

2013-1232

EcoPass Contract

Applicant: City and County of Denver, Career Service Authority

Contact Name: Heather Britton Phone: 720 913 5699

Email: heather.britton@denvergov.org

Billing Address: 201 W. Colfax, Dept 412, Denver, CO 80202
 Street City State Zip

Locations	SLA	# of Employees	Rate	Amount
See Attached list	A	2317	\$51	\$118,167
	B	136	\$128	\$17,408
	C	2940	\$367	\$1,078,980
		5393 total employees		
		Pro-Rate Adjust		
		Sub Total		1,214,555
		3% Credit Card Processing Fee		
		Maximum Contract Amount		1,500,000.00
		Minimum Contract Amount		1,214,555.00

Contract Payment Terms:

The City and County of Denver agrees to pay to the order of RTD the minimum Contract Amount listed above for the EcoPasses. Signed contracts must be returned to RTD for processing by the 15th of the month in order to ensure start date below.

Contract Payment Terms:

The City and County of Denver agrees to pay to the order of RTD the total sum listed above prior to the issuance of the EcoPasses. Signed Contracts must be returned to RTD for processing by the 20th of the month in order to ensure start date below.

Contract will be valid from: **January 01, 2014** through **December 31, 2014**.

MAIL APPLICATION AND REQUIRED DOCUMENTATION ALONG WITH PAYMENT TO:

RTD, 1600 Blake Street, Attn: EcoPass, Denver, CO 80202

The Applicant, acting through the undersigned who represents that he/she is duly authorized by the Applicant, agrees to the payment(s) as stated herein. The undersigned has read this Contract, including the attached terms and conditions, and by his/her signature acknowledges that he/she has received a copy of this Contract, read same, and agrees to all of the terms and conditions. The Applicant understands and agrees that this Contract becomes a Contract upon signature of the Applicant and countersigned and approved by RTD. Any modifications or alterations to the Contract must be made in writing and signed by RTD. This Contract cannot be canceled except as stated herein.

By signing this Contract, you agree that the number of Employees listed above are the Employees as defined in the terms and conditions, and are Applicant's total Employee headcount at all locations listed and not a partial representation of Applicant's Employee headcount.

ECOPASS CONTRACT TERMS AND CONDITIONS

This Contract is made between the Applicant named herein ("Applicant") and the Regional Transportation District, a district organized pursuant to the Regional Transportation District Act, Section 32-9-101, et seq., C.R.S. ("RTD"). The purpose of this Contract is to provide RTD annual EcoPass Smart Cards ("EcoPasses") to all of the Applicant's eligible Employees. EcoPasses are provided at a rate based upon the pricing schedule provided to the Applicant. This Contract contains the entire Contract between Applicant and RTD for the term stated and cannot be changed or altered except by written amendment signed by Applicant and RTD. Oral contracts or special arrangements contrary to or in addition to the terms and conditions stated herein shall not be authorized by RTD.

1. **ELIGIBILITY:** Applicant must purchase EcoPasses for all full-time paid Employees at each location listed in this Contract; Applicant may also elect to add ALL or none of its part-time paid Employees (i.e., any Employees working on average less than 32 hours a week) at the same rate as full-time Employees. Applicant (including home businesses or sole proprietorships) must be the Employee's primary source of employment, and eligible Employees shall be only those paid Employees appearing on Applicant's payroll register. Applicant may include full-time paid interns; if Applicant hires paid summer interns, they must be added at a pro-rated cost based on their hire date. All other seasonal, on-call, temporary, volunteer, out of state, retired or termed persons working for or on behalf of Applicant shall be ineligible for EcoPasses. Applicant shall reimburse RTD for EcoPasses issued to any ineligible persons; reimbursement shall be the full cash fare for each trip taken. EcoPasses may not be provided or resold to ineligible persons. Home businesses are charged at the service level "D" rate.

