

**RESOLUTION NO. 2023-14
OF THE FRONT RANGE PASSENGER RAIL DISTRICT**

**APPROVING A CONTRACT FOR FINANCIAL ADVISORY SERVICES WITH ERNST
& YOUNG INFRASTRUCTURE ADVISORS, LLC**

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 Ernst & Young Infrastructure Advisors, LLC (“EYIA”) for the purpose of providing municipal and financial advisory services and financial modeling for the District (the “Contract”); and

WHEREAS, the Board passed Resolution No. 2023-06 at the April 21, 2023, Board of Directors meeting establishing a procurement and purchasing policy for goods and services (the “Procurement Policy”); and

WHEREAS, the District undertook a competitive procurement for the services, and following evaluations of the proposals received in response to the request for qualifications issued by the District, selected EYIA to provide the scope of services contemplated herein; and

WHEREAS, the Board further desires to authorize execution of Task Order 1 under the Contract and to authorize the appropriation of District funds therefor.

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, attached hereto as **Exhibit A**, and authorizes the General Manager to execute the Contract in substantially the form presented, with such non-material modifications as may be approved by the General Manager and District legal counsel.

BE IT FURTHER RESOLVED that the Board of Directors hereby approves Task Order 1 under the Contract, attached hereto as **Exhibit B**, authorizes the expenditure of funds for the

purposes set forth in Task Order 1 in an amount not to exceed the maximum amount set forth therein, and authorizes the General Manager to execute Task Order 1 in substantially the form presented, with such non-material modifications as may be approved by the General Manager and District legal counsel.

APPROVED this 11th day of December 2023.


Chair

ATTEST:


Julie Mullica (Dec 19, 2023 21:11 MST)
Secretary

EXHIBIT A
CONTRACT AND TASK ORDER 1

TASK ORDER CONTRACT
FOR
PROFESSIONAL SERVICES

This **TASK ORDER CONTRACT** (the “Contract”), made and entered into this _____ day of December, 2023 (hereinafter referred to as “Contract Effective Date”), by and between (a) the Front Range Passenger Rail District, a body politic and corporate and a political subdivision of the state of Colorado (hereinafter referred to as the “District”), acting by order of and through its Board of Directors (hereinafter referred to as “Board”), and (b) Ernst & Young Infrastructure Advisors LLC, a limited liability company organized under the laws of Delaware and with its principal address at One Manhattan West, 395 9th Ave, New York, NY 10001 (hereinafter referred to as “Consultant” and, together with the District, collectively the “Parties” and individually each a “Party”).

RECITALS

WHEREAS, the purpose of the is 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, the District identified the need to and benefit of securing the services of consultants to perform on-call, task order-based professional services to support its efforts; and

WHEREAS, the District issued a Request for Qualifications for Multiple Award Task Order Contracts (MATOCs) for Professional Services, dated September 13, 2023 (as amended by addenda, the “RFQ”) to select consultants to provide such Services; and

WHEREAS, pursuant to the process set forth in the RFQ, the District selected the Consultant as a “Pre-Qualified Applicant”; and

WHEREAS, on the basis of such selection the Board has now authorized the award of this Contract to Consultant; and

WHEREAS, this Contract sets out the terms and conditions pursuant to which the Consultant may perform Services from time to time pursuant to separate Task Orders (as defined below) to be separately awarded by the District.

NOW THEREFORE, in consideration of the promises, and of the terms, covenants, and conditions hereinafter contained to be kept and performed by the Parties hereto,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. Nature of Agreement

1.1. Entire and Integrated Contract

It is expressly understood and agreed by the Parties that:

- a. the following documents are incorporated into and made a material part of this Contract as though fully set forth herein: each "Exhibit" and "Attachment" hereto, including as Exhibit 5 certain federally required provisions (the "Federally Required Provisions"); the RFQ including its addenda; any Task Order(s) issued by the District to Consultant pursuant to this Contract, including any negotiated terms or costs for such Task Orders; and any related Request for Task Order Proposals ("RFTOPs") or direct solicitation package;
- b. this Contract, is comprised of this document and the other Contract Documents, which include the Exhibits and Attachments referenced and incorporated hereto, and all other materials referenced herein. Together the Contract and Contract Documents constitute:
 - (i) the entire agreement between the Parties hereto and supersedes any and all prior written or oral agreements between them concerning the subject matter contained herein; and
 - (ii) constitutes a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

1.2. Non-Exclusive Contract

The Consultant acknowledges and agrees that:

- a. this is a non-exclusive Contract and the District is only obligated to Consultant for the scope of Services and the amount of Consultant's compensation for same authorized within any given executed Task Order and any duly executed Amendment thereto;
- b. under the terms of the RFQ, the District has entered or will enter into one or more additional contracts ("Parallel MATOC Contracts") in equivalent form with other contractors;
- c. this Contract does not commit the District to any particular outcome with respect to any future RFTOP and/or directed solicitation for Task Orders including any commitment to issue any RFTOP or directed solicitation or subsequently award any Task Order to the Consultant; and
- d. Consultant shall cooperate fully and in all respects with other consultants and contractors of the District, including those awarded work under the Parallel MATOC Contracts.

2. Term of Contract

Unless terminated early, the term of this Contract will be for a period of three (3) years commencing upon the Contract Effective Date.

3. Services to be Performed by Consultant

3.1. Scope of Services

- a. The scope of services which the District may require the Consultant to perform under the terms of any Task Order(s) in accordance with Section 4 are set out in Exhibit 1 (the "Services").
- b. All Services will be assigned to Consultant by written Task Order(s) issued by the District and as may be further described in the Contract Documents. Consultant is authorized to perform only the Services outlined in such Task Order(s). Consultant is not authorized to, and will not perform, any Services unless and until specifically authorized under the terms of any Task Order(s).
- c. Should Consultant perform any Services outside of those that are specifically authorized in any Task Order(s), Consultant does so at its own risk and expense, and the District will not be obligated to compensate Consultant for such additional services.

3.2. Incidental Work

- a. It is expressly understood and agreed that Consultant will perform all ancillary, collateral, and incidental work required to complete the Services in accordance with this Contract and all applicable law as described by Task Order(s), including work for which no specific proposal item(s) was/were included, and/or including work which is required to furnish final, finished, and detailed Services consistent with and fulfilling the requirements of the Contract Documents.
- b. All such incidental work will not be considered extra work for which additional compensation can be claimed by Consultant.

3.3. Deliverables

In its performance of the Services, Consultant agrees to provide any deliverables defined in specific Task Order(s) issued pursuant to this Contract, which are otherwise reasonably necessary to complete the Task Order-defined Services, and as may be further described in the Contract Documents.

3.4. Standards for Performance of Services

- a. Consultant agrees to perform all Services in strict compliance with the Contract Documents, all applicable law and regulations, and the Standard of Care, for which purposes:
 - (i) the "Standard of Care" refers to the generally accepted professional standards of a specialist which provides professional services in the United States of America of the type, scope, quality, and complexity described in the Contract Documents; and

- (ii) the obligation to comply with law will include compliance with all applicable local, State, and Federal laws, rules and regulations, of any and all District, State and Federal agencies, which may have jurisdiction over, or be concerned with, the programming and planning of Services and/or project tasks.
- b. Further, and without in any way limiting the obligations set forth in Section 3.4.a, above, Consultant agrees to cooperate fully with the District in its efforts to comply with the Americans With Disabilities Act of 1990 and any amendments thereto, or successor statutes. Should Consultant fail to comply with this Section, then the District will have the right, but not the obligation, to perform, or have performed, whatever work is necessary to achieve equal access compliance. Consultant will then be required to reimburse the District, or the District will exercise its right to withhold from a future payment due and owing to Consultant the actual cost of achieving compliance.
- c. Consultant will provide for quality control and quality assurance of the Services, including to ensure compliance of such Services with all Contract Document terms and conditions.
- d. Consultant will be solely responsible for any and all damages caused, and/or penalties levied, as the result of Consultant's noncompliance with the foregoing obligations under this Section.
- e. Consultant will work with the District in resolving any conflicting legal authorities and/or Contract Document requirements, provided that to the extent resolution of conflicts is not possible, the District's determination will be final and binding.

4. Task Orders

4.1. Retention of Services by Task Order

- a. Any Services to be provided by Consultant will only be performed pursuant to written directives from the District to the Consultant (each, a "Task Order") that provide a detailed description of either the specific Services or tasks to be performed, the personnel to be assigned, the time frame for the subject Services to be performed, the not-to-exceed amount Consultant will be compensated for such Services, and any estimated expenses, together with such other terms and conditions as the District may require. Task Orders shall follow the form attached hereto as Exhibit 3.
- b. Task Orders and any and all amendments to Task Orders will be effective only if in writing and signed by the District and Consultant.
- c. Task Orders will be competitively awarded by the District under the terms of a RFTOP or otherwise awarded through direct solicitations, in either case with the method of solicitation to be determined by the District in its sole discretion. Consultant will provide a complete detailed proposal with respect to each Task

Order under the terms of any RFTOP or direct solicitation. The District reserves the right to reject any or all bids or proposals received in response to any RFTOP or other direct solicitation as it may determine in its sole discretion.

- d. The sharing of information regarding any RFTOP or other direct solicitation, or the performance of services under any Task Order, between or among the Consultant and contractors to any Parallel MATOC Contract, and the engagement in collusion between or among such parties, remains strictly prohibited.
- e. When the District elects to have a defined scope of Services performed pursuant to this Contract, the District may notify, in its own discretion, one or more contractors prequalified by the RFQ process, in writing, by sending them a RFTOP.
- f. The labor rates set forth in Exhibit 2 will be used in to establish the cost of the Services for any Task Orders issued through any future direct solicitation and/or RFTOP, as further provided in Section 6.

4.2. Changes to Scope of Services, Task Orders, or Project Schedule

- a. Changes to the scope of Services, Task Order, or project schedule will only be valid if memorialized by a written Task Order amendment signed by the Parties and issued by the District ("Amendment") in accordance with Section 28.5.
- b. The District may request changes to the scope of Services required by a Task Order(s) upon issuance of a written notice to Consultant in accordance with this section a ("Change Notice"). The Consultant will within ten (10) days after receipt of such Change Notice, notify the District in writing of any impact of the Change Notice on either time or compensation, provided that claims for changes in compensation will be calculated in accordance with Section 6. Upon agreement between the District and Consultant as to the extent of such impacts on time and compensation, not to be unreasonably withheld or delayed by Consultant, an Amendment will be executed by the Parties modifying the subject Task Order accordingly. Execution of the Amendment by both Parties will constitute Consultant's notice to proceed with the changes memorialized by the Amendment.
- c. Consultant will be liable for all costs resulting from any change (howsoever described) in the scope of Services under any existing Task Order not properly ordered under the terms of a written Amendment issued in accordance with this section and signed by the District. Furthermore, Consultant will not be compensated for Services performed pursuant to an Amendment unless the Amendment and the related costs were agreed to by the District in writing in advance of Consultant performing such Services.

5. Completion of Consultant's Services

5.1. Timely Performance

The Services and any defined deliverables will be completed and delivered to the District in a prompt and timely fashion so as to permit the effective review and employment of the deliverables by the District during and throughout the performance of the Services.

