

**RESOLUTION NO. 2024-10
OF THE FRONT RANGE PASSENGER RAIL DISTRICT**

APPROVING AN ENGAGEMENT FOR LEGAL SERVICES WITH NOSSAMAN LLP

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 attorneys and other professional consultants, and to prescribe methods for the performance or furnishing of labor, materials, or supplies that may be required to carry out the purposes of the Act; and

WHEREAS, pursuant to *Resolution No. 2023-06* the Board approved a procurement and purchasing policy for goods and services for the District (the “Procurement Policy”); and

WHEREAS, pursuant to Section V of the Procurement Policy, the District is authorized to enter into this Agreement without conducting competitive procurement because the Board has determined it is in the best interests of the District to procure by non-competitive proposal; and

WHEREAS, the Board desires for the District to affiliate with Nossaman LLP to provide legal services to the District pursuant to the terms of the engagement letter attached hereto as **Exhibit A** (the “Engagement Letter”), and to ratify any performance of legal services by Nossaman LLP pursuant to such Engagement Letter prior to the Board’s approval thereof.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Front Range Passenger Rail District that the Board hereby approves the Engagement Letter and the services to be provided thereunder, and authorizes the General Manager to execute the Engagement Letter in substantially the form presented.

APPROVED this 31st day of May 2024.

Christopher E Nevitt
Christopher E Nevitt (Jun 6, 2024 13:05 MDT)

Chair

ATTEST:

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

Secretary

Front Range Passenger Rail District
Resolution No. 2024-10

EXHIBIT A
Engagement Letter with Nossaman LLP

[See attached.]



ATTORNEYS AT LAW

1800 California St., Suite 2400
Denver, CO 80202
T 303.301.2900

Brent E. Butzin
D 303.301.2902
bbutzin@nossaman.com

Admitted only in Colorado

May 17, 2024

Andy Karsian, General Manager
Front Range Passenger Rail District
1800 W. 33rd Ave.
Denver, CO 80211

Re: Representation of Front Range Passenger Rail District

Dear Andy:

We are very pleased to have the opportunity to provide legal services to Front Range Passenger Rail District ("Client" or "District"). (The terms "you" and "yours" as used in this letter shall refer to the Client.) We expect that these services will be provided principally by our Denver office, although we may call upon attorneys in our other offices to provide advice or assistance on your matter if appropriate. This letter will serve to record our agreement of the terms and conditions of our representation only after completing a review of all conflicts and credit as acceptance of the engagement by Firm Management.

1. Client has asked us and we agree to represent Client with respect to general counsel representation of the District and its Board of Directors ("Board"). The Client has appointed the District's General Manager as its designee to receive our billings and other information with respect to this agreement and to give us instructions as to how we are to provide service to the Client under this agreement.

2. Client agrees that our Client for purposes of this representation is the District, and not any of its individual Board directors or the employers or appointing entities of such Board directors, whose interests such directors may also represent. By undertaking a representation of the District, we do not regard ourselves as being precluded from separately representing any appointing entities of the District's Board or from taking positions that may be adverse to the interests of any such entities.

3. We understand that we are being retained only by the Client. We have performed our conflict check based upon the information you the Client provided to us. You agree that we are not bound to avoid conflicts with any other entities that you have not identified to us. In accordance with applicable ethical rules, we have confirmed that we have no current actual conflicts between the Client and any Firm clients. As you are aware, we represent a number of public sector and private sector clients in Colorado. We cannot foreclose the possibility that, at some time in the

future, any existing or future Firm client may be adverse to the District on matters unrelated to this engagement. The District understands and agrees that the Firm may represent new and existing clients in any matter not substantially related to our representation of the District even if the interest of such other clients may be directly adverse to the District or to any entity or person related to the District; except such prospective consent to conflicting representation will not apply to any matter where we have obtained sensitive, proprietary, or otherwise confidential information that could be used to the material disadvantage of the District.

4. On matters covered by this agreement, we agree to provide such legal services as we determine are reasonably required to represent Client; to take reasonable steps to keep you informed of facts and developments concerning the subject matter of this engagement as they come to our attention; and to respond to your reasonable inquiries. The Firm's lawyers have no obligation to share information, even information material to the representation, if that information was learned while representing other clients and is confidential to those other clients. You agree to cooperate with us, to keep us informed of developments, to abide by this agreement and to pay our statements for services in accordance with the provisions below.

