consultant shall provide an invoice for all services provided as of the date of such notice, and the District shall pay Consultant for all services provided to the date of such notice.

3. Compensation. The District will pay Consultant an amount not to exceed \$50,000, payable as set forth in Section 4. This sum shall compensate Consultant for the performance of all the Services, including, sampling, instrument design, fielding, topline, cross-tabs, findings & recommendations deck, and presentation of results. Any pre-approved Consultant travel will be invoiced for reimbursement within 30 days of associated travel.

4. Payment and Invoicing.

a. Payment shall be made within 30 days following the receipt of the invoice by the District (“Due Date”), provided that the District receives such invoice before the regular monthly draw date (which date is the 15th day of each month unless Consultant receives written notice from the District of any change to that date). Consultant shall submit invoices each month to frontrangeprd@bill.com, with a copy to procurement@frprdistrict.com.

b. If the District objects to any invoice submitted by Consultant, the District shall so advise Consultant in writing giving reasons therefor. If any invoice submitted by Consultant is disputed by the District, only that portion so disputed may be withheld from payment, and the remainder shall be payable within the timeframe set forth in this Section 4.

5. Annual Appropriation. Notwithstanding anything to the contrary contained in this Contract, the District shall have no obligations under this Contract after, nor shall any payments be made to Consultant in respect of any period after December 31 of any year, without an appropriation therefor by the District in accordance with a budget adopted by the Board in compliance with the Local Government Budget Law (Section 29-1-101, *et. seq.*, C.R.S.) and Article X, Section 20 of the Colorado Constitution (“TABOR”).

6. Consultant Personnel. Todd Vitale shall be Consultant’s contact with respect to this Contract and performance of the Services. In providing such services,

Consultant shall make available professionals of recognized experience and qualifications to work on this matter. Consultant represents that at all times in the performance of the Services, Consultant's personnel shall comply with any and all applicable laws, codes, rules, and regulations. The Consultant understands and acknowledges that the District, its Board, and employees are subject to Colorado's Fair Campaign Practices Act, TABOR, and the Uniform Election Code of 1992.

7. **Insurance.** Consultant shall carry and maintain during the term of this Contract (unless otherwise specified):

a. Commercial general liability insurance consistent no less broad than the most current ISO Form CG001 with minimum limits of \$1,000,000 per occurrence and \$1,000,000 general aggregate;

b. Business Automobile liability insurance covering all owned, non-owned, and hired vehicles in an amount of not less than \$1,000,000 combined single limit; and

c. Workers' compensation insurance as required by Colorado law.

8. **Indemnification.** Consultant shall defend, release, indemnify, save, and hold harmless the District, its officers, agents, and employees from and against and all claims, demands, suits, actions, liabilities, costs, expenses, causes of action, or other legal, equitable or administrative proceedings of any kind or nature whatsoever, of or by anyone whomsoever, arising out of the acts or omissions of Consultant in its performance under this Contract. This Section 8 shall survive termination of this Contract. Consultant shall not be liable to the District for any consequential damages resulting in any way from the performance of the Services.

9. **Relationship of the Parties.** Consultant shall perform under this Contract as an independent contractor and it is not intended, nor shall it be construed, that Consultant or any employee or subcontractor to Consultant, is an employee, partner, or joint venture of the District for any purpose whatsoever.

10. **Open Records.** Delivery of the Services may require the Consultant to use data belonging to the District. Any data provided by the District will remain property of the District. Additionally, all Records prepared by Consultant in connection with the Services shall become property of the District. Consultant shall execute written assignments to the District of all rights (including common law, statutory, and other rights, including copyrights) to the same as the District shall from time to time request. For purposes of this Section 10, Records includes any Records created by any employee or subconsultant in connection with the performance of the Services and additional services under this Contract.