5.2. Force Majeure Events

- a. If the performance by the Consultant of the Services is prevented or delayed due to the occurrence of any event or circumstance beyond its reasonable control, to the extent such could not have been avoided or mitigated by the exercise of due diligence, and which could not have been expected or taken into account as of the Contract Effective Date, including, the acts or neglect of the District, the District's employees, or those under the District by contract; or otherwise, by court order; by acts or failures to act of local, state, and federal agencies or of any railroad; by pandemics and epidemics (including COVID-19, but excluding those impacts of COVID-19 that are in effect as of the Contract Effective Date); lockouts; failures of power; acts of God; tornados; hurricanes; earthquakes; acts of public enemies; terrorism; riots; insurrection,, civil commotion; inability to obtain labor or materials or reasonable substitutes for either; fire; or similar cause, in each case excluding any event or circumstance arising from any fault of the Consultant, the Consultant will notify the District of such event or circumstance.
- b. Following such notice, the Consultant's nonperformance will be excused during the period of prevention or delay, and any affected deadlines will be extended by an equivalent period, subject to compliance with the following mitigation obligations and provided that in no case will the term under Section 2 be extended as a result of any such event or circumstance. In no case will the District be liable to Consultant for any damages or other cost or expense on account of any such event or circumstance.
- c. When affected by any such event or circumstance, the Consultant will exercise commercially reasonable efforts to overcome the impediment to performance.
- d. Notwithstanding the foregoing, the Consultant will not be excused from any obligations that by their nature can continue during the occurrence and continuance of such event or circumstance.

6. Payment

6.1. Payment for Services

- a. The Consultant will be compensated according to the Task Order and the guidelines established by the Contract Documents for the Services provided.
- b. For all Services rendered under this Contract and all reimbursable costs allowed under this Contract, the District will calculate payments to the Consultant in accordance with the Task Order(s) based on either (1) a mutually agreed-upon lump sum basis or (2) a direct time and material basis, in each case as elected by the District and memorialized in a not-to-exceed Task Order.

- c. Labor costs under any of the foregoing payment structures shall be calculated based on the labor rates set forth in Exhibit 2, whether estimated as part of a lump sum, or based on actual time spent performing the Services.
- d. The District, in its sole discretion and as deemed necessary, may by notice to the Consultant (including, in its sole discretion, in response to a written and justified Consultant request) add positions to the list in Exhibit 2, indicating corresponding labor rates for such additional positions to be taken into account under the terms of any RFTOP, direct solicitation, or Task Order.

6.2. Not to Exceed Amount

For all Services rendered under this Contract, and all reimbursable costs allowed under the Contract incurred by Consultant pursuant to this Contract under all Task Orders, the total compensation to be paid to the Consultant, together with such amounts paid or payable by the District to other consultants under the terms of any Parallel MATOC Contracts, will not exceed the total sum of budgeted and appropriated expenditures by the District in a fiscal year.

6.3. Escalation

The District anticipates permitting increases to the hourly labor rates permitted under this Contract and any Task Order not to exceed three percent (3%) year-over-year for the same or similar services.

6.4. Requests for Payment

- a. If Consultant is performing Services under a Task Order and entitled to compensation, the Consultant will submit requests for payment (each a "Request for Payment") on a monthly basis, or as directed by the District, for Services completed during the billing period.
- b. Consultant is obligated to collect monthly invoices from its subconsultants and subcontractors of all tiers (each a "Subconsultant") and include the same in its monthly Request for Payment to ensure its Subconsultants are paid timely and in accordance with Section 6.5 below.
- c. The Consultant is allowed a mark-up of no more than 3% on first-tier Subconsultant direct labor for the management of the Subconsultant work. No markup shall be permitted on lower tier subconsultant work.
- d. The Parties agree that time is of the essence in the submission of any Request for Payment, inclusive of any charge or invoice, and agree that, as a condition precedent to Consultant's right to payment, Consultant will submit any charge, invoice, or Request for Payment no later than one hundred twenty (120) days from the last date of service for which payment is sought. The Parties agree that Consultant waives its right to payment for any charge, invoice, or Request for

Payment submitted more than one hundred twenty (120) days from the last date of service for which payment is sought.

- e. Each Request for Payment will:
 - (i) contain documentation to support payment as required by the District, which documentation will include invoices for cost reimbursables, applicable personnel time sheets, identification of the scope of Services completed, billing by position, and the applicable billing rates;
 - (ii) include relevant Subconsultant(s) invoices together with documentation that summarizes the Consultant's utilization of small/minority/women/disadvantaged businesses;
 - (iii) contain a cumulative total of all monthly billings, costs broken down per Task Order, Task Order authorization amount, the monthly billing applicable to each Task Order, and a cumulative total applicable to each Task Order; and
 - (iv) be certified by a duly authorized and knowledgeable officer of the Consultant or the controller of the Consultant in a certification containing the following statement: "I certify, under penalty of perjury, under the laws of the State of Colorado, that to the best of my knowledge and belief, the above bill/invoice is just, true and correct according to the terms of this Contract, and that payment therefore has not been received."
- f. The District reserves the right to require use of specific billing templates supplied by the District and to require additional documentation and substantiation regarding any Request for Payment in either case if the District considers such additional documentation and substantiation to be in the best interest of the District.
- g. A failure to comply with the foregoing, including to submit any documentation with the Request for Payment will result in remedies and/or sanctions as the District, or applicable law, deems appropriate, and a delay in processing the Requests for Payment.
- h. Consultant will perform thorough Quality Assurance (QA)/Quality Control (QC) of each Request for Payment prior to submitting the same to the District.
- i. The District will process the Request for Payment, following the District's normal procedure, upon approval of said request by the District, which will be paid to Consultant within thirty (30) days of the District's receipt and approval of a satisfactory invoice, subject to the following:
 - (i) Any errors discovered in the Consultant's invoicing by the District will be brought to the Consultant's attention during the review cycle and the Consultant will be given a period of time, determined by the District in its discretion to correct any issues or provide adequate level of support

documentation in order to keep the Request for Payment in process. Should the correction not be made in the time specified, the charges will be removed and the invoices short paid. Should the charges be supported after the deadline, they may be resubmitted in a subsequent Request for Payment for consideration; however, if deemed in error or unallowable a second time, the Consultant waives its right to payment for the affected charges.

- (ii) The District will not be required to make payments for Services not yet performed, nor for Services deemed unsatisfactory by the District, or not performed in accordance with the Standard of Care or otherwise in compliance with the Contract Documents. The Parties agree that the District, will make the final determination as to when Consultant's Services, or any part thereof, have been satisfactorily performed or completed to justify release of any given payment to Consultant under the Contract.
- (iii) Consultant will maintain, in a form subject to audit, and in accordance with generally accepted accounting principles, backup documentation to support all entries in each Request for Payment which documentation will be made available to the District, and to its duly authorized representative(s), upon request by the District.

6.5. Prompt Payment to Subconsultants

Consultant agrees to pay each Subconsultant under this Contract, and require the same of its Subconsultants, not later than seven (7) days after receipt of each payment, the respective amounts allowed the Consultant on account of the work performed by the Subconsultants, to the extent of each Subconsultant's interest therein.

6.6. Set-off

The District will have the right to retain, out of any payment otherwise due to Consultant under this Contract and any Task Order, an amount sufficient to satisfy any amount due and owing to the District from Consultant under this Contract and any Task Order, including in connection with indemnification. Prior to withholding any amounts in dispute, the District will use reasonable efforts to provide Consultant with a notice indicating the specific amounts the District intends to withhold and the reasons and contractual basis for the withholding.

7. Project Records and Audits

7.1. Obligation to Keep and Maintain Records

- a. Consultant will create, maintain, and retain full and complete "records", including, but not limited to, books, documents, accounting procedures and practices, and other data, papers, databases, files, and other documentation of information, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, relating to Services and the

Consultant's performance of its obligations under the Contract Documents and each Subconsultant's performance under any subcontract to which it is a party. Such records will be maintained until at least four (4) years following the end of the term or if later, following the latest of final payment on, final termination settlement of, or final dispute resolution of, this Contract.

- b. In addition, Consultant will use an electronic document management system approved or provided by the District in its discretion for such project records.
- c. Consultant will include, in any and all Subconsultant agreements under this Contract that exceed one hundred thousand dollars (\$100,000.00), a provision setting forth the requirements specified in this Section 7.

7.2. Inspections and Audits

- a. The District personnel will have the right to enter Consultant's work locations from time to time with reasonable prior written notice and subject to safety and health protocols and commercially reasonable agreements to maintain the confidentiality of Consultant's proprietary information.
- b. Consultant will provide the District and any other governmental authority with jurisdiction, and any of each of their duly authorized representatives, with access to such records at location(s) in the District during normal business hours (and, upon reasonable request, at times outside normal business hours) and to the extent possible on a 24/7 basis through remote access, for any lawful or contractually permitted purpose including audits, examinations, and transcriptions.
- c. Consultant will at all times otherwise cooperate and coordinate with the District, the Comptroller General of the United States, any other governmental authority with jurisdiction, and any of each of their duly authorized representatives, when such are performing oversight and conducting inspections during the performance of the Services, including by attending meetings, providing personnel to participate in working groups, and responding to requests for information.

7.3. Audit Results

- a. To the extent that an audit by the District, District's independent auditors or consultants, or their designees, or any other authority with jurisdiction discloses excess charges inaccurately or improperly invoiced or allocated to this Contract by the Consultant or its Subconsultants, Consultant agrees to remit the amount of the overpayment to the District upon demand.
- b. If such audit discloses an overcharge of two percent (2%) or more of the total amount invoiced to the District for any year audited, and such audit is correct, Consultant will pay the actual cost of such audit, which cost, in the case of audits conducted by District, the District's auditors, or in-house staff, will be computed

on the basis of two (2) times the direct payroll of the audit staff completing the audit and audit report.

- c. Should audit disclose an underpayment to Consultant, the District will promptly remit the amount of the underpayment to the Consultant. The foregoing obligations to pay in the event of an overcharge do not apply to errors discovered in the processing of Requests for Payment in the ordinary course of business.

8. Personnel and Subcontracting

8.1. Personnel Generally

- a. All Consultant's personnel to be assigned to provide Services pursuant to this Contract will be authorized to perform Services through the use of a written Task Order.
- b. Consultant will ensure that all Services will be performed and, as applicable, supervised by personnel who are professionally and technically qualified to, who are authorized under State and local law to, and who hold all necessary registrations, permits, approvals, and licenses to, perform or supervise the relevant part Services pursuant to this Contract.
- c. Subject to compliance with law, the District reserves the right to request Consultant to remove from the work any personnel for any reason given in writing, which removal will be required if the District determines, in its good faith discretion, that any Person engaged by or acting on behalf of a Consultant is engaged in conduct unbecoming an employee or contractor of the District, which may include but is not limited to a determination by the District that the person identified is not qualified to fulfill the responsibilities of their appointed Key Personnel position, poses a potential risk to the health, safety, or security threat of any person, the environment, the community or property, or is acting or threatening to act in a violent, harassing, discriminatory or illegal manner.
- d. Upon such notice, Consultant will promptly remove and replace, or ensure the removal and replacement, of such Person.

8.2. Key Personnel

- a. Subject to the following, and excepting any periods in which a position is temporarily vacated due to retirement, death, disability, incapacity, or termination of employment, Consultant will ensure that all Key Personnel are at all relevant times occupying the roles and performing the function of their positions.
- b. Consultant will promptly fill any vacant Key Personnel position. Consultant will not remove and/or replace any of the Key Personnel (including through an appointment to a vacant position) without the District's prior approval, provided that Consultant may, as required by Law, terminate, suspend or limit the duties of any Key Personnel individual (and, promptly thereafter, notify the District of such action and its proposed replacement).

