

**RESOLUTION NO. 2023-11
OF THE FRONT RANGE PASSENGER RAIL DISTRICT
APPROVING A CONTRACT WITH CDR ASSOCIATES**

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 CDR Associates, a Colorado nonprofit corporation, in order to facilitate the Board’s upcoming retreat (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, 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, pursuant to Section III of the Procurement Policy, the Finance Committee reviewed and recommended approval of this Contract at the September 7, 2023, Finance Committee meeting and has referred it to the Board for ratification.

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 ratifies any prior execution of the same.

APPROVED this 22nd day of September 2023.

James M. Souby

Chair

ATTEST:

Julie Duran Mullica

Secretary

**EXHIBIT A
CONTRACT**

CONTRACT FOR SERVICES

This CONTRACT FOR SERVICES (the “Contract”) is made and entered into as this ____ day of _____, 2023, by and between CDR Associates, a Colorado nonprofit corporation, (the “Consultant”) and the Front Range Passenger Rail District (the “District”) (each individually referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

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

WHEREAS, except as otherwise specifically provided, the Board of Directors of the District (the “Board”) exercises and performs all powers, privileges, and duties vested in or imposed upon the District in the Act; and

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

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

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

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

TERMS AND CONDITIONS

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

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

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

2. Period of Services and Termination. Unless earlier terminated, the period for providing the services and deliverables under this Contract shall commence on September 1, 2023, and shall end on December 31, 2023. Either Party shall have the right to terminate this Contract at any time, with or without cause, by providing written notice of termination to the other Party and effective upon the date of such notice. Upon termination, Consultant shall provide an invoice for all services provided as of the date of such notice, and the District shall pay Consultant for all services provided to the date of such notice.

3. Compensation. The performance of the Services under this Contract shall not exceed the amount described in **Exhibit B**, attached hereto and incorporated herein by this reference (the “Budget”), unless otherwise agreed to by the Parties. Consultant shall notify the District at any time when it anticipates that within 30 days Consultant will have expended the full amount described in the Budget. Such notice shall detail the compensation-to-date, the remaining scope of services, and the cost to complete the outstanding work for the remainder of the fiscal year. Consultant shall not be entitled to bill at overtime and/or double time rates for work done outside of normal business hours unless specifically authorized in writing by the District. The District shall compensate Consultant for the performance of the Services in a sum computed and payable as set forth as set forth in Section 4.

4. Payment and Invoicing.

a. Payment shall be made within 30 days following the receipt of the invoice by the District (“Due Date”), provided that the District receives such invoice before the regular monthly draw date (which date is the 15th day of each month unless Consultant receives written notice from the District of any change to that date). Consultant shall submit invoices each month to Dana Reza, Senior Accountant at CliftonLarsonAllen LLP at dana.reza@claconnect.com, with copy to Andy.Karisan@frprdistrict.com.

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

5. Annual Appropriation. Notwithstanding anything to the contrary contained in this Contract, the District shall have no obligations under this Contract after, nor shall any payments be made to Consultant in respect of any period after December 31 of any year, without an appropriation therefor by the District in accordance with a budget

adopted by the Board in compliance with the Local Government Budget Law (Section 29-1-101, *et. seq.*, C.R.S.) and Article X, Section 20 of the Colorado Constitution.

6. **Consultant Personnel.** Jonathan Bartsch shall be Consultant's contact with respect to this Contract and performance of the Services. In providing such services, Consultant shall make available professionals of recognized experience and qualifications to work on this matter. Consultant represents that at all times in the performance of the Services, Consultant's personnel shall comply with any and all applicable laws, codes, rules, and regulations.

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

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

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

c. Workers' compensation insurance as required by Colorado law and employers liability with minimum limits of \$500,000 for each accident, \$500,000 for each employee for disease, and \$500,000 aggregate.

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

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

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

The Parties acknowledge that the records under and related to this Contract may be subject to the Colorado Open Records Act, Colo. Rev. Stat. §§ 24-72-201 to 206. In the event of a request to the District for disclosure of information identified by Consultant as Consultant's "Confidential Commercial and/or Financial Information," the District shall advise Consultant of such request to give Consultant the opportunity to object to the disclosure of such information. In the event of the filing of a lawsuit to compel such disclosure, the District shall tender all such material to the court for judicial determination of the issue of disclosure and Consultant agrees to intervene in such lawsuit to protect and assert Consultant's claims of confidentiality against disclosure of such material. Consultant further agrees to defend, indemnify, save, and hold harmless the District, its officers, agents, and employees, from any claim, damages, expense, loss, or costs arising out of Consultant's intervention to protect and assert Consultant's claims of confidentiality against disclosure under this Section 10 including, without limitation, prompt reimbursement to the District of all reasonable attorneys' fees, costs, and direct damages that the District may incur directly or may be ordered to pay by such court.

