

**RESOLUTION NO. 2023-10
OF THE FRONT RANGE PASSENGER RAIL DISTRICT
APPROVING PROFESSIONAL SERVICES AGREEMENT WITH HNTB**

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 HNTB Corporation, a Delaware corporation for the purpose of advising the Board regarding rail operator selection (the “Professional Services Agreement”); 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 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 Professional Services Agreement 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
PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into as this ____ day of _____, 2023, by and between HNTB Corporation, a Delaware corporation authorized to conduct business in the State of Colorado (“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 Agreement 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

Agreement and terms set forth in Exhibit A, the terms in the body of this Agreement 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 Agreement (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 Agreement shall commence on September 1, 2023, and shall end on December 31, 2023. Either Party shall have the right to terminate this Agreement 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. This Agreement will renew automatically on an annual basis, beginning on January 1, 2024, unless either Party provides written notice of termination to the other Party by December 1 of the current fiscal year.

3. Compensation. The performance of the Services under this Agreement shall not exceed the amount annually appropriated by the District for such Services. Consultant shall notify the District at any time when it anticipates that within 60 days Consultant will have expended the full amount appropriated for the fiscal year under the Agreement. 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. Unless a different payment schedule is provided for in Exhibit 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 Agreement, the District shall have no obligations under this Agreement

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.** Lisa Sakata or her designee shall be Consultant's contact with respect to this Agreement 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 Agreement (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;

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; and

d. Professional liability insurance with limits of at least \$1,000,000 per claim and \$2,000,000 in the annual aggregate, which coverage shall be "occurrence" based or, if claims made, shall be maintained for three (3) years following the from the completion of the work hereunder, and shall have a retroactive date no later than the date of this Agreement.

8. **Indemnification.** Consultant shall defend, release, indemnify, save, and hold harmless the District, its officers, agents, and employees from and against and all claims, demands, suits, actions, liabilities, costs, expenses, causes of action, or other legal, equitable or administrative proceedings of any kind or nature whatsoever, of or by anyone whomsoever, arising out of the acts or omissions of Consultant in its performance under this Agreement. This Section 8 shall survive termination of this Agreement. 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 Agreement 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 Agreement.

The Parties acknowledge that the records under and related to this Agreement 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 Agreement 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 Agreement 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 Agreement. 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 Agreement 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 Agreement shall be binding on the District and Consultant and their respective successors and permitted assigns, provided Consultant shall have no right to assign this Agreement 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 Agreement, 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 Agreement, 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 Agreement 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 Agreement 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 Agreement 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 Agreement. This Agreement 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 Agreement shall have the meaning ascribed to such terms in the Indenture.

23. Notices. All notices or other communications required under this Agreement 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@frprdistrict.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:	HNTB Corporation Attn: Lisa Sakata 950 17th Street, Suite 2000 Denver, CO 80203 Telephone: 970.389.2748 Facsimile: 303.825.7005 E-Mail: lsakata@hntb.com

[Signature page follows.]

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

District:

Front Range Passenger Rail District

By: _____

Name: _____

Title: _____

Consultant:

HNTB Corporation

By: _____

Name: _____

Title: _____

EXHIBIT A
(Scope of Services)

DRAFT Scope/Schedule/Budget

Development of Procurement Plan for an Operator

Front Range Passenger Rail

August-December 2023

Prepared by: Anna Barry, Program Manager/Boston; David Kutrosky, National Practice Consultant/Oakland

Goal: To develop a plan towards identifying a procurement plan selecting an operator for the proposed FRPR inter-city passenger rail (IPR) service

Details: 2 Workshops + one retreat in Dec 2023 + interviews with similar state IPR agencies in US

Timeline¹

1. Early Sept: One workshop (in-person) with Planning Committee [anticipate 8-10 board members] and District personnel [3 hrs]
2. Early Oct: Lunch-n-Learn virtual workshop with full Board (on-line) and District personnel [1.5 hrs]
3. Oct-Nov: Virtual Interviews with IPR agencies [West (CCJPA, WSDOT), East (VA, NNEPRA)].
4. Mid-Dec: Retreat with full Board and District personnel (in-person) [2-3 hrs]

Guiding Principles

- To help the District understand what we need to do before bringing on an operator.
- To discuss service goals, and how the process for selection of an operator furthers those goals.
- Interactive workshops that bring together District decision-makers, preferably in-person, would be the most productive means of having discussions with the District.
- To educate the District on the timeline for a procurement process to select an operator.
- To educate the District on key elements from the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), particularly those related to operator selection, that will support the District's efforts to obtain FRA money and support.

General Discussion/Content

- Potential operators
 - Amtrak
 - Independent Operators (e.g., Herzog, others)
 - Host railroads (e.g., BNSF for Sounder (WA) and Northstar (MN))
- Host railroads relations with operators
 - BNSF
 - UPRR
- Funding (FRA checklist; requirement that the District support what is built.)
 - Nexus of operator selection to potential capital funding sources
 - Operations funding sources
- Review of State and Federal regulations/laws (in cooperation with District legal counsel)
 - Fed: PRIIA Sec 213 → ability to select an operator other than Amtrak
 - CO: what are the restrictions if any on ownership of rail assets?
 - Benefits and constraints of owning rail assets

¹ Consultant acknowledges that any meeting at which three or more District Board member are in attendance (including virtual meeting) is considered a public meeting under Colorado law, and members of the public may also be in attendance.