5. Our fees for services provided to you pursuant to this agreement will be calculated and billed based upon hourly rates established for each attorney, paralegal and clerk rendering services on your matters. Our statements for services will provide you with a description of the services performed, the date they were performed, the time devoted to your matters and the specific hourly rate of the attorney, paralegal or clerk that performed the services on your behalf.

6. The hourly rates of individuals who are currently expected to perform services with respect to general counsel representation of the District are set forth on Attachment A hereto and will generally be recorded and billed in one tenth hour increments. If other personnel are asked to perform services, you will be informed of their billing rates on the first statement following their initial service. We expect that the attorneys listed on Attachment A will render the bulk of the services, however, additional attorneys may be added as needed to support Client with your approval. From time to time, our rate structure in general, or the rates of particular attorneys, paralegals or clerks, may be increased. We ordinarily evaluate rates annually and will advise you in advance of any anticipated changes in rates. The new rates shall apply to all work performed after you have been advised of the new rates. The Firm and Client agree that subsequent work related to delivery of the front range passenger rail project that falls outside the scope of general counsel representation, including advise on project delivery methodology, environmental and regulatory matters, right-of-way acquisition, project procurement, and design, construction, operations, and maintenance negotiation and contracting, may be subject to an alternative rate structure to be implemented by a modification to this agreement.

7. Our hourly rates apply to all time spent on your behalf, including but not limited to preparing, analyzing, reviewing and revising correspondence and documents; factual and legal research; consultation and advice; conducting negotiations; conferences; preparing for and attending public meetings; travel time; conferring with other attorneys in our Firm, or with professionals also involved in the matter; and such other services of a professional nature as this engagement may require.

8. We will ordinarily incur various costs and expenses or will provide certain in-house services while performing legal services. You agree to pay for these items in addition to our fees for legal services. The costs and expenses and in-house services may include, but will not necessarily be limited to, filing fees fixed by law or assessed by courts or other agencies; consultants' fees; out of town travel expenses; electronic data hosting charges, long distance telephone charges; messenger and private courier delivery charges; photocopying and other reproduction services; computerized research charges; and similar items.

In accordance with our Firm policies we currently charge \$1 per page for outgoing faxes, 10 cents per page for black white reprographic and printing services and 35 cents per page for color reprographic and printing services. External costs and expenses are charged at our cost, including computerized research and electronic evidence data processing. Where the Firm maintains a fixed subscription contract with a vendor for computerized research, you will be charged for the actual cost incurred by the Firm during the given month which often results in substantial discounts of the vendor's regular rates. We will not charge you for word processing, overtime expenses associated with administrative or secretarial personnel, telephone calls within the United States and similar items unless these items are unusually large in amount and we obtain your agreement in advance. We will not add a "handling" charge for costs and expenses incurred on your behalf.

9. We are not required to advance payment for any external expenses. If for any reason we advance a payment for external expenses, you agree to promptly pay our invoices with those charges. In addition, we may submit those charges directly to you and ask that you pay such charges directly to the vendors, in a timely manner. If you do not make timely payments to vendors, we reserve the right to pay those vendors on your behalf and include such charges in our statements and require reimbursement from you. It is important that vendors be promptly reimbursed so that we can retain good professional relationships with those vendors.

10. Our files for work prepared pursuant to this agreement are your property. We will release our files for work performed pursuant to this agreement to you or to anyone else you designate upon your written request delivered to the attorney in charge of this matter. However, you agree that we may, in our sole discretion, copy all or any portion of the file and charge the copying costs to you, and that we may have a reasonable period of time before releasing the documents to you or anyone else you designate in order to copy all or any portion of the files you have directed us to surrender. We will, from time to time, send portions of your files that are not currently needed to an off-site storage facility. The cost of this facility will be our sole expense. However, we are not the guarantor of the security of any off-site storage facility. Accordingly, you agree that the Firm will not be responsible for any damages which may occur as a result of the loss of any of your files which we store at an off-site storage facility. If the Firm is designated as the public records custodian for the District pursuant to §§ 24-72-202, *et seq.*, C.R.S., we will maintain all public records in accordance with any duly approved and adopted retention and destruction policy of the District and the Colorado State Archives or similar regulatory body. You also agree that if the Firm is not so designated, after the passage of two years without our having performed any work for you pursuant to this engagement for services, we may destroy your files unless you provide us with written instruction to forward the files to you or to another person you designate.