8.3. Subcontracting

- a. Consultant will direct, coordinate, and control the activities of all Subconsultants with respect to the Services. The subcontracting, including through arrangements with Subconsultants, of all or any part of the Services by Consultant will not relieve Consultant from any of the obligations or conditions of this Contract. As between the Parties, Consultant will be solely responsible for the selection, pricing, scheduling, and performance of all Subconsultants (in each case of every tier), and for the performance, non-performance, acts, defaults, omissions, breaches, and negligence of the same, as fully as if any such performance, non-performance, acts, defaults, omissions, breaches, or negligence were those of Consultant.
- b. Nothing contained in the Contract will create any contractual relationship between the District and any Subconsultant.
- c. The Parties acknowledge and agree that, as of the Contract Effective Date, Consultant has entered into the following Subconsultant agreements with the following Subconsultants, including as such were "Members" (as such term is defined in the RFQ) identified in its SOQ:
 - (i) Strae Advisory Services
- d. Consultant will not without prior District approval make or permit any assignment, transfer, change, or replacement of any of the foregoing identified Subconsultants, or of any other Subconsultants separately identified by Consultant and approved by the District in connection with a Task Order.
- e. Consultant will solicit bids and proposals from Subconsultants to perform Services under any future Task Order, at a minimum, to the extent such Services must be competitively bid in order to comply with the law.
- f. Consultant will not perform Services with any Subconsultant who is ineligible to perform work on a public works project under Colorado law. Any contract entered into between Consultant and a debarred Subconsultant for Services under this Contract is void as a matter of law. A debarred Subconsultant may not receive any public money for performing work as a Subconsultant on a public works contract, and any public money that may have been paid to a debarred Subconsultant by Consultant will be returned to the District. Consultant will be responsible for the payment of wages to workers of a debarred Subconsultant who has been allowed to perform Services. The District will strictly comply with the applicable law and will act on information related to any debarred Subconsultant in accordance with law.

8.4. Subcontracting Terms and Records

- a. Each Subconsultant agreement will incorporate all terms and provisions that this Contract or law require to be expressly incorporated in such Subconsultant agreement, or that are otherwise necessary for Consultant to comply with its

obligations under this Contract. In addition, no Subcontract will contain terms that are contrary to or inconsistent with this Contract.

- b. Consultant will maintain records of all Subconsultant agreements to which Consultant is a party and will, upon the District request, provide the District with a list describing all Subconsultant agreements and a copy of any such Subconsultant agreements.

9. Insurance

9.1. Obligation to Procure

- a. Consultant will procure at its expense, and keep in effect at all times during the term of this Contract, the Insurance Requirements described hereto ("Insurance Requirements").
- b. At the District's sole discretion, the Insurance Requirements may be further defined and/or revised via each Task Order issued to Consultant, if any.
- c. Furthermore, the District and Consultant agree that the insurance policy limits specified in this Section will be reviewed by the District for adequacy annually, and/or before the District issues a Task Order(s), if any, to Consultant, throughout the term of this Contract, who may thereafter require Consultant to adjust the amount(s) of insurance coverage(s) to amount(s) the District deems to be reasonably adequate.

9.2. Insurance Limits

Consultant will maintain at all times during the performance of the Services under this Contract insurance coverage as follows:

- a. Workers' Compensation insurance in compliance with statutory limits.
- b. Employers' liability with a limit of \$5,000,000 (Each Accident).
- c. Business Automobile Liability with a limit of \$1,000,000 (Combined Single Limit).
- d. Commercial General Liability with limits of \$5,000,000 (Each Occurrence) and \$5,000,000 (General Aggregate).
- e. Professional Liability Insurance with limits of \$5,000,000 (Any One Claim) and \$5,000,000 (Policy Aggregate).
- f. Umbrella liability coverage may be used to accommodate requested limits under subsections (b) and (d) above.

9.3. Insurance Requirements

- a. In addition to the foregoing, the specified insurance (except for Workers' Compensation and Professional Liability) will also, by endorsement to the policies, include and insure the District, its Board, and all of the District's officers and employees, their successors and assigns, as additional insureds, against the areas

of risk described in the Insurance Requirements for the District with respect to Consultant's acts or omissions or other related functions performed by or on behalf of Consultant.

- b. The District reserves the right to have submitted to it, upon request, all pertinent information about the agent(s) and carrier(s) providing required insurance.
- c. Each specified insurance policy (other than Workers' Compensation and Professional Liability) will contain a Severability of Interest (Cross Liability) clause which states, "It is agreed that the insurance afforded by this policy will apply separately to each insured against whom claim is made, or suit is brought, except with respect to the limits of the company's liability." Additionally, Consultant's Commercial General Liability policy ("Policy") will provide Contractual Liability coverage, and such insurance as is afforded by the Policy will also apply to the tort liability of the District assumed by the Consultant under this Contract.
- d. All such insurance (except for Workers' Compensation and Professional Liability) will be primary and noncontributing with any other insurance held by the District where liability arises out of, or results from, the acts or omissions of Consultant, its agents, employees, officers, invitees, assigns, or any person or entity acting for, or on behalf of, Consultant.
- e. Such policies may provide for reasonable deductibles and/or retentions, subject to review and approval by the District, which are the sole responsibility of the Consultant.
- f. The District will have no liability for any premiums charged for such coverage(s). The inclusion of District, its Board, and all of its officers, employees and agents, and their agents and assigns, as additional insureds, is not intended to, and will not, make them, or any of them, a partner or joint venture of Consultant in its activities and operations in the performance of Services under this Contract.
- g. If Consultant is a "public entity" within the meaning of the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subconsultant is a public entity within the meaning of the GIA, Contractor shall ensure that the Subconsultant maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subconsultant's obligations under the GIA.

9.4. Waiver of Subrogation

For commercial general liability insurance and Workers' Compensation insurance the insurer will agree to waive all rights of subrogation against the District for losses arising

from activities and operations of Consultant insured in the performance of Services under this Contract.

9.5. Evidence of Insurance

- a. Consultant will provide proof of all specified insurance in the form of industry standard ACORD insurance certificates. The documents evidencing all specified coverages will be filed with the District prior to the Consultant performing the Services hereunder. Such documents will contain the applicable policy number(s), the inclusive dates of policy coverage(s), the insurance carrier's name(s), and they will bear an original or electronic signature of an authorized representative of said carrier(s), and they will provide that such insurance will not be subject to cancellation, reduction in coverage or non-renewal, except after the Consultant provides actual, written notice to the District thirty (30) days prior to the effective date thereof, unless replacement coverage meeting the terms and conditions hereunder are obtained without lapse.
- b. Furthermore, prior to the expiration date of any of the above policies, Consultant will file with the District documentation showing that the insurance coverage has been renewed or extended. If any such coverage is cancelled or reduced, Consultant will, within fifteen (15) days of such cancellation or reduction of coverage, file with the District industry standard ACORD insurance certificates that show the required insurance has been reinstated, or is being provided through another insurance company or companies.
- c. In the event Consultant fails to furnish the District with evidence of insurance, or to maintain the insurance as required under this Section, the District, upon ten (10) days' prior written notice to Consultant of its intention to do so, will have the right to secure the required insurance at the cost and expense of Consultant. Consultant may secure its own insurance, and furnish evidence of such insurance to the District, during this ten (10) day period. Should Consultant fail to secure insurance, and provide evidence of said insurance to the District within the ten-day period, the District will have the right to secure the required insurance at the cost and expense of Consultant, and Consultant agrees to promptly reimburse the District for the cost thereof, plus fifteen percent (15%) for administrative overhead, and agrees to the District's right to, alternatively, withhold same from a future payment(s) due and owing Consultant.

9.6. Subconsultants

- a. Subconsultants shall hold their own insurance policies at limits appropriate for the exposure (to be determined by the District in consultation with the Applicant and applicable Subconsultant) at the time of Task Order.
- b. All coverages for Subconsultants will be subject to all of the requirements stated herein unless otherwise agreed to in writing by the District's General Manager ("GM").

10. The District Held Harmless

- a. To the fullest extent permitted by law, Consultant will indemnify and hold harmless the District and any and all of the District's Boards, officers, employees, assigns and successors in interest from and against any and all suits, claims, causes of action, liability, losses, damages, or expenses (including, but not limited to, reasonable attorney's fees and costs of litigation), claimed by anyone (including Consultant and/or Consultant's agents or employees) by reason of injury to, or death of, any person(s) (including Consultant and/or Consultant's agents or employees), or for damage to, or destruction of, any property (including property of Consultant and/or Consultant's agents or employees) or for any and all other losses that arise out of, pertain to, or relate to the Consultant's and/or Subconsultant's performance or non-performance of the Contract; provided, however, this paragraph will not be construed to require Consultant to indemnify or hold the District harmless to the extent such suits, causes of action, claims, losses, demands and expenses are caused by the District's negligence; and provided further the extent of Consultant's obligation to defend, indemnify, or hold harmless the District may be determined only after the indemnity obligor's liability or fault has been determined by dispute resolution or adjudication in accordance with Section 22, or otherwise resolved by mutual agreement between the Consultant and the District.
- b. In addition, and consistent with the requirements of Section 12 below, Consultant agrees to indemnify, keep and hold harmless the District, including its Boards, officers, and employees, from and against any and all claims, damages, liabilities, losses, and expenses arising out of any threatened, alleged, or actual claim that the end product provided to the District by Consultant violates any patent, copyright, trade secret, proprietary right, intellectual property right, moral right, privacy, or similar right, or any other rights of any third party anywhere in the world. Consultant agrees to, and will, pay all damages, settlements, expenses and costs, including costs of investigation, court costs and attorney's fees, and all other costs and damages sustained or incurred by the District arising out of, or relating to, the matters set forth above in this paragraph of the foregoing "Hold Harmless" agreement.

11. Survival

The following provisions of this Contract will survive the expiration or earlier termination of this Contract:

- a. Consultant obligations regarding retention of project records, including as contained in Section 7;
- b. Consultant obligations regarding insurance in Section 9;
- c. Section 10 regarding indemnification and holding the District harmless;

- d. Section 12 regarding intellectual property;
- e. Section 18 regarding default and termination;
- f. Section 20 regarding Consultant representations and warranties;
- g. Section 21 regarding limitations on liability;
- h. Section 22 regarding disputes;
- i. Section 28 regarding construction and governing law; and
- j. any Consultant liability or obligations to the District arising from a Default as may be stated in this Contract.

12. Intellectual Property Ownership and Rights

12.1. Ownership

- a. All Work Product (as hereinafter defined) originated and prepared by Consultant or its Subconsultant of any tier under this Contract will be and remain the property of the District for its use in any manner it deems appropriate; provided, however, that any use unintended under this Contract, or modification or alteration of the Work Product without the direct involvement of the Consultant will be without liability to Consultant.
- b. "Work Product" are all works, tangible or not, created by Consultant and/or its Subconsultant(s) for the District as part of the Services including, without limitation, documents, deliverables, material, data, reports, analysis, studies, surveys, modeling files, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property therein, but excluding notices and correspondence to the extent such do not themselves constitute or include the foregoing.
- c. To the extent applicable under the U.S. Copyright Act or otherwise, all Work Product created by Consultant under this Contract are work-made-for-hire created for the sole benefit and ownership of the District in which Consultant transfers any ownership rights and claims to the District upon creation. Consultant hereby assigns, and agrees to assign to the District, all goodwill, copyrights, and trademarks in all Work Product originated and prepared by Consultant and/or its Subconsultant(s) pursuant to the Contract. Consultant further agrees to execute any documents necessary for the District to perfect, memorialize, or record the District's ownership of rights provided herein. This paragraph will survive expiration or termination of this Contract.