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

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

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

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

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

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

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

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

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

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

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

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

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

District:	Front Range Passenger Rail District 2921 W 38th Ave PMB 361 Denver, CO 80211 Telephone: 303.883.9381 E-Mail: Andy.Karsian@frprdistrct.com
With copy to:	Kaplan Kirsch & Rockwell Attn: Brent E. Butzin, Esq. 1675 Broadway, Suite 2300 Denver, CO 80202 Telephone: 303.825.7000 Facsimile: 303.825.7005 E-Mail: bbutzin@kaplankirsch.com
Consultant:	CDR Associates 4696 Broadway, Ste. 1 Boulder, CO 80304 Telephone: 303.442.7367 E-Mail: cdr@mediate.org

[Signature page follows.]

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

District:

Front Range Passenger Rail District

By: _____

Name: _____

Title: _____

Consultant:

CDR Associates

By: _____

Name: _____

Title: _____

EXHIBIT A
(Scope of Services)

FRONT RANGE PASSENGER RAIL

Board of Directors Retreat

Scope of Work

August 28, 2023

Goal

Design, facilitate, and document the Front Range Rail (FRPR) District Board of Directors annual retreat.

Background

SB 21-238 created the Front Range Rail District (district) for the purpose of planning, designing, developing, financing, constructing, operating, and maintaining an interconnected passenger rail system (system) along the front range. An initial Board retreat was held in 2022 to explore vision and values, roles and responsibilities, and key Board tasks for 2023.

Approach

Building on the 2022 Board retreat, CDR, in coordination with Board staff will: **A)** check in with District Board members on retreat topics and ideas and coordinate with Board staff on agenda, retreat structure, and presentation materials; **B)** facilitate and document an interactive and strategic Board retreat; and **C)** organize logistics for retreat (e.g. room/restaurant reservations).

A) Board and Staff Check-ins and Agenda

Each Board member will be contacted to discuss their ideas and suggestions for what to cover in the retreat. (Potential interview questions for Board members and staff are included below.) The discussions will result in a summary of Board themes to be presented during the retreat, lead directly to the development of an annotated agenda.

B) Facilitate and Document Chartering Meeting

An in-person District Board meeting will be held (approximately 8 hours total) to discuss critical success factors, identify key decisions for 2023/2024, and build a sense of unity among the Board members.

C) Organize Logistics

Coordinate with the meeting venue and organize food for retreat, including dinner reservations.

Potential Interview Questions for Board Members and Staff

- What is your desired outcome for the FRPR District Board retreat?
- What are the issues and goals for Year 2, i.e. how can the District be most impactful moving forward?
- What strategic and governance issues do you feel need to be addressed?
 - What is the role of FRPR BOD in other state/regional rail and transportation issues?
 - How would you describe the relationships with other agencies and organizations that impact Board functioning?
 - What is the BOD's role in stakeholder engagement/communication?
- How would you assess the following issues:
 - **Roles and Parameters** of Board and staff: What is working well and what are areas for improvement?
 - **Meetings and Committees:** Are Board and subcommittee meetings addressing expectations? Are there the right number/type of Committees?
 - **Communication and Decision Making:** How do you evaluate Board members' communication with each other? Does communication remain professional/civil, effectively incorporate a diversity of perspectives, and lead to efficient decision making?
 - **Risk Identification and Strategies:** What are the current risks for the Board and for FRPR to recognize and address?
- What **concerns and challenges** are you experiencing as Board members? How do you see yourself helping to fix these? (e.g. engineering, finance, public/stakeholder engagement)

EXHIBIT B
(Budget)

PROJECT BUDGET

CLIENT: FRPR Board of Directors
PROJECT TITLE: Annual Retreat
DATES: September - December 2023
SUBMITTED: August 28, 2023

PROJECT LABOR DESCRIPTION	Jonathan Bartsch - Principal 250	Patrick Teese - Program Associate 140
Check-ins, Coordination and Agenda Development		
Review background information and relevant documents	5	5
Planning meetings with Staff and Board Leadership (assume 10)	20	10
Check-ins with Board (assume 24 - 1 hour with scheduling/summarizing)	24	8
Agenda Development and Key themes	5	5
Facilitation of Board of Directors Retreat		
{Prep, facilitation, documentation (assume 2 - 4 hour meetings)	24	24
Organize Logistics		
Room and food for BOD meeting, dinner and other coordination needs	2	12

STAFFING	HOURS	RATES
Jonathan Bartsch, Principal	80	250
Patrick Teese, Program Associate	64	140
TOTAL STAFFING	196	28960

OTHER DIRECT COSTS	UNITS	RATES
Mileage (60 miles x 5)	300	0.58
TOTAL ODC		174

TOTAL PROPOSED BUDGET	\$29,134.00
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Signature: Julie Duran Mullica
Julie Duran Mullica (Sep 26, 2023 12:08 MDT)

Email: juliemullica@gmail.com

Resolution No. 2023-11 ADOPTING A CONTRACT WITH CDR

Final Audit Report

2023-09-26

Created:	2023-09-26
By:	Chrissy Breit (chrissybreit@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4pcg7dUrAHurNbBTOEEfdAK5Zrp9dvzT

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-  Signer juliemullica@gmail.com entered name at signing as Julie Duran Mullica
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-  Document e-signed by Julie Duran Mullica (juliemullica@gmail.com)
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