

Eco Pass Agreement

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	2176	\$51.00	\$110,976.00
	B	135	\$128.00	\$17,280.00
	C	2944	\$367.00	\$1,080,448.00
		Sub Total		\$1,208,704.00
		Pro-Rate Adjust		
		Pro-Rate Sub Total		
		Contract Min Added		
		Maximum Contract Amount		\$1,448,622.00
		Minimum Contract Amount		\$ 965,748.00

10-1065

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 Eco Passes. Signed contracts must be returned to RTD for processing by the 15th of the month in order to ensure start date below.

The Eco Passes will be valid from: January 1, 2011 through December 31, 2011.

MAIL TO: RTD, 1600 Blake Street, Attn: Eco Pass, Denver, CO 80202

Denver agrees to the payment(s) as stated herein. The undersigned has read this Agreement, including the terms and conditions on the reverse side, and by his/her signature acknowledges that he/she has received a copy of this agreement, read same, and agrees to the terms and conditions as stated. Denver understands and agrees that this Agreement becomes a contract upon signature of Denver and countersigned and approved by RTD. Any modifications or alterations to the Agreement must be made in writing and signed by both Denver and RTD. This Agreement cannot be canceled except as stated herein.

ECO PASS TERMS AND CONDITIONS

This Agreement is made between the City and County of Denver (hereafter referred to as ("Denver")) and the Regional Transportation District, a district organized pursuant to the Regional Transportation District Act, Section 32-9-101. et seq., C.R.S. (hereinafter "RTD"). The purpose of this Agreement is to provide RTD annual Eco Passes, which will be distributed by Denver to all of the eligible employees. Eco Passes are provided at a rate based upon the pricing schedule provided to Denver. This contract, including the attachments, contains the entire agreement between the parties hereto for the term stated and cannot be changed or altered except by written agreement signed by all parties hereto. Oral agreements or special arrangements contrary to or in addition to the terms and conditions stated herein shall be authorized by RTD.

1. **ELIGIBILITY:** Denver will purchase Eco Passes for all full-time limited and unlimited elected officials and employees for the City and County of Denver who are employed within the career service and those appointed and employed by the mayor, the auditor, the clerk and recorder, the city council, the civil service commission, the district attorney, the library, the county court and the board of adjustment zoning who work at the participating Denver locations listed on Attachment A. (collectively hereafter referred to as the "Eligible Employees"). Except for elected officials, for employees to be eligible Denver must be their primary source of employment. Denver may opt to add ALL of its part-time paid employees at the same rate as full-time employees, in which case such part-time employees shall also be deemed "Eligible Employees." A part-time employee is defined as anyone that works on average less than 32 hours a week. Independent contractors, interns, volunteers, seasonal and temporary employees and any employee not expressly listed above shall not be eligible. Subject to Paragraph #4 of this Agreement, Denver may be liable for passes issued to ineligible persons, with the amount of such liability being equal to the cost of a Regional monthly pass for each month remaining on the Agreement. Eco Passes may not be provided or resold to ineligible persons.

2. **REQUIRED DOCUMENTATION:** Denver will supply RTD with an official employee roster/payroll journal of all current full-time and part-time Eligible Employees by employment location or other qualified documents as approved by RTD Sales and Outreach Department. Denver is required to submit official documentation as RTD in its sole discretion may require to verify the number of Eligible Employees and confirm employer status. RTD will provide Denver a pre-numbered tracking log. Denver is required to track the issuance of all Eco Pass Decals. Denver is required to submit copies of their completed tracking logs twice annually no later than May 30, 2011, and September 30, 2011.

3. **PAYMENT TERMS:** Payments will be made on a Quarterly basis by Denver to RTD, with payments due March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011. Deposit of the check does not constitute acceptance of the Agreement. In the event the Agreement is not approved, a refund check will be sent within 30 days of refusal. For Agreements of less than 12 months, the price of each Eco Pass shall be prorated in monthly increments. No Agreement will be accepted for an amount under the contract minimum per year. No Agreement will be accepted for more than 6,312 total employees. Denver's maximum payment obligation will not exceed One Million four Hundred eight hundred forty eight thousand six hundred and twenty-two Dollars (\$1,448,622.00). 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 6,831 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 Eco Pass 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 Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and this Agreement 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 Agreement.

5. **ISSUANCE OF ECO PASSES:** Denver will issue Eco Pass decals to all of its Eligible Employees who elect to participate in the Eco Pass program and who sign a participation agreement. The form of the Eco Pass and location of the decal must be approved in advance by RTD. If the number of participating Eligible Employees increases above the contracted amount, Denver agrees to inform RTD in writing within 60 days and pay a prorated pass value for each additional employee added during the duration of this Agreement above the contract minimum. Denver will maintain an inventory of Eco Passes held by participating Eligible Employees. An authorized agent of Denver must affix RTD decals to the I.D. next to the photo. RTD reserves the right to audit or survey the number of Eligible Employees by Denver's location(s). Denver is required to submit, upon request by RTD, quarterly employee rosters and listings of new hires and terminated Eligible Employees using RTD forms as provided.

6. **TERMINATED PASSES:** Denver shall be responsible for returning an employee's Eco Pass immediately to RTD when an employee is no longer eligible pursuant to Paragraph #1. Subject to Paragraph #4 of this Agreement, Denver may be held liable to RTD for \$50 for each Eco Pass not returned to RTD as a result of employee termination. Denver shall be liable for any pro-rated costs for new employees. If any passes are not returned to RTD for unauthorized use, discontinuance