2. **REQUIRED DOCUMENTATION:** In addition to the signed Contract and payment, all new Applicants shall supply RTD with an official payroll register of all current full-time and part-time Employees by employment location, or other qualified documents as approved by RTD Sales and Outreach Department, prior to Contract approval. All renewing Applicants will submit a signed certification confirming headcount in place of a payroll register. Sole Proprietors and General Partnerships must provide RTD with proof of current registration with the Colorado Department of Revenue and prior year Schedule C income tax return. Within 15 days of each request, Applicant shall submit all other documentation as RTD in its sole discretion may require to verify the number of Employees, Employee status, and compliance with the Contract by Applicant and its Employees. Such documentation may include official payroll registers to verify headcount, and quarterly Employee payroll registers and listings of new hires and terminated Employees using forms provided by RTD. In addition, RTD shall have the right to audit or survey the number of eligible Employees at each of Applicant's locations upon request.

3. **PAYMENT TERMS:** Payments will be made on a Quarterly basis by Denver to RTD, with payments due March 31, 2014, June 30, 2014, September 30, 2014 and December 31, 2014. Deposit of the check does not constitute acceptance of the Contract. In the event the Contract is not approved, a refund check will be sent within 30 days of refusal. For Contracts of less than 12 months, the price of each EcoPass shall be prorated in monthly increments. No Contract will be accepted for an amount under the contract minimum per year. No Contract will be accepted for more than 5,393 total employees. Denver's maximum payment obligation will not exceed One Million five hundred dollars (\$1,500,000.00). If a new Eligible Employee is hired, the Eligible Employee may be added at no charge so long as the complete ridership does not exceed 5,393 total Eligible Employees. If any scheduled payments are not made on their due date, then this contract may be deemed to be in default and RTD shall have the right to cancel and revoke passes held by Denver or its employees on the date of the missed payment. RTD may, at its option, allow an extension of any payment due with interest at the rate of 1% compounded monthly on all balances due. Denver may not receive participant contributions for the EcoPass at a profit above the contract amount.

4. **FINANCIAL OBLIGATIONS SUBJECT TO APPROPRIATION:** Denver's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Contract. The City does not by this Contract irrevocably pledge present cash reserves for payment or performance in future fiscal years, and this Contract does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. Failure of Denver to make timely payments on grounds of failure to appropriate/encumber may be treated as a default at RTD's option, with RTD having the rights to cancel/revoke passes or allow extensions of payments as set forth in Paragraph #3 of this Contract.

5. **ISSUANCE OF ECOPASSES:** Employees may obtain EcoPasses at an RTD photo location with an RTD-supplied authorization form signed by Applicant. Applicant also has the option of uploading Employee photos via RTD's web portal for production of EcoPasses; if such photos cannot be transferred to and/or be received by RTD for any reason including RTD equipment failure, Applicant shall instead make arrangements for its Employees to obtain their EcoPasses at a RTD photo location.

6. **HEADCOUNT INCREASE AND REDUCTION:** RTD will not track Applicant's employee headcount changes on a month-to-month basis; instead, Applicant must report changes in headcount to RTD by June 30 and December 31 as follows. If on June 1, 2014 the

number of eligible employees has increased or decreased from the original contract headcount, Applicant shall inform RTD no later than June 30, 2014 by submitting forms provided by RTD and accompanied by Applicant's January 1, 2014 and June 1, 2014 official payroll registers. Applicant will pay the June prorated amount for each additional Employee, or RTD will apply a June prorated credit to the Applicant's account for each terminated employee. In either such event, the Contract's headcount baseline will thereafter be adjusted accordingly and will apply to all future payments and/or credits. If at renewal time RTD finds that the Applicant has failed to notify RTD of a headcount increase subject to the above reporting requirements, in addition to any other rights RTD may at its option exercise under Section 7 of this Agreement, RTD may back charge the Applicant for unreported increases in headcount from July 1 through December 31 using prorated portion of calendar year (i.e. 6 months).

7. **DEACTIVATED ECOPASSES:** Applicant shall immediately deactivate an Employee's EcoPass through the RTD web portal when any Employee is no longer eligible pursuant to Paragraph #1. If Applicant fails to deactivate the EcoPass: all charges for issuing passes to ineligible persons will apply.