12.2. Obligations on Subconsultant

Any Subconsultant agreement entered into by Consultant relating to this Contract, to the extent allowed hereunder, will include a like provision (on the District's ownership in Work Product) for work to be performed under this Contract to Contractually bind or otherwise oblige its Subconsultants performing work under this Contract such that the District's ownership rights of all Work Product are preserved and protected as intended herein. Failure of Consultant to comply with this requirement or to obtain the compliance of its Subconsultants with such obligations will subject Consultant to all remedies allowed under law and termination of this Contract.

12.3. Use of Work Product by Third Parties

Consultant will not make available, provide, or disclose any Work Product to any third party without prior written consent of the District.

12.4. No Transfer of Pre-Existing Intellectual Property

- a. Nothing herein may be construed to transfer to the District any ownership, interest or right in any of the Consultant's intellectual property, trade secrets, or know-how that is pre-existing before commencement of this Contract, or that is derived independent of Consultant's performance of this Contract.
- b. Notwithstanding the foregoing, unless expressly stated otherwise, for all third-party and Consultant's intellectual property (if any) that is pre-existing before commencement of this Contract, including software, required to operate or use any Work Product delivered by Consultant, Consultant hereby grants and will cause others to grant the District (including its agents and consultants) a royalty-paid, perpetual, irrevocable license to use such pre-existing intellectual property internally by the District (including its agents and consultants).

12.5. Non-Infringement Warranty

Consultant hereby represents and warrants that performance of all obligations under this Contract does not infringe in any way, directly or contributory, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity, and proprietary information. This section will survive expiration or termination of this Contract.

12.6. Indemnification of Third-Party Intellectual Property Infringement Claims

- a. Consultant will defend at its sole expense and hold harmless the District, its officers, directors, agents, employees, or affiliates ("the District Defendants") in any infringement claim, demand, proceeding, suit or action ("Action" hereinafter), for any infringement or violation, actual or alleged, direct or contributory, intentional or otherwise, of any intellectual property rights, including patents, copyrights, trade secrets, trademarks, service marks, ideas, concepts, themes, methods, algorithms, and other proprietary information or rights (collectively "Intellectual Property Rights" hereinafter), (1) on or in any design, medium, matter, plant, article, process, method, application, equipment, device,

instrumentation, software, hardware, or firmware used by the Consultant or Subconsultants in performing the work under this Contract; or (2) as a result of the District's actual or intended use of any Work Product furnished by Consultant and/or Subconsultants under the Contract.

- b. Consultant also will indemnify the District against any loss, cost, expense, liability, and damages awarded against the District or settlement as a consequence of such Action. Under no circumstances is Consultant liable under this sub-section to defend and hold the District harmless, where the District licenses or sublicenses for profit any of the intellectual property rights in the Work Product to a third party whose use of the intellectual property gives rise to the alleged infringement and whose use is not in any way part of the intended use for the benefit of the District under this Contract.
- c. Where any Work Product furnished by Consultant is in a form of software or firmware, and if any part of such software or firmware (A) becomes the subject of an Action, (B) is adjudicated as infringing a third party's Intellectual Property Right, or (C) has its use enjoined or license terminated; Consultant will at its own expense, with the District's consent, either:
 - (i) Procure for the District the right to continue using said part of the software or firmware; or
 - (ii) Replace the software or firmware with a functionally equivalent, non-infringing product.
- d. Exercise of any of the above-mentioned options will not cause undue business interruption to the District or diminish the intended benefits and use of the Work Product by the District under the specifications herein.
- e. Rights and remedies available to the District hereinabove will survive the expiration or other termination of this Contract. Further, the rights and remedies are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States and the State of Colorado. This paragraph will survive the expiration or other termination of this Contract.

12.7. Consultant's Trade Secrets

- a. Trade Secrets, as used in this Contract, are defined in the Uniform Trade Secrets Act, §§ 7-74-101, *et seq.*, C.R.S. and may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. No Work Product created and delivered to the District under this Contract may constitute Trade Secrets of Consultant.

- b. Consultant hereby stipulates that the District is not, nor expected to be, in possession of any of Consultant's Trade Secrets. In the unlikely event that Consultant reveals any of its Trade Secrets (that is so marked conspicuously on every page) to the District to further the intent and purpose of this Contract and so notifies the District in writing that it has revealed its Trade Secrets to the District, then the District agrees to notify Consultant of any request made pursuant to the Colorado Open Records Act, C.R.S. § 24-72-201 *et seq.*, ("CORA") that includes Consultant's Trade Secrets. The District may disclose any of Consultant's Trade Secrets if Consultant does not object in writing to the District after ten (10) calendar days from the notice mailing date by the District to Consultant of the CORA request.

13. Responsibility for Fault

- a. All costs incurred due to the fault of the Consultant in carrying out the Services pursuant to the Contract Documents, including but not limited to correcting Work Product or Requests for Payment, will be borne by Consultant without any right to claim additional compensation.
- b. The Consultant will, without additional compensation, correct or revise any deficiencies or errors or omissions caused by the Consultant in its Services and Work Product, including but not limited to Consultant's analysis and reports.
- c. The Consultant also agrees that if any error or omission or deficiency is found in its performance of Services and/or Work Product, the District will not pay for (and may be reimbursed for) that portion of the Services and/or Work Product containing material error(s), omission(s), and/or deficiency(ies) and the Consultant will expeditiously make the necessary correction, at no cost to the District, except when such error was directly caused by the District.
- d. The Consultant also agrees that if Consultant misses a deadline identified in a Task Order(s), the District may not pay for that portion of the Work Product that is delivered after that deadline identified in a Task Order(s), except when such untimely performance was solely caused by the District or when non-performance was excusable in accordance with Section 5.2

14. Independent Contractor

In furnishing the Services provided for herein, Consultant is acting as an independent contractor, is to furnish such Services in its own manner and method, and is in no respect to be considered an officer, employee, or agent of the District.

15. Equal Employment Practices

- a. During the term of this Contract, Consultant agrees and obligates itself in the performance of this Contract not to discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital

status, domestic partner status, or medical condition. Consultant will take affirmative action to ensure that applicants for employment are treated, during the term of this Contract, without regard to the aforementioned factors and any ordinances or laws pertaining to discrimination.

- b. During the performance of this Contract, Consultant agrees to comply with the State of Colorado's anti-discrimination and anti-retaliation laws, including but not limited to C.R.S. §§ 8-4-120, 24-34-402, 24-34-402.5, 24-50.5-103 ("Equal Employment Practices"), including any future amendments thereto, which is incorporated herein by this reference. By way of specification, but not limitation, pursuant to Sections 10.8.3.E and 10.8.3.F of said Administrative Code, the failure of Consultant to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of this Contract. No such finding will be made, nor penalties assessed, except upon a full and fair hearing after notice and an opportunity to be heard has been provided to Consultant. Upon a finding duly made that Consultant has failed to comply with said Equal Employment Practices provisions of this Contract, this Contract may be forthwith terminated, cancelled, or suspended.
- c. All Subconsultant agreement awarded by Consultant pursuant to this Contract will contain provisions similar to the foregoing.
- d. Consultant also agrees to comply with all other applicable statutes, ordinances, and regulations relative to employment, wages, and hours of labor.

16. Disadvantaged Business Enterprises

- a. Pursuant to United States Code of Federal Regulations Title 49 Transportation, Subtitle A, Part 26 (49 CFR 26), it is the policy of the District to provide Disadvantaged Business Enterprises ("DBEs") an equal opportunity to participate in the performance on all of the District's contracts. The objective of this policy is to achieve the participation of DBEs at levels comparable to their availability to provide goods and services to the District, with the ultimate goal of developing their status and expertise so that they may compete for future contracts on an equal basis.
- b. Consultant hereby agrees and obligates itself to utilize the services of the DBE firms designated in its Proposal on the level designated in its Proposal. Specific levels of DBE participation may be specified by the District in future RFTOPs and/or associated with the Services to be provided under any Task Order.
- c. The Consultant and their approved Subconsultants will utilize the District determined reporting method to track and confirm progress payment and will cooperate with the District personnel in providing participation information as requested by the District in order to ensure compliance with the provision of this section. Future payment requests may be delayed or withheld if Consultant fails to enter Subconsultant utilization information at time of invoicing or Consultant

fails to promptly provide any and all information related to DBE participation as requested by the District. In addition, the District may take other remedies and/or sanctions as the District, or applicable law, deems appropriate.

- d. Failure to comply with any Disadvantaged Business Enterprise requirements may subject the Consultant to remedies and/or sanctions as provided for by law.
- e. Failure to comply with any of the terms of this section (or the terms of this Contract) will constitute a material breach of contract.

17. Public Contracts for Services

Consultant certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S. Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subconsultant that fails to certify to Consultant that the Subconsultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Consultant (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subconsultant and the contracting State agency or institution of higher education within three days if Consultant has actual knowledge that a Subconsultant is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the Subconsultant agreement if a Subconsultant does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to § 8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Consultant participates in the Department Program, Consultant shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Consultant has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department Program. If Consultant fails to comply with any requirement of this provision or §§ 8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Consultant shall be liable for damages

18. Default and Termination

18.1. Default

- a. The occurrence of any one of the following events will constitute a "Default":

- (i) Consultant abandons all or a material part of the Services, which abandonment will occur if Consultant:
 - A. expresses an intent not to perform, or continue to perform, a material part of the Services;
 - B. does not perform, or continue to perform, for a continuous period of sixty (60) days or more a material part of the Services; and/or
 - C. if, in the opinion of the District, Consultant otherwise fails to provide prompt, efficient, and thorough Services, or if Consultant fails to complete the several portions of its Services within the time limits provided; or
 - (ii) any other material breach by Consultant of law or any of its obligations under the Contract Documents.
- b. The cure period for any Default is thirty (30) days after the date on which the District delivers notice to Consultant of the occurrence of the relevant Default, provided that no notice and opportunity to cure is required for any Default that by its nature cannot be cured or which presents a potential risk to the health, safety, or security of any person, the environment, the community, or property.

18.2. Termination by District

- a. If a Default occurs and has not been cured within the applicable cure period (if any), the District may, in its discretion, terminate this Contract or any Task Order at any time that such Default is continuing by delivering to the Consultant a termination notice to such effect. Any such termination for Default will be effective immediately on the date of the termination notice, or on such other date as the District may specify in such notice.
- b. The District may also terminate this Contract or any Task Order at its convenience, in whole or in part, at any time. If the District decides to terminate this Contract at its convenience, the District will send a written notice of termination for convenience to Consultant specifying the extent to which performance of work under this Contract is terminated. Any such termination for convenience will be effective thirty (30) days from the date of the termination notice, or on such other date as the District may specify in such notice.
- c. Upon receipt of the notice, Consultant will immediately cease all activity except for that activity expressly authorized by the notice of termination.
- d. Notwithstanding anything to the contrary, termination of this Contract in accordance with this section will not waive any right or claim to damages that the

District may have and the District may pursue any cause of action that it may have under the Contract.