11. You agree to keep us informed of any change in your address, telephone numbers, or electronic mail address so that we may effectively communicate with you. We will also advise you promptly of any change in the Firm's business address, electronic mail address or telephone or facsimile numbers. You agree that we may communicate with you via electronic mail or wireless telephone even though these media may be less secure than alternative means of communication.

12. To aid in your matters, it may become necessary to hire experts, consultants or other specialists. Such persons will be employed by us on your behalf, not by you, so as to protect any privileged work; but we will not hire such persons unless you approve and also agree to pay their fees and charges. The responsibility to pay for their services is solely yours.

13. We will send you monthly statements for fees and costs incurred. Payment is due within 30 days of the date of invoice. If not paid within the 30 days, interest shall accrue at the rate of 12% per annum from said due date. **You agree to read your statements carefully and promptly notify the Firm of any error.**

If payment is to be made by check, please make checks payable to Nossaman LLP and mail checks to:

Nossaman LLP
Attn: Accounts Receivable
777 S. Figueroa Street, 34th Floor
Los Angeles, CA 90017

**Please include the Attorney name and/or client-matter number as a reference.*

If payment is to be made by wire transfer or ACH, please use the following instructions to complete the transaction.

Colorado IOLTA (COLTAF) Account

Beneficiary: Nossaman LLP
777 S. Figueroa St., 34th Floor
Los Angeles, CA 90017

**Please include the Attorney name and/or client-matter number as a reference.*

14. You may discharge us as your attorneys at any time. We may withdraw as your attorneys with or without your consent, as long as permitted by law. Some of the reasons that may cause us to withdraw include but are not limited to the following: your breach of this agreement; your failure to pay our bills on time; your refusal to cooperate with us; your refusal to follow our advice on a material matter; the development of irreconcilable disagreement between you and us as to the conduct of the engagement; or any other fact or circumstance that would render our continuing representation contrary to your interests, or to law, or to the rules of professional conduct. Failure to withdraw as your attorneys on any one occasion shall not be a waiver of our right to do so if such other occasions arise.

If you discharge us, or if we elect to withdraw, you agree to secure forthwith other counsel of your own selection to represent you.

15. Nothing in this agreement and nothing in our statements to you should be construed as a guarantee or promise about the outcome of your matter or any phase thereof. Comments about the course or outcome of your matter or any phase thereof which we may make from time to time are expressions of opinion only. Further, neither the Firm nor any of its attorneys or employees shall be employed, retained, or otherwise categorized as a "municipal advisor" to the District as such term is defined in the 15 U.S.C. 78o-4(e)(4)(c), as amended by the Dodd/Frank Act (the "Act"), or any rules promulgated by the Securities and Exchange Commission under the Act. Any comments or advice provided by the Firm or its attorneys regarding the issuance of securities by the District shall be solely of a "traditional legal nature", as permitted under the Act. You acknowledge that the amount of legal fees and costs which may be incurred on your behalf pursuant to this agreement is not capable of precise prediction; and you acknowledge that we have made no guarantees or promises and that you have set no limits with regard to the cost of services we provide you.

16. If any dispute arises out of, or relates to, a claimed breach of this agreement, the professional services rendered by attorneys, or any other disagreement of any nature, type or description regardless of the facts or legal theories which may be involved, including any dispute as to the Client's failure to pay fees for professional services and/or expenses, such dispute shall be resolved in the Colorado District Court in the City and County of Denver. The party prevailing in an action regarding a dispute as to the Client's failure to pay fees for professional services and/or expenses shall be entitled to recover from the other party the prevailing party's reasonable attorneys' fees, court costs, and expenses incurred in such proceeding. For the purposes of enforcing this agreement, and as otherwise required by law, you agree that this agreement may be disclosed to a court.