The Parties acknowledge that the records under and related to this Contract may be subject to the Colorado Open Records Act, Colo. Rev. Stat. §§ 24-72-201 to 206. In the event of a request to the District for disclosure of information identified by Consultant as

Consultant's "Confidential Commercial and/or Financial Information," the District shall advise Consultant of such request to give Consultant the opportunity to object to the disclosure of such information. In the event of the filing of a lawsuit to compel such disclosure, the District shall tender all such material to the court for judicial determination of the issue of disclosure and Consultant agrees to intervene in such lawsuit to protect and assert Consultant's claims of confidentiality against disclosure of such material. Consultant further agrees to defend, indemnify, save, and hold harmless the District, its officers, agents, and employees, from any claim, damages, expense, loss, or costs arising out of Consultant's intervention to protect and assert Consultant's claims of confidentiality against disclosure under this Section 10 including, without limitation, prompt reimbursement to the District of all reasonable attorneys' fees, costs, and direct damages that the District may incur directly or may be ordered to pay by such court.

11. No Discrimination in Employment. This Contract is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Consultant agrees that it will not discriminate in its employment practices in violation of any such applicable law or executive order. Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability. Consultant agrees to insert the foregoing provision in all subcontracts hereunder.

12. Conflict of Interest. The Parties agree that no official, officer, or employee of the District shall have any personal or beneficial interest whatsoever in the services or property described herein and Consultant further agrees not to hire or contract for services with any official, officer, or employee of the District or with any other person which would be in violation of Sections 18-8-308 and 24-18-101 *et seq.*, C.R.S.

13. Amendments. Any and all amendments, additions, or deletions to this Contract shall be null and void unless approved by the Parties in writing.

14. Time of Essence. Time is of the essence with respect to this Contract. Notwithstanding the foregoing, Consultant agrees to exercise diligence in the performance of its services consistent with the agreed upon project schedule, subject to the exercise of the generally accepted standard of care for performance of such services. If, through no fault of Consultant, such periods of time or dates are changed, or the orderly and continuous progress of Consultant's services is impaired, then the time for completion of Consultant's services shall be adjusted equitably.

15. Counterparts. This Contract may be executed in facsimile counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

16. **Successors and Assigns.** This Contract shall be binding on the District and Consultant and their respective successors and permitted assigns, provided Consultant shall have no right to assign this Contract without the express written consent of the District.

17. **Disputes.** In the event of a dispute between the parties, arising out of or related to this Contract, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute through good faith negotiations, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation. Should such efforts fail to resolve the dispute, either party may bring a cause of action in accordance with Section 18.

18. **Applicable Law and Venue.** Any and all claims, disputes or controversies related to this Contract, or breach thereof, shall be litigated in the state District Court for Denver County, which shall be the sole and exclusive forum for such litigation. This Contract shall be construed and interpreted under and shall be governed by the laws of the State of Colorado.

19. **Enforceability.** A determination that any provision of this Contract is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Contract to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

20. **Entirety of Agreement.** This document supersedes all prior agreements between the Parties, written or oral, and embodies the complete agreement and understanding among the Parties, written or oral, which may have related to the subject matter hereof in any way, and shall not be amended orally, but only by the mutual agreement of the Parties hereto in writing specifically referencing this Contract. This Contract sets forth the only agreements pursuant to which the District or any of its affiliates is obligated to pay money or any other benefit to Consultant.

21. **Waiver.** No failure or delay by either party in the exercise of any right hereunder shall constitute a waiver thereof. No waiver of any breach shall be deemed a waiver of any preceding or succeeding breach.

22. **Defined Terms.** Any capitalized terms not otherwise defined in this Contract shall have the meaning ascribed to such terms in the Indenture.

23. **Notices.** All notices or other communications required under this Contract shall be effected, either by personal delivery in writing, by certified mail return receipt requested, by facsimile transmission with evidence of confirmation, or by reputable overnight delivery. Notice shall be deemed to have been given when delivered, mailed or transmittal is confirmed to the Parties at the address set forth below or such other address as either Party may specify to the other Party in writing.

District:	Front Range Passenger Rail District 2921 W 38th Ave PMB 361 Denver, CO 80211 Telephone: 303.883.9381 E-Mail: info@frprdistrct.com
With copy to:	Kaplan Kirsch & Rockwell Attn: Stephen H. Kaplan, Esq. 1675 Broadway, Suite 2300 Denver, CO 80202 Telephone: 303.825.7000 Facsimile: 303.825.7005 E-Mail: skaplan@kaplankirsch.com
Consultant:	WPA Intelligence Attn: Todd Vitale 627 S. Corona St. Denver, CO 80209 Telephone: 303.748.1140 E-Mail: tvitale@wpaintel.com

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the date and year first written above.