- e. If only a portion of the Services is terminated, the Consultant will continue to complete the remaining portions of the work that was not terminated in accordance with the Contract.

18.3. Termination by Consultant

Consultant may terminate this Contract upon written notice if Consultant reasonably determines that professional standards administered by entities with regulatory authority over Consultant require termination due to decisions, circumstances, or events that were not solely within the control of Consultant or its affiliates.

18.4. Payment Following Termination

- a. In the event this Contract, any Task Order, and/or Consultant's Services, or any portion of any of them, is terminated by the District, the District will pay Consultant the amount calculated below subject to the District's right to withhold payment from Consultant.
- b. The District will pay the Consultant such termination amount equal to the amount otherwise due to the Consultant for Services provided up to the termination date. Such payment will be due on the later of thirty (30) days following termination and the District's receipt and approval of Consultant's invoice(s) therefor.
- c. The District will not be liable to pay Consultant for the cost of Services performed, nor for expenses incurred by Consultant, subsequent to the termination effectiveness date. The District will not in any case be liable to pay Consultant for any profits anticipated by Consultant on account of Services unperformed or any loss of opportunity to perform other Services or compensation for any damages of any nature whatsoever arising from the District's termination of all or any portion of a Task Order, this Contract, and/or Consultant's Services.
- d. In the event of termination for Default, all reasonable costs and charges incurred by the District, together with the cost of completing the Services under the Contract and any Task Order, including compensation for any of the District authorized representative's services and all other expenses made necessary thereby, will be deducted from any monies due or which may become due the Consultant. If such expense exceeds the sum which would have been payable under the Contract, then the Consultant will be liable and will pay to the District the amount of such excess.
- e. Any termination payment to the Consultant determined in accordance with this section constitutes the Consultant's exclusive remedy for a termination hereunder.
- f. Anything contained in this Contract to the contrary notwithstanding, a termination for Default will not waive any right or claim to damages, with respect to

indemnification, or otherwise, that the District may have and the District may pursue any cause of action against Consultant that it may have under this Contract.

18.5. Consequences of Termination

- a. All finished or unfinished documents and materials and Work Product produced or procured under this Contract, including all intellectual property rights thereto, will, to the extent not previously transferred or conveyed, become the District property upon, and promptly be delivered to the District following, the date of such termination unless otherwise noted in a Task Order(s). Unfinished documents, materials, and Work Product is delivered as-is, without warranty express or implied.
- b. Consultant agrees to execute any documents necessary for the District to perfect, memorialize, or record the District's ownership of rights provided herein. This section will survive termination of the Contract.

19. Stop Work

- a. The District may, at any time, upon written order to Consultant, require Consultant to stop all, or any part, of the Services called for by this Contract for a period of thirty (30) days. Said thirty (30) day period will commence on the day the written order is delivered to Consultant, and will further be extended for any period to which the Parties may agree. Any such order will be specifically identified as a "Stop Work Order" issued pursuant to this clause.
- b. Upon receipt of such a Stop Work Order, Consultant will forthwith comply with its terms.
- c. Within a period of thirty (30) days after a Stop Work Order is delivered to Consultant, or within any extension of that period to which the Parties have agreed, the District will either:
 - (i) cancel the Stop Work Order; or
 - (ii) terminate the Services as provided in Section 18.
- d. If a Stop Work Order issued under this section is cancelled or expires, or the period of any extension thereof is cancelled or expires, Consultant will not resume work until the Stop Work Order has been retracted in writing by the District. Upon issuance of the Stop Work Order an equitable adjustment will thereafter be made for Consultant's time of performance, Consultant's compensation, or both, consistent with the provisions of Section 5.2 of this Contract, if:
 - (i) the Stop Work Order results in an increase in the time required for, or in Consultant's cost properly allocable to, the performance of Services under this Contract; and
 - (ii) Consultant asserts a valid claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided, however, that the

District may investigate and substantiate any facts relating to any such claim.

- e. If a Stop Work Order is not cancelled or retracted, and the Services covered by such order are terminated for the convenience of the District, the District will not be liable to pay Consultant for any profits anticipated by Consultant on account of Services unperformed or any loss of opportunity to perform other Services or compensation for any damages of any nature whatsoever or any costs incurred by Consultant resulting from said Stop Work Order.
- f. It is understood and agreed that should the District decide that any portion of a Task Order and/or Consultant's Services will be suspended or terminated, this Contract will continue to apply to that portion or those portions of the Task Order and/or Services not suspended or terminated, and that such suspension or termination of a portion of a Task Order and/or Services will in no way make void or invalidate this Contract as to that portion, or those portions, not suspended or terminated.

20. Consultant Representations and Warranties

Consultant represents and warrants that as of the Contract Effective Date and the effective date of any Task Order:

- a. Consultant is a limited liability company, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted under this Contract and any Task Order.
- b. Consultant is duly qualified to do business in the State, and is in good standing in the State and, as applicable, its state of formation or incorporation.
- c. Consultant has full power, right, and authority to execute and deliver and perform this Contract, and to perform all of Consultant's obligations provided for under this Contract.
- d. Each Person executing this Contract on behalf of Consultant has been duly authorized to execute and deliver this Contract on behalf of Consultant.
- e. The execution, delivery, and performance of this Contract by Consultant has otherwise been duly authorized by all necessary actions of Consultant.
- f. This Contract has been (or, at the time of execution and delivery, will have been) duly and validly executed and delivered by Consultant.

21. Liability

21.1. Joint and Several Liability

In the event that Consultant, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by

Consultant will be the joint and several obligation or undertaking of each such individual or other legal entity.

21.2. Limitation on Liability

- a. The Consultant's total aggregate liability to the District and any indemnified party under the Contract, including for default, breach of contract, negligence, any liquidated damages (howsoever described), pursuant to any indemnity obligations related to claims and/or losses suffered by any indemnified parties, or otherwise in connection with the Consultant's performance under the Contract, will not exceed five million dollars (\$5,000,000).
- b. This limitation on liability will not apply:
 - (i) to losses to the extent that such losses are required to have been covered by insurance pursuant to this Contract;
 - (ii) to losses to the extent that such losses are covered by the proceeds of insurance actually carried by or insuring the Consultant under policies solely with respect to the Project, regardless of whether such policies are required pursuant to this Contract;
 - (iii) under any indemnity pursuant to this Agreement to the extent such indemnity relates to a claim asserted and/or losses suffered by any third party (other than the District or a District indemnified party); arising from death or bodily injury; or arising out of fraud, willful misconduct, criminal conduct, recklessness, bad faith, or gross negligence of the Consultant or any subcontractor; or
 - (iv) to costs, liabilities, or obligations arising from the Consultant's abandonment of the Project.

21.3. Waiver of Consequential Damages

- a. Neither Party will be liable to the other for any punitive, indirect, incidental, consequential, or special damages of any nature, whether arising out of a breach of this Contract, tort (including negligence), or other legal theory of liability, including loss of bonding capacity, loss of bidding, loss of business or contracting opportunities, or other impact costs.
- b. The limitation set out above will not apply to:
 - (i) any amounts expressly payable pursuant to this Contract;
 - (ii) Consultant's liability for claims and/or loss that are in respect of death or personal injury and amounts payable by Consultant under an indemnity pursuant to this Contract for third-party claims; and

- (iii) any Party's liability for loss arising out of fraud, willful misconduct, criminal conduct, recklessness, bad faith, or gross negligence on the part of the relevant Party.

21.4. No Personal Liability

No agent, consultant, officer, or authorized employee of the District will be responsible either personally or as an agent, consultant, officer or employee, or board member, for any liability arising under this Contract, it being understood that in such matters they act as representatives of the District.

21.5. Governmental Immunity

Liability for claims for injuries to persons or property arising from the negligence of the District, its employees, and its officials shall be controlled and limited by the provisions of 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), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

22. Dispute Resolution

- a. If any dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the Parties agree to first endeavor to settle the dispute in an amicable manner through non-binding mediation with an alternative dispute resolution service before seeking recourse in a judicial forum.
- b. No written or oral representation made during the course of any mediation will be deemed a Party admission.
- c. Any lawsuit brought under this Contract shall be filed in Colorado state court in Denver County.

23. Parties to Contract

23.1. Binding Effect; Successors and Assigns

This Contract will be binding upon and inure to the benefit of the District and Consultant and each of their respective permitted successors and assigns.

23.2. Assignment or Transfer Prohibited

- a. Consultant will not, in any manner, directly or indirectly, by operation of law or otherwise, hypothecate, assign, transfer, or encumber this Contract, or any portion thereof or any interest therein, in whole or in part, without the prior written consent of the District. The names of Subconsultants or others whom Consultant intends to employ to perform Services as part of the project(s) will be submitted to the District for prior approval.

- b. For purposes of this Contract, the terms “transfer” and “assign” will include, but not be limited to, the following: (i) if Consultant is a partnership or limited liability company, the transfer of fifty percent (50%) or more of the partnership interest or membership or the dissolution of the Consultant; and, (ii) if Consultant is a corporation, any cumulative or aggregate sale, transfer, assignment, or hypothecation of fifty percent (50%) or more of the voting shares of Consultant.

23.3. Limitations on Third Party Beneficiaries

- a. The Parties agree that this Contract is solely for the benefit of the Parties and, nothing herein is intended to create any third-party beneficiary rights for third parties.
- b. Notwithstanding the foregoing, the duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed by law.

24. Business Tax Registration

- a. Consultant represents that it has registered its business with appropriate jurisdiction and has obtained and presently holds a Business Tax Registration Certificate or any other certificate as required by such jurisdiction.
- b. Consultant will maintain, or obtain as necessary, all such certificates required of it and will not allow any such certificate to be revoked or suspended during the term hereof.

25. Confidentiality of Information

- a. Consultant acknowledges that all deliverables (including but not limited to Work Product, all drawings, documents, specifications, plans, reports, statistics, and data whether or not expressly marked confidential) and any other information in any form prepared by or provided to Consultant in connection with this Contract (whether or not expressly marked confidential collectively, “Program Data”) may contain information vital to the security of the passenger rail. Consultant will take utmost precaution/measures while sharing information with its Subconsultants, and will do so on a need-to-know basis only, even while working on the project(s). If Consultant fails to comply with this section, Consultant will be liable for the reasonable costs of actions taken by the District or affected parties that the applicable entity reasonably incurs in good faith as a result of such failure, including, without limitation, the design and construction of improvements, procurement and installation of security devices, and posting of guards. Consultant and its Subconsultants will store all the information gathered as part of this project in a secure and safe place during and/or after the performance of this Contract.
- b. Except as authorized in writing by the District, Consultant must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Contract, disseminate any

information regarding its Services or the tasks/projects to which the Services pertain.