8. **CANCELLATION/TERMINATION OF ECOPASSES OR CONTRACT BY RTD:** RTD may cancel any or all individual EcoPasses or immediately terminate this entire Contract with no right to Applicant for proration of unused balances: (1) If RTD has reason to believe that the information provided by the Applicant has been falsified and/or EcoPasses have been given to ineligible persons; (2) For failure of Applicant to comply with any Contract terms or conditions; or (3) For discontinuance of business by Applicant. In addition to all other remedies available under this Contract, RTD has the right to immediately confiscate an EcoPass and pursue claims or demands against anyone determined by RTD to have duplicated, altered, or committed unauthorized use of an EcoPass; provided, however, that RTD may not pursue such claims or demands against an Applicant based on counterfeiting, alleged counterfeiting, or unauthorized use of an EcoPass unless such event is determined by RTD to be the result of Applicant's gross negligence or willful misconduct. RTD may also refer any information regarding such events to authorities for prosecution.

9. **REPLACEMENT OF DAMAGED OR LOST ECOPASSES:** Replacement EcoPasses cost \$10 unless the EcoPass is determined by RTD to be inoperable with no visible physical damage. Applicant and Employees shall not punch holes in or otherwise alter or deface the EcoPass. EcoPasses determined by RTD to have been damaged from washing, scratching, having holes punched in them, or other alteration or misuse will be charged the replacement fee. A lost EcoPass will be deactivated and will no longer be valid. If the lost EcoPass is later found, it cannot be reactivated and RTD will not provide a refund.

10. **SERVICES INCLUDED WITH ECOPASS:** Eligible employees with a valid EcoPass may ride on all parts of RTD's regular bus route transportation system including parts which are operated by Contractors to RTD, as well as on any fixed guideway rapid transit system which RTD operates, and call-n-Ride. EcoPass holders must pay a \$2.50 upcharge for SkyRide service to and from Denver International Airport ("DIA"), except that: (1) EcoPasses issued by authorized DIA employers are exempt from this fee; and (2) No upcharge is required for travel initiating from RTD's Airport Blvd/40th Ave. or Stapleton Park-n-Rides to/from DIA. EcoPasses are not valid on any special service as designated by RTD, including special services such as BroncosRide and RockiesRide.

11. **SMART CARD USE AND REQUIREMENTS:** The EcoPass Smart Card ("Smart Card") holder is required to tap the Smart Card to the validator on buses, and show the Smart Card's photo to the bus operator upon boarding. If the Smart Card is read successfully, the holder will hear a beep, see a yellow light, and see a "SHOW ID" message on the display requesting that the holder's Smart Card be shown to the operator. On light rail, Smart Card holders are required to select the level of service they are traveling (based upon the number of fare zones travelling), and tap the Smart Card to the validator before boarding a train. If the card is read successfully the holder will see a yellow light and hear a beep. Upon request, holders are required to show the Smart Card to an RTD fare inspector who will confirm that the Smart Card was tapped with the correct level of service by using a hand held reader. (Note: RTD reserves the right to modify the above procedures.) Failure to tap a Smart Card, or to select a correct fare zone, may result in a warning for the first offense, a seven day suspension for the second offense, a 30 day suspension for the third offense, and confiscation of the Smart Card for the remainder of the calendar year for a fourth offense. No refunds or credits will be issued. In the event a pass is placed on suspension or confiscated; the EcoPass holder will be required to pay full fare during any suspension or confiscation period. Failure to pay a fare during a suspension or confiscation period will be considered fare evasion and a citation may be issued. If for any reason a Smart Card cannot be read successfully or the holder receives a red light, the EcoPass holder must purchase a valid fare, contact RTD's Smart Card Call Center or Applicant's Transit Coordinator to provide notice of the problem, and cease using the Smart Card until the problem is resolved by RTD. Applicant and Employee shall not be entitled to refunds by RTD in the event of any such problem. All other applicable RTD policies and procedures for Smart Cards shall also apply to EcoPass Smart Cards.

12. **SELF-ADMINISTERING APPLICANTS:** An Applicant may self-administer issuance and activation of EcoPasses with RTD's advance written approval. Such Applicant is responsible for issuing EcoPasses to its eligible Employees. RTD will provide the pre-printed and pre-encoded EcoPass stock and Applicant shall use RTD's stock and specifications to produce EcoPasses. Applicant shall activate EcoPasses through the RTD web portal upon issuance. Applicant shall deactivate an employee's EcoPass through the web portal when an employee is no longer eligible pursuant to Paragraph #1. If the Applicant fails to deactivate the EcoPass, then all charges will apply. Applicant is responsible for deactivating a lost or stolen pass and reissuing a new pass to eligible employees. The \$10 replacement fee only applies if the employee visits one of the RTD locations to obtain the replacement. Applicant is responsible for storing the cards in a secure location.