17. This agreement is made under and shall be construed in accordance with the substantive laws of the State of Colorado without reference to its choice of law rules.

18. We carry professional liability insurance which would cover the services we will be providing to you under the terms of this agreement. That insurance is subject to a significant self-insured retention.

19. This agreement will take effect when you sign this agreement and return it to us; but its effect will be retroactive to the date we first performed services on your behalf.

20. This agreement constitutes a single, integrated written contract expressing the entire agreement of the Client and our Firm. There is no other agreement, written or oral, express or implied, between the parties with respect to the subject matter of this agreement. This agreement may be modified only in a writing signed by all the parties. This agreement shall be construed by giving effect to the plain meaning of its terms.

We are very proud of our client relationships, and occasionally identify clients to others who ask about our client base, or in institutional materials. Unless you object in writing, we assume that you agree that we may state that we represent you in such matters as we deem appropriate, although of course we would not publish or disseminate any confidential information.

Please understand that your engagement of the Firm will not become final until we advise you that we have cleared potential conflicts and a credit review of this engagement is approved by the Firm's Management.

If these terms are acceptable to you, please sign in the space provided below on both this copy and the enclosed copy and return one copy of this agreement to us in the envelope enclosed for your convenience and retain the other copy for your files.

We appreciate your confidence in our Firm and look forward to working with you.

Sincerely,



Brent E. Butzin
Nossaman LLP

BEB:rds

ACCEPTANCE

I have read and understand the foregoing terms and agree to them as of the date that Nossaman LLP first provided services to the Front Range Passenger Rail District.

Dated: June 3, 2024

Front Range Passenger Rail District

By: 

Printed Name: Andy Karsian

Title: General Manager

ATTACHMENT A

SCHEDULE/EXPLANATION OF FEES

Billing Rates charged in one-tenth hour increments:

TIMEKEEPER

**HOURLY
RATE**

Attorneys

Partners:

Brent E. Butzin

Associates:

Erin Lee

Adeyemi Ojudun

Paralegals/Clerks:

Lisa Beidleman

DISBURSEMENTS

Fax per page.....\$ 1.00
Black White Print/Copy per page.....\$ 0.10
Color Print/Copy per page.....\$ 0.35

SPECIAL DISBURSEMENT RATES OR ARRANGEMENTS

Travel	<u>At reasonable actual cost for non-local (outside 50 miles) travel only</u>
Meals	<u>At reasonable actual cost for non-local (outside 50 miles) travel only</u>
Online Research	<u>At actual cost.</u>

Interest charged on payment past due 12%

BEB

Nossaman Partner
Initials

AK

Client's Initials

Resolution No. 2024-10 APPROVING AN ENGAGEMENT FOR LEGAL SERVICES WITH NOSSAMAN LLP

Final Audit Report

2024-06-07

Created:	2024-06-05
By:	Chrissy Breit (chrissy.breit@frprdistrct.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAzPAX8rN-Tz07-OQO8hGIWbhoUdyULaXh

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-  Document created by Chrissy Breit (chrissy.breit@frprdistrct.com)
2024-06-05 - 6:43:41 PM GMT
-  Document emailed to Christopher Nevitt (chris.nevitt@frprdistrct.com) for signature
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-  Document emailed to Joan Peck (joan.peck@longmontcolorado.gov) for signature
2024-06-05 - 6:43:49 PM GMT
-  Email viewed by Christopher Nevitt (chris.nevitt@frprdistrct.com)
2024-06-06 - 7:04:57 PM GMT
-  Signer Christopher Nevitt (chris.nevitt@frprdistrct.com) entered name at signing as Christopher E Nevitt
2024-06-06 - 7:05:14 PM GMT
-  Document e-signed by Christopher E Nevitt (chris.nevitt@frprdistrct.com)
Signature Date: 2024-06-06 - 7:05:16 PM GMT - Time Source: server
-  Email viewed by Joan Peck (joan.peck@longmontcolorado.gov)
2024-06-07 - 12:53:58 PM GMT
-  Document e-signed by Joan Peck (joan.peck@longmontcolorado.gov)
Signature Date: 2024-06-07 - 12:54:16 PM GMT - Time Source: server
-  Agreement completed.
2024-06-07 - 12:54:16 PM GMT