- c. If Consultant is presented with a subpoena or a request by any governmental entity regarding any Program Data which may be in Consultant's possession by reason of this Contract, Consultant must immediately give notice to the District, with the understanding that the District will have the opportunity to contest such process by any means available to it before any Program Data are submitted to any court, administrative agency, or other third party. Consultant, however, is not obligated to withhold the delivery beyond the time ordered by a court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

26. Appropriation of Funds

- a. Pursuant to the Local Government Budget Law of Colorado, 29-1-101, *et seq.*, financial obligations of the District payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- b. Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated herein, and in order for the District to comply with its governing legal requirements, the District will have no obligation to make any payments to Consultant unless the District will have first made an appropriation of funds equal to, or in excess of, its obligation to make any payments as provided in this Contract. Consultant agrees that any services provided by Consultant, purchases made by Consultant, or expenses incurred by Consultant, in excess of said appropriation(s), will be free and without charge to the District, and the District will have no obligation to pay for any of said services, purchases, or expenses. Consultant will have no obligation to provide services, nor to incur any expenses, in excess of the appropriated amount(s) until the District appropriates additional funds for this Contract.
- c. If the District does not appropriate additional funds in an amount equal to, or in excess of, its obligation to make any payments as provided in this Contract, either Party may terminate the Contract by providing thirty (30) days written notice to the other Party. The Parties agree that this termination provision will have no force or effect on either of the Parties' respective rights to terminate this Contract under any other provision thereof.

27. Waiver

The waiver by the District of any breach of any term, covenant, or condition contained in the Contract Documents will not be deemed to be a waiver of any other term, covenant, or condition of the Contract Documents, or of any subsequent breach of the same term, covenant, or condition.

28. Miscellaneous

28.1. Federally Required Provisions

- a. The Consultant acknowledges and agrees that the District may seek federal reimbursement for Services provided under this Contract pursuant to a Task Order and that, as a result, this Contract includes and incorporates by reference Federally Required Provisions as set forth in Exhibit 5.
- b. In the event there is a conflict between any other provision of the Contract and the Federally Required Provisions, the Federally Required Provisions will control.

28.2. Construction

- a. It is the intention of the Parties hereto that if any provision of this Contract is capable of different constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision will have the meaning which renders it valid. Language will be interpreted according to its fair meaning and not strictly for or against Consultant or the District.
- b. In the event that any of the provisions, or portions or applications thereof, of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, the District and Consultant will endeavor to negotiate an equitable adjustment in the provisions of this Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions, portions, or applications thereof will not be affected thereby.
- c. This Contract will be governed by and construed in accordance with the laws of the State, any applicable federal law, any applicable local ordinance, and the regulations, codes, and Executive Orders enacted and/or promulgated pursuant thereto.
- d. The section headings appearing herein will not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Contract.
- e. Except as otherwise expressly provided or as the context may otherwise provide:
 - (i) a reference to any section within this Contract (including in the Exhibits) is a reference to such section of this Contract (excluding the Exhibits); and
 - (ii) a reference to an agreement or other document, or to any law or permit, will be construed to be a reference to such agreement, document, law or permit as it may be amended, modified, replaced, or supplemented from time to time.
- f. The singular includes the plural and vice versa.
- g. Except as otherwise expressly provided in this Contract, a reference to a person includes such person's permitted successors, assigns and transferees, and any and

all gender-specific references, classifications, and/or language will be interpreted to be gender-neutral.

- h. Words preceding “include”, “includes”, “including” and “included” will be construed without limitation by the words that follow.
- i. Except as otherwise expressly provided in this Contract or as the context may otherwise provide, words and phrases not otherwise defined herein:
 - (i) that have well-known insurance, engineering, construction, or specialized technical industry meanings will be construed pursuant to such recognized meanings where such meaning would be contextually appropriate; and
 - (ii) of an accounting or financial nature will be construed pursuant to the Generally Accepted Accounting Principles (GAAP), in each case taking into account the context in which such words and phrases are used.

28.3. Integration of Provisions Required by Law

- a. The Parties agree that any additional provisions not set forth in this Contract required by any existing or future law to be inserted in this Contract are and will be deemed to be incorporated in this Contract as and when required by or for compliance with such law with effect from the date of their incorporation (unless the law expressly provides for retroactive effectiveness).
- b. Subordination to United States Government
 - (i) The Parties agree that this Contract will be subject and subordinate to the provisions of any existing or future agreement between the District and the United States of America or the State relative to the use, operation, or maintenance of the District facilities and projects, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the District or expenditure or reimbursement of federal or State funds (including federal grants-in-aid) for the development of the such facilities or projects, including but not limited to the District’s Grant Assurance obligations to the federal government, or to any security requirements of state or federal government, including temporary security procedures or instructions.
 - (ii) In the event that this Contract, either on its own terms or by any other reason, conflicts with or violates such agreement referred to in the prior paragraph, the District will promptly notify Consultant of such conflict or violation, and work with Consultant to amend, alter, or otherwise modify the terms of this Contract in order to resolve such conflict or violation in a manner reasonably acceptable to both Parties.

28.4. Severability

If any provision of this Contract is held or deemed inoperative or unenforceable because it conflicts with any other provision or provisions hereof, or any constitution, statute, ordinance, rule of law, public policy, or any other reason, the circumstances will not render the provision in question inoperative or unenforceable in any other case or circumstances, or render any other provision herein contained invalid, inoperative, or unenforceable to any extent. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Contract will not affect the remaining portions of this Contract or any part thereof.

28.5. Amendments and Waivers

No changes, amendments, modifications, cancellation, or waiver of this Contract or any Task Order, including with respect to the Services, or any part thereof, will be valid unless in writing and signed by the authorized representatives of the Parties hereto, or their respective successors and assigns. Oral changes, amendments, modifications, cancellations, or waivers are not allowed and will have no effect.

29. Notices

- a. Unless the context otherwise requires, any reference to a “notice” in this Contract means a notice, request, demand, instruction, deliverable, or other communication, and any such notice must be made in writing.
- b. All notices and any other information required to be provided to a Party under this Contract will be made in writing, and will be delivered either personally, by overnight delivery service, by U.S. certified or registered mail, postage prepaid, or by email addressed to the Parties at their respective addresses indicated below or, at the District’s election, using the document management system or as provided by the District.
- c. Notices to the District will, until Consultant's receipt of written notice otherwise from the District, be addressed to the District at:

Andy Karsian, General Manager
Front Range Passenger Rail District
1675 Broadway, Suite 2300
Denver, CO 80211
andy.karsian@frprdistrict.com

- d. Notices to Consultant will, until the District’s receipt of written notice otherwise from Consultant, be addressed to Consultant at:

Tom Rousakis
One Manhattan West

395 9th Ave.
New York, NY 10001
tom.rousakis@ey.com

- e. Notices sent by overnight delivery service will be deemed received on the Business Day (defined as any day other than a Saturday, Sunday or legal holiday in the State) following the date of deposit with the delivery service. Mailed notices will be deemed received upon the earlier of the date shown on the return receipt, or the second Business Day after the date of mailing. Any notice sent by email or through the document management system will be deemed received when confirmed by written or electronic confirmation of receipt by the addressee of the email or equivalent digital documentation.
- f. Notwithstanding the foregoing, any service of process must at all times be physically delivered.

30. Vendor Discount

Consultant agrees to use commercially reasonable efforts to determine the rates it charges customers for similar goods and services to be provided herein, and to offer the District any discount terms that are offered to its best customers for similar goods and services to be provided herein, and apply such discount to payments made under this Contract which meet the discount term. Consultant covenants, represents, and warrants that all of the pricing benefits and terms granted by Consultant herein are at least as favorable to the District as the benefits and terms granted by Consultant to any current customer or client for similar services offered by Consultant for time and materials (T&M) contracts in comparable locales, provided that such rates would not be unfair or unreasonable.

31. Contractor Assessments

- a. The District may evaluate Consultant's performance as often as it deems necessary throughout the term of the Contract and after completion of the project and Services.
- b. The District will provide Consultant with a copy of any evaluation. Within fourteen (14) days of receipt of a copy of an evaluation, Consultant may submit a response. The District may consider any evaluation along with Consultant's response thereto, in evaluating future qualifications, proposals, and/or bids submitted by Consultant to the District for contract award.

32. Execution

- a. This Contract and any other document necessary for the consummation of the transaction contemplated by this Contract may be executed in counterparts, including counterparts that are manually executed and counterparts that are in

the form of electronic records and are electronically executed. An electronic signature means a signature that is executed by symbol attached to or logically associated with a record and adopted by a party with the intent to sign such record, including facsimile or e-mail signatures. All executed counterparts will constitute one agreement, and each counterpart will be deemed an original.

- b. The Parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Contract and electronic signatures, facsimile signatures, or signatures transmitted by electronic mail in so-called PDF format will be legal and binding and will have the same full force and effect as if a paper original of this Contract had been delivered that had been signed using a handwritten signature.
- c. All Parties to this Contract: (i) agree that an electronic signature, whether digital or encrypted, of a Party to this Contract is intended to authenticate this writing and to have the same force and effect as a manual signature; (ii) intended to be bound by the signatures (whether original, faxed, or electronic) on any document sent or delivered by facsimile or electronic mail or other electronic means; (iii) are aware that the other Party(ies) will rely on such signatures; and, (iv) hereby waive any defenses to the enforcement of the terms of this Contract based on the foregoing forms of signature.
- d. If this Contract has been executed by electronic signature, all Parties executing this document are expressly consenting, under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN"), that a signature by fax, e-mail, or other electronic means will constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

IN WITNESS WHEREOF, the District has caused this Contract to be executed on its behalf by General Manager and Consultant has caused the same to be executed by its duly authorized officers, all as of the day, year and place first hereinabove written.

Ernst & Young Infrastructure Advisors, LLC

By: _____

Tom Rousakis

Senior Managing Director

Front Range Passenger Rail District

By: _____

Andy Karsian

General Manager

EXHIBITS

- Exhibit 1:** Scope of Services
- Exhibit 2:** Consultant Rates
- Exhibit 3:** Form of Task Order
- Exhibit 4:** Federally Required Provisions

EXHIBIT 1: SCOPE OF SERVICES

- A. Support FRPRD in vetting ridership and revenue studies being produced by others as part of the service development plan process.
- B. Support FRPRD in project financial feasibility and alternatives analyses being produced by others as part of the service development plan process.
- C. Prepare economic and fiscal impact analyses.
- D. Prepare transit oriented development (TOD) assessments.
- E. Advise FRPRD on developing a funding strategy that:
 - a. identifies existing available funding;
 - b. identifies likely federal funding sources and funding scenarios;
 - c. analyses potential revenue/tax sources (including, but not limited to, sales tax and property tax) to support sizing a ballot initiative;
 - d. quantifies funding gaps, in terms of revenue quantum and timing; and
 - e. analyses available debt/financing approaches.
- F. Develop a project funding plan and financial models to support FRPRD ballot initiative and project delivery.
- G. Include assessments of potential revenue contributions from station area improvement districts, tax increment financing, and/or other alternative value capture-related revenue sources.
- H. Assist FRPRD with identifying and managing obligations associated with federal funds, including but not limited to, tracking opportunities for funding, meeting the requirements for applying for appropriate funding, meeting all subaward agreement requirements, ensuring availability of required matches, maintaining appropriate and accurate records, submitting reports and invoices in a timely manner, and complying with all state and federal regulations pertaining to the award.
- I. Other tasks as directed by the District from time to time and/or included in an agreed Task Order.

EXHIBIT 2: CONSULTANT RATES

Rank/Labor Classification	Hourly Rate
Senior Managing Director / Partner / Principal	\$604
Managing Director / Executive Director	\$604
Senior Vice President	\$533
Vice President	\$472
Senior Association	\$395
Analyst / Staff	\$279
Administrative Assistant	\$152

EXHIBIT 3: TASK ORDER FORM

TASK ORDER CONTRACT

BETWEEN

THE FRONT RANGE PASSENGER RAIL DISTRICT AND

[]

FOR

PROFESSIONAL SERVICES

TASK ORDER *[Insert #]*

This Task Order is made as of this *[Insert Date]* day of *[Insert Month]*, *[Insert Year]*, in accordance with the terms of the Multiple Award Task Order Contract (the “Contract”) between the Front Range Passenger Rail District (the “District”) and *[Insert Consultant Name]* (the “Consultant”) made and entered into on *[Insert Contract Effective Date]*.

1. SCOPE OF SERVICES

Pursuant to Section 3 of the Contract, the Consultant is authorized to and shall perform the services set out in Appendix 1 of this Task Order, including providing any deliverables defined therein.

2. COMPENSATION

In return for the performance of the foregoing scope of services, the District will compensate the Consultant an amount not to exceed *[Insert Not-to-Exceed Amount]*, on the following basis:

[Select the applicable compensation basis for this Task Order, provide the required information, and delete the other two bases that are not used.]

A. Lump Sum

The District will release the following milestone payments upon the Consultant’s completion of the relevant milestones:

- *[Insert milestone payment schedule, if applicable]*

The Consultant’s compensation will be based on the performance of services by the following authorized personnel:

- *[Insert a list of authorized Consultant and Subconsultant personnel]*

The Consultant commits to utilizing the services of the following DBE firm(s) at the level specified:

- *[Insert a list of DBE firms and the dollar amounts of services to be performed by such DBE firms]*

B. Time and Materials

The District will pay the Consultant allowable costs as they are incurred in the performance of this Task Order. Such allowable costs, including costs to be incurred by the following authorized Consultant and Subconsultant personnel, include:

- *[Insert authorized Consultant and Subconsultant personnel and fully burdened hourly rates, and reimbursable expenses if applicable]*

The Consultant commits to utilizing the services of the following DBE firm(s) at the level specified:

- *[Insert a list of DBE firms and the dollar amounts of services to be performed by such DBE firms]*

in accordance with Appendix 2 of this Task Order and the terms of the Contract.

The Consultant is not authorized to perform services in excess of the not to exceed amount under this Task Order without prior written authorization from the District.

3. PERFORMANCE PERIOD

The Consultant shall perform all services described in this Task Order by *[Insert Task Order Expiration Date]*. The Consultant shall not perform any services described in this Task Order prior to *[Insert Task Order Performance Beginning Date]* or after *[Insert Task Order Expiration Date]*.

4. PERSONNEL

As part of Exhibit 2 of this Task Order, the Consultant and Subconsultant personnel who are authorized to perform the services set out in Appendix 1 of this Task Order are provided. Other Consultant or Subconsultant personnel are not authorized to perform services under this Task Order without prior authorization by the District in accordance with the terms of the Contract.

5. DBE PARTICIPATION

The Consultant hereby agrees and obligates itself to utilize the services of the DBE firm(s) set out in Appendix 2 of this Task Order at the level specified therein.

6. INSURANCE REQUIREMENTS

The Consultant shall comply with the insurance requirements set out in the Contract, including any insurance requirements applicable to any of the Subconsultants, unless otherwise modified in this Task Order.

7. WORK PRODUCT OWNERSHIP

All finished or unfinished documents and materials and Work Product produced or procured under this Task Order, including all intellectual property rights thereto, will become the District's property, subject to the terms and conditions of the Contract.

All terminology used in this Task Order shall be interpreted in accordance with the Contract unless specifically defined differently in this Task Order.

[Insert Consultant Name]

Front Range Passenger Rail District

By: _____

By: _____

[Name of Authorized Person]

Andy Karsian

Authorized Person

General Manager

EXHIBIT 4: FEDERALLY REQUIRED PROVISIONS

The Work and the project shall comply with, and the Consultant shall perform its obligations and (where relevant) shall require each Subconsultant to perform their respective obligations under this Contract, the other Contract Documents and the Subconsultant agreements in accordance with the following requirements.

1. General Requirements

- a. The Consultant and its Subconsultants shall comply with applicable requirements and provisions, in effect now or as hereafter amended, of all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Contract. Performance under this agreement shall be governed by and in compliance with the requirements of this Exhibit 4, as applicable, to the Consultant and its Subconsultants.
- b. Specific assurances required to be included in any grant agreement applicable to the District's funding of the work under this Contract, whether as of the Effective Date or in the future, are hereby incorporated by reference into this agreement.

2. General Federal Legislation

- a. Davis-Bacon Act - 40 U.S.C. § 3141 et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. § 201 et seq.
- c. Hatch Act - 5 U.S.C. § 1501 et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. § 4601 et seq.
- e. National Historic Preservation Act of 1966 – Section 106 - 54 U.S.C. § 306108
- f. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. §§ 312501–312508
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. § 3001 et seq.
- h. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. § 7401 et seq.
- i. Section 404 of the Clean Water Act, as amended - 33 U.S.C. § 1344
- j. Section 7 of the Endangered Species Act, P.L. 93-205, as amended – 16 U.S.C. § 1536
- k. Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. § 1451 et seq.
- l. Flood Disaster Protection Act of 1973, Section 102(a) – 42 U.S.C. § 4012a
- m. Age Discrimination Act of 1975 - 42 U.S.C. § 6101 et seq.
- n. American Indian Religious Freedom Act, P.L. 95-341, as amended
- o. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. § 4541 et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2

- r. Architectural Barriers Act of 1968 - 42 U.S.C. § 4151 et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701 et seq.
- u. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- v. National Environmental Policy Act of 1969 - 42 U.S.C. § 4321 et seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271 et seq.
- x. Federal Water Pollution Control Act, as amended - 33 U.S.C. §§1251–1376
- y. Single Audit Act of 1984 - 31 U.S.C. § 7501 et seq.
- z. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101 et seq.
- aa. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. §§ 1681–1683 and §§ 1685–1687
- bb. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- cc. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. § 2000d et seq.
- dd. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C. §§ 1101-1104
- ee. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- ff. Freedom of Information Act - 5 U.S.C. § 552, as amended
- gg. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1801 et seq.
- hh. Farmland Protection Policy Act of 1981 – 7 U.S.C. § 4201 et seq.
- ii. Noise Control Act of 1972 – 42 U.S.C. § 4901 et seq.
- jj. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. § 661 et seq.
- kk. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. §§ 401 and 525
- ll. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
- mm. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended – 42 U.S.C. §§ 9601–9657
- nn. Safe Drinking Water Act – 42 U.S.C. §§ 300f to 300j-26
- oo. The Wilderness Act – 16 U.S.C. §§ 1131–1136
- pp. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. § 6901 et seq.
- qq. Migratory Bird Treaty Act 16 U.S.C. § 703 et seq.
- rr. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)

- ss. Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- tt. Buy American Act – 41 U.S.C. § 8301–8305
- uu. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232

3. Executive Orders

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11988 – Floodplain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency
- h. Executive Order 14005 – Ensuring the Future is Made in All of America by All of America’s Workers

4. General Federal Regulations

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3

5. Non-Discrimination in Federally-Assisted Programs

- a. Statutory/Regulatory Authorities:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - ii. 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964); and
 - iii. 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964),

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

- b. **Compliance with Regulations:** The Consultant will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Railroad Administration (FRA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- c. **Non-discrimination:** The Consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
- d. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a Subconsultant agreement, including procurements of materials, or leases of equipment, each potential Subconsultant or supplier will be notified by the Consultant of the Consultant's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- e. **Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or FRA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the Recipient or FRA, as appropriate, and will set forth what efforts it has made to obtain the information.
- f. **Sanctions for Noncompliance:** In the event of a Consultant's noncompliance with the Non-discrimination provisions of this Contract, the Recipient will impose such contract sanctions as it or FRA may determine to be appropriate, including, but not limited to:
 - i. withholding payments to the Consultant under the contract until the Consultant complies; and/or
 - ii. cancelling, terminating, or suspending a contract, in whole or in part.
- g. **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs (b) through (g) in every Subconsultant agreement, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant hereto. The Consultant will take action with respect to any subcontract or procurement as the Recipient or FRA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a Subconsultant, or supplier because of such direction, the Consultant may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

6. Pertinent Non-Discrimination Authorities

During the performance of this Contract, the Consultant, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- f. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- h. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- i. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- I. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

7. Certification Regarding Lobbying.

The Applicant certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of Applicant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. Consultant shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

8. Debarment, Suspension, Ineligibility and Voluntary Exclusion (Consultant)

- a. The certification in this clause is a material representation of fact upon which reliance was placed when the District determined to enter into this Contract. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the District may terminate this transaction for cause of default.
- b. The Consultant shall provide immediate written notice to the District if any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- c. The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a

covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- d. The Consultant shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- e. The Consultant agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the District, entering into this covered transaction, without modification, in all Subconsultant agreements and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- f. The Consultant may rely upon a certification of a Subconsultant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The Consultant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.
- g. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- h. Except for transactions authorized under paragraph (f) of these instructions, if the Consultant knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the District may terminate this transaction for cause or default.

9. Debarment, Suspension, Ineligibility and Voluntary Exclusion (Subconsultants)

- a. The certification in this clause is a material representation of fact upon which reliance was placed when the District determined to enter into this Contract. If it is later determined that the Subconsultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or the District may pursue available remedies, including suspension and/or debarment.
- b. The Consultant shall require all Subconsultants to provide immediate written notice to the Consultant if at any time the Subconsultant learns that its certification was erroneous by reason of changed circumstances.
- c. The Consultant shall require all Subconsultants to agree that they shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

10. Certification Regarding Delinquent Tax Liability or Felony

- a. Before entering into any Subconsultant agreement, Consultant shall check the System for Award Management (the "SAM") at <http://www.sam.gov/> for an entry describing the Subconsultant entity indicating that the entity has a Tax Delinquency or a Felony Conviction.
- b. A "tax delinquency" means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- c. A "felony conviction" means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.
- d. If the SAM entry for a Subconsultant indicates that the entity has a Tax Delinquency or a Federal Conviction, or if a Subconsultant's prior certification was inaccurate when made or became inaccurate after being made, then Consultant shall not enter or continue a Subconsultant agreement with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.
- e. The Consultant shall notify the District of any Tax Delinquency or a Felony Conviction under this section.

11. Text Messaging While Driving

- a. The Consultant is encouraged to:
 - i. adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving (A) company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or (B) privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government; and
 - ii. conduct workplace safety initiatives in a manner commensurate with the size of the business, such as: (A) establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and (B) education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Consultant shall insert the substance of this section, including this paragraph (b), in all Subconsultant agreements other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

12. Drug-Free Workplace

Consultant agrees to, and to cause its Subconsultants to, comply with Government-wide Requirements for Drug-Free Workplace (Grants), 49 C.F.R. Part 32.

13. Record Retention

During the course of the Project and for three years after notification of grant closeout, the Consultant agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Contract. In cases where litigation, a claim, or an audit is initiated prior to the expiration of the record retention period, records must be retained until completion of the action and resolution of issues or the end of the record retention period, whichever is later. Reporting and record-keeping requirements are set forth in 2 C.F.R. §§ 200.333 – 200.337. Project closeout does not alter these requirements.