District:

Front Range Passenger Rail District

By: Andrew Karsian

Name: Andy Karsian

Title: General Manager

Consultant:

WPA Intelligence

By: Todd Vitale
Todd Vitale (Feb 27, 2024 18:49 MST)

Name: Todd Vitale

Title: Principal

EXHIBIT A
(Scope of Services)



*Trusted Perspective
Innovative Data
Superior Results*

TO: FRONT RANGE PASSENGER RAIL DISTRICT
FROM: TODD VITALE
SUBJECT: LETTER OF ENGAGEMENT
DATE: FEBRUARY 7, 2024

**WPA INTELLIGENCE
STATEMENT OF WORK
Front Range Passenger Rail District**

Title	Description
Survey Research	FRPRD Survey of District Voters: • Geography: FRPR District • Universe: Likely Voters • Sample Size: n=500 ($\pm 4.4\%$ margin of error) • Methodology: All Live 65% Cells • 35 asked questions
Cost	\$50,000
Issued by:	Todd Vitale
Project Code #:	

1. Strategy

- a) Provide overall strategic advice based in part upon FRPR district research and various community goals and expectations within the District's boundaries. Ongoing consultation may include meeting with District staff, meeting with members of the Board, and reviewing materials prepared by precursor organizations, governmental agencies, and during the Service Development Planning process.

2. Polling

- a) Develop and recommend an overall strategy and timeline for completing the polling.
b) Develop a methodology and polling instrument to capture a statistically valid sampling of registered electors of the District.
c) Present a sample instrument to staff and the Board for review and input.
d) Conduct the polling in accordance with the agreed upon methodology and instrument.
e) Produce topline findings, cross-tabulations, and a full findings & recommendations report deck.
f) Present research findings to the Board – any/all (client-approved) travel will be billed separately.



2) Survey Research Timing and Deliverables

- a) **Timing:** Questionnaire development requires approximately 2-5 business days, with unlimited editing before reaching final approval. Estimated fielding would require approximately three to four days.
- b) **Deliverables:** Toplines and crosstabs are delivered the morning after fielding concludes, then an in-depth executive analysis deck is presented five business days after the survey has completed fielding.
- c) **Consultation:** Todd Vitale is available for team consultation and de-briefing discussions about the research findings. Additionally, key findings memorandums can be prepared for donors, media, or other interested parties.

3) Terms & Conditions

- a) This Exhibit is subject to the terms and conditions of the Agreement, which are incorporated herein as if a part thereof.
- b) **Ownership of Data:** Delivery of the Services may require the Company to use data belonging to the Client. Any data provided by the Client will remain property of the Client.
- c) **Confidentiality:** Both parties agree to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of research, data or other confidential information, and to prevent unauthorized use or access to it.
- d) **Compliance with Laws:** WPAi shall, while performing services for the Client in conjunction with this agreement, comply with all applicable local, state and federal laws and regulations.
- e) **Publicity:** In addition to the confidentiality provisions of the Agreement, neither party will, without the other party's prior written consent, use the name, service marks or trademarks of the other party or any of its affiliates.
- f) **Project Invoicing:** The Client agrees to pay for rendered services subject to the pricing as agreed between the parties. All payments are due upon receipt of invoice and prior to the release of any data, the standard late charges added after 30 days.

RESOLUTION No. 2024-03 APPROVING CONTRACT FOR SERVICES WITH WPAI

Final Audit Report

2024-03-12

Created:	2024-03-08
By:	Chrissy Breit (chrissy.breit@frprdistrct.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAApZKaAkTe_L4aZtVS12s7DXAFi8RmKfVI

"RESOLUTION No. 2024-03 APPROVING CONTRACT FOR SERVICES WITH WPAI" History

-  Document created by Chrissy Breit (chrissy.breit@frprdistrct.com)
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-  Document emailed to Christopher Nevitt (chris.nevitt@denvergov.org) for signature
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-  Document e-signed by Joan Peck (joan.peck@longmontcolorado.gov)
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