A. Scope

1. Project Management

- Coordination between SDP team, operator procurement team, and District
- Monthly progress reviews
- Invoicing and monthly progress reporting
- Quality Assurance and quality control

2. Preparing Workshops and Retreat

- Workshop 1: Board Planning Committee (3-hr in-person workshop)
- Map of project development (“you are here”)
- Overview of regulations, procedures, flow of tasks
 - How does the selection of an operator impact the overall flow of tasks?
 - How is this timing/sequence different if one operator is chosen vs. another (e.g., Amtrak vs. a private operator)?
- What do the Committee members want the service to represent?
 - Which of these require the selection of an operator?
- Format: Slides, Q&A/discussion, including breaks
- Identify presentation modules (see content above and 2 bullets below)
 - What state IPR services are operating today?
 - History of Amtrak involvement: pre-/post Sec 209

Deliverable: Slide deck (up to 36 slides)

- Workshop 2: Lunch-and-Learn virtual meeting with Board
- Content based on results from Planning Committee Workshop
 - *Deliverable: Slide deck (up to 18 slides)*
- Board Retreat [Dec 2023]
- Short presentation (assuming this one item of a larger agenda)
 - -Briefly recap material covered in Planning Committee and full Board Lunch-n-Learn.
 - -Respond to takeaways from the Lunch-and-learn session.
 - -Recommend next steps for the Board in the forthcoming year related to operator selection.
 - *Deliverable: Slide deck (up to 5 slides)*

3. Interviews with IPR agencies

- Identify and select state IPR agency executives to speak with Planning Committee.
- Develop interview questions and approach with District personnel.
- Budget includes HNTB to coordinate, facilitate, and develop summary notes for each conversation.
- *Deliverables*:
 - *Briefing sheets: overview of IPR systems District is meeting with (history, service data/stats, key reasons for conversation)*
 - *Summary Report of interviews including key takeaways (10-20 pages)*

4. Recommendations of Plan to Procure/Select Operator

- Identify key findings from Workshops and interviews.
 - Use advice and insights from SMEs on timing of selecting an operator
- Deliverable: Plan for Procuring an Operator (reasons and timeline) [up to 10 pages]*

B. Schedule (August-Dec 2023)

Task	July 2023	Aug 2023	Sept 2023	Oct 2023	Nov 2023	Dec 2023
Workshop 1						
Workshop 2						
Interviews						
Board Retreat						
Recommendations						

★ - Event Occurrence/Deliverable

FINAL

EXHIBIT B
(Budget)

HNTB Corporation			
1700 Lincoln St #2450			
Denver, CO 80203			
COST PROPOSAL FOR			
FRPR District			
Project #			
August 29, 2023			
DIRECT LABOR EXPENSES			
LABOR DESCRIPTION	ESTIMATED HOURS	AVG. PAY RATE \$/HOUR	Cost
Lisa Sakata - Department Manager - Planning	20	\$ 114.48	\$2,289.60
Dominic Spaethling - Office Leader I	0	\$ 146.48	\$0.00
Michelle Hall - Project Analyst	20	\$ 43.84	\$876.80
Anna Barry - Program Manager	75	\$ 135.12	\$10,134.00
David Kutrosky - National Practice Consultant	75	\$ 180.32	\$13,524.00
Reza Akhavan - Office Leader I	4	\$ 162.64	\$650.56
-	0	\$ -	\$0.00
-	0	\$ -	\$0.00
-	0	\$ -	\$0.00
-	0	\$ -	\$0.00
-	0	\$ -	\$0.00
TOTAL	194		\$27,474.96
	OVERHEAD	139.44%	\$38,311.08
	SUBTOTAL		\$65,786.04
	FIXED FEE	10.00%	\$6,578.60
	FCCM	0.33%	\$90.67
TOTAL DIRECT LABOR EXPENSES			\$72,455.32
DIRECT EXPENSES			
Direct Expenses			\$5,200.00
	Total Direct Expenses		\$5,200.00
SUBCONSULTANT(S) EXPENSE			
	Total Subconsultant		\$0.00
		TOTAL COSTS	\$77,655.32

Signature: Julie Duran Mullica
 Julie Duran Mullica (Sep 26, 2023 12:10 MDT)
 Email: juliemullica@gmail.com

Resolution No. 2023-10 ADOPTING A CONTRACT WITH HNTB

Final Audit Report

2023-09-26

Created:	2023-09-26
By:	Chrissy Breit (chrissybreit@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAsnGQ9K7m09aaQ7CDe9CG6fMEdH26cVSo

"Resolution No. 2023-10 ADOPTING A CONTRACT WITH HNTB" History

-  Document created by Chrissy Breit (chrissybreit@gmail.com)
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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)
Signature Date: 2023-09-26 - 6:10:45 PM GMT - Time Source: server- IP address: 71.56.204.28
-  Agreement completed.
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