14. Rights in Intangible Property

- a. Title to Intangible Property. Intangible property, as defined in 2 C.F.R. § 200.59, acquired in the performance of this Contract vests upon acquisition in the District. The District must use that property for the originally-authorized purpose, and must not encumber the property without approval of FRA. When no longer needed for the originally-authorized purpose, disposition of the intangible property must occur in accordance with the provisions of 2 C.F.R. § 200.313(e).
- b. Copyright. The Consultant may copyright any work that is subject to copyright and was developed or for which ownership was acquired under this Contract. FRA and the District each reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work, and to authorize others to do so.
- c. Patents. The following provisions will apply to patents under this Contract:
 - i. The Consultant is subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements”.
 - ii. If the Consultant secures a patent with respect to any invention, improvement, or discovery of the Consultant or any of its Subconsultants conceived or first actually reduced to practice in the course of or under this Project, the Consultant agrees to grant to FRA a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process.
- d. Research Data. For any research data (as defined in 2 C.F.R. § 200.315(e)(3)) acquired under a grant or contract, FRA has the right to:
 - i. Obtain, reproduce, publish, or otherwise use the research data produced under this Contract; and
 - ii. Authorize others to receive reproduce, publish, or otherwise use such data.
- e. Freedom of Information Act (FOIA). Responding to a FOIA request under this Contract will be handled in accordance with the provisions of 2 C.F.R. § 200.315(e), including any definitional provisions set forth therein. The “Federal awarding agency” is FRA, and the “non-Federal entity” is the District for purposes of this clause.

15. Audit and Inspection

- a. The Consultant will comply with all audit requirements of 2 C.F.R. §§ 200.500 – 200.512.

- b. The Consultant agrees to permit the Secretary and the Comptroller General of the United States, or their Authorized Representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Consultant and its Subconsultants pertaining to the Project.

16. Site Visits

FRA, through its Authorized Representatives, has the right, at all reasonable times, to make site visits to review Project activities, accomplishments, and management control systems and to provide such technical assistance as may be required. If any site visit is made by FRA under this Contract on the premises of the District, Consultant, any Subconsultant, beneficiary or subrecipient, the Consultant will provide, or will ensure the provision of, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations will be performed in such a manner as will not unduly delay work being conducted by the Consultant or any Subconsultant.

17. Federal Fair Labor Standards Act (Federal Minimum Wage)

- a. The Contract and all Subconsultant agreements that the Consultant enters into for the performance of Services under this Contract incorporate by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.
- b. The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

18. Bonus or Commission.

The Consultant affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain this Contract.

19. False or Fraudulent Statements or Claims.

The Consultant acknowledges and agrees that:

- a. Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and USDOT regulations, "Program Fraud Civil Remedies", 49 C.F.R. Part 31, apply to the Consultant's activities in connection with the Services. By executing the Contract, the Consultant certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Services. In addition to other penalties that may apply, the Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation, directly or indirectly, to the Federal Government, the Federal Government reserves the right to impose on the Consultant the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.
- b. Criminal Fraud. If the Consultant makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation directly or indirectly to the Federal Government, the Federal Government reserves the right to impose on the Consultant the

penalties of 49 U.S.C. § 5323(l)(1), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

- c. Inclusion in Lower Tier Subcontracts. The Consultant agrees to include the clauses at Section 1.3.c.i and 1.3.c.ii in each lower tier Subconsultant agreement financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the lower tier Subconsultant agreement that will be subject to the provisions.

20. Trafficking in Persons.

To the extent applicable, the Consultant agrees to comply with, and assures the compliance of each Subconsultant with, the requirements of subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of said subsection (g) consistent with U.S. OMB guidance, "Award Term for Trafficking in Persons", 2 C.F.R. Part 175.

21. Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.

Consultant agrees to provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and to implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Contract.

TASK ORDER CONTRACT
BETWEEN
THE FRONT RANGE PASSENGER RAIL DISTRICT AND
EY INFRASTRUCTURE ADVISORS, LLC
FOR
PROFESSIONAL SERVICES
TASK ORDER #1

This Task Order is made as of this ____ day of December, 2023, in accordance with the terms of the Task Order Contract for Professional Services (the “Contract”) between the Front Range Passenger Rail District (the “District”) and EY Infrastructure Advisors, LLC (the “Consultant”) made and entered into on _____.

1. SCOPE OF SERVICES

Pursuant to Section 3 of the Contract, the Consultant is authorized to and shall perform the services set out in Appendix 1 of this Task Order, including providing any deliverables defined therein.

2. COMPENSATION

In return for the performance of the foregoing scope of services, the District will compensate the Consultant an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000), on the following basis:

B. Time and Materials

The District will pay the Consultant allowable costs as they are incurred in the performance of this Task Order in accordance with Appendix 2 of this Task Order and the terms of the Contract.

The Consultant is not authorized to perform services in excess of the not to exceed amount under this Task Order without prior written authorization from the District.

3. PERFORMANCE PERIOD

The Consultant shall perform all services described in this Task Order by June 30, 2025. The Consultant shall not perform any services described in this Task Order prior to December 11, 2023, or after June 30, 2024, unless such time period is extended in a written notification from the District.

4. PERSONNEL

As part of Exhibit 2 of this Task Order, the Consultant and Subconsultant personnel who are authorized to perform the services set out in Appendix 1 of this Task Order are provided. Other Consultant or

Subconsultant personnel are not authorized to perform services under this Task Order without prior authorization by the District in accordance with the terms of the Contract.

5. INSURANCE REQUIREMENTS

The Consultant shall comply with the insurance requirements set out in the Contract, including any insurance requirements applicable to any of the Subconsultants, unless otherwise modified in is Task Order.

6. WORK PRODUCT OWNERSHIP

All finished or unfinished documents and materials and Work Product produced or procured under this Task Order, including all intellectual property rights thereto, will become the District’s property, subject to the terms and conditions of the Contract.

All terminology used in this Task Order shall be interpreted in accordance with the Contract unless specifically defined differently in this Task Order.

EY Infrastructure Advisors, LLC

Front Range Passenger Rail District

By: _____

By: _____

Tom Rousakis

Andy Karsian

Senior Managing Director

General Manager

APPENDIX 1. SCOPE OF SERVICES

1. Research and inventory existing available information with regard to sales tax and property tax generation within the District, including but not limited to Department of Revenue historical data, Census population and employment trends by county, development activity and the projected development pipeline (based on issuance of building permits by local jurisdictions or other relevant data, etc.).
2. Build a financial model capable of (i) estimating sales tax and property tax generation potential at different scales of geography within the District and at various tax or mill levy rates, consistent with the taxing authority given to FRPRD under SB 21-238 (ii) estimating property tax and/or special assessment revenue generation potential for station area improvement areas (requiring the participation of local jurisdictions), (iii) performing scenario analysis to test different phasing options, levels of passenger rail service (e.g. frequencies or headways), operator assumptions (Amtrak vs. other), as well as revenue and cost growth assumptions; (iv) estimating the financing capacity associated with the projected sales tax and property tax generation using various debt instruments, including but not limited to general obligation bonds, special obligation bonds, TIFIA and/or RRIF loans.
3. Integrate into the financial model estimates and projections of anticipated Project capital costs, operating and maintenance costs, farebox revenue, and ancillary revenue for the Project prepared by FRPRD's other consultants, both for the entire Project corridor and for discrete, standalone operating segments that may be delivered in a phased manner, to the extent available.
4. Estimate the likely timing and amount of any anticipated or targeted non-FRPRD federal and/or state discretionary grant program funds, for inclusion in the cash flow analysis.
5. Perform transit-oriented development assessments to quantify station-specific value capture opportunities.
6. Support FRPRD in defining a "base case" scenario incorporating the most likely or probable combination of assumptions with regard to costs and revenues, phasing, and service planning.
7. Prepare a cash flow analysis to assess the financial feasibility of delivering the Project (or segments thereof) and operating the Project sustainably based on projected Project revenues and other grant program funds under the "base case" scenario.
8. Perform scenario and sensitivity analysis as needed to model the cost and schedule impact of potential Project risks, understand the range of potential Project costs and FRPRD-generated revenue required during the project development, capital, and operating phases, and to compare the cost of different financing instruments for the Project.
9. Advise FRPRD on the sales tax and/or mill levy rates required to generate the targeted amount of FRPRD-generated Project funding under the "base case" and any alternative scenarios.
10. Develop an overall funding strategy and financial plan for the Project.

11. Support FRPRD in summarizing the outputs of the financial model and preparing presentations for the Board and other Project partners including the Federal Railroad Administration (FRA), Colorado Department Transportation, local jurisdictions located within District boundaries,, and/or other stakeholders.
12. Support ongoing development of the Service Development Plan.
13. Prepare supporting analyses, such as economic and fiscal impact analysis, and collaborate with other consultants as needed, to assist the District's internal coalition building, marketing and communications strategies, and the drafting a voter ballot initiative.
14. Analyze, compare and advise on the financial performance of Project delivery options and operator alternatives.
15. Support FRPRD in developing procurement strategies and building the resourcing needed to execute those strategies.
16. Advise on potential grant and other funding opportunities and assist in the preparation of grant applications.
17. Support the preparation of Federal loan applications and provide transaction support on the execution of loan agreements, including but not limited to interactions with rating agencies, drafting of responses to due diligence inquiries, and negotiation of loan terms with the Build America Bureau.
18. Assist FRPRD with identifying and managing obligations associated with federal funds, including but not limited to, tracking opportunities for funding, meeting the requirements for applying for appropriate funding, meeting all subaward agreement requirements, ensuring availability of required matches, maintaining appropriate and accurate records, submitting reports and invoices in a timely manner, and complying with all state and federal regulations pertaining to the award.
19. Perform any other support services as directed by FRPRD.

APPENDIX 2. AUTHORIZED PERSONNEL

Name	Rank/Labor Classification
Tom Rousakis	Senior Managing Director
Adam Christian	Senior Vice President
Allen Freeman	Managing Director
Mona Rupani	Senior Vice President
Caroline Sallee	Executive Director
Scott Ladner	Senior Vice President
Elizabeth Lee (Strae)	Principal
Mark Tompkins (Strae)	Principal
Madison Schafer	Manager

Resolution No. 2023-14 APPROVING A CONTRACT FOR FINANCIAL ADVISORY SERVICES

Final Audit Report

2023-12-20

Created:	2023-12-20
By:	Jordan Jewsbury (jcjewsb@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAuJv8oZNZ2Bkc8HkKv295ejQpKk3GuKsO

"Resolution No. 2023-14 APPROVING A CONTRACT FOR FINANCIAL ADVISORY SERVICES" History

 Document created by Jordan Jewsbury (jcjewsb@gmail.com)

2023-12-20 - 3:12:18 AM GMT- IP address: 76.130.34.91

 Document emailed to Julie Mullica (julie.mullica@gmail.com) for signature

2023-12-20 - 3:12:25 AM GMT

 Email viewed by Julie Mullica (julie.mullica@gmail.com)

2023-12-20 - 3:31:49 AM GMT- IP address: 66.102.6.134

 Document e-signed by Julie Mullica (julie.mullica@gmail.com)

Signature Date: 2023-12-20 - 4:11:16 AM GMT - Time Source: server- IP address: 71.205.38.234

 Agreement completed.

2023-12-20 - 4:11:16 AM GMT