13. **CHANGE OF ADDRESS:** If Applicant changes any designated location during the Contract period, it must notify RTD within 30

days in writing. Applicant shall pay RTD the prorated increase of all EcoPasses if the new location is in a higher service level. Applicant shall receive a prorated credit if the new location is in a lower RTD service level. Applicant may be liable for the increased Contract minimum.

14. **TERMINATION OF CONTRACT:** This Contract shall continue in full force and effect through the expiration date specified, unless terminated by either party pursuant to this Contract. RTD's prior rights to any payments under this Contract shall survive termination of the Contract. In addition to RTD's right to terminate the Contract under Section 6 above, either party may terminate this Contract at its sole discretion by giving the other party written notice of termination at least 60 days prior to the termination date. Upon such 60-day notice of termination, RTD will suspend any active EcoPass at the termination date and shall issue a refund, pro-rated for any period of available use.

15. **GUARANTEED RIDE HOME:** Applicant's Employees holding EcoPasses may use the Guaranteed Ride Home Program as provided by the Denver Regional Council of Governments ("DRCOG").

16. **MISCELLANEOUS:** (1) The captions or headings on any paragraphs to this Contract are for reference only and do not affect any of the terms and conditions contained herein. (2) Without RTD waiving any privileges and immunities conferred by the Colorado Governmental Immunity Act, each party agrees to be responsible for any claims, demands, or suits arising out of its own negligence. (3) EcoPasses do not guarantee any specific level or performance of service by RTD. (4) No person not a named party to this Contract shall have any rights or entitlement of any nature under it. (5) No assent, express or implied, to any breach of any term of this Contract shall constitute a waiver of any other term or the same term upon subsequent breach. (6) Applicant may not assign this Contract to any other person or entity without advance written permission from RTD. .

17. **NOTICES:** All notices, requests, demands, and other communications under this agreement shall be in writing and shall be deemed to be given if hand delivered, faxed, or mailed by certified mail, return receipt requested. Unless hereinafter changed by written notice, any notice shall be delivered, faxed, or mailed to the addresses listed as follows:

For Denver:
City and County of Denver
Career Service Authority
Attn: Bruce Backer
201 West Colfax, Dept. 412
Denver, CO 80202
Fax 720-913-5720

For RTD:
Regional Transportation District
Attn: Theresa Rinker, Sales Manager
1600 Blake St.
Denver, CO 80202-1399
303-299-2600

All notices delivered by hand shall be effective upon delivery and notices mailed by certified mail, return receipt requested, or notices faxed, shall be effective when received, as indicated on the return receipt or facsimile transmittal.

18. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, shall, until the expiration of three (3) years after the final payment under this Agreement, have the right to access to and the right to examine any directly pertinent books, documents, papers or records of RTD, involving transactions related to this Agreement without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

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[SIGNATURE BLOCKS ON NEXT PAGE]

Contract Control Number: CSAHR-201313956-00

Contractor Name: RTD

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

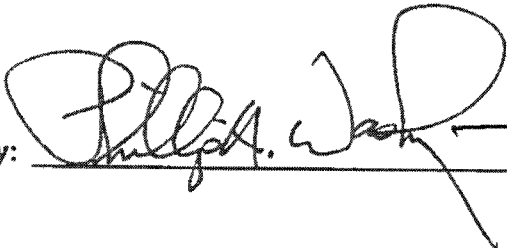
By _____

By _____



Contract Control Number: CSAHR-201313956-00

Contractor Name: RTD

By: 

Name: PHILLIP A. WASHINGTON
(please print)

Title: GENERAL MANAGER & CEO
(please print)

ATTEST: [if required]

APPROVED AS TO LEGAL FORM FOR THE
REGIONAL TRANSPORTATION DISTRICT


LEGAL COUNSEL

By: _____

Name: _____
(please print)

Title: _____
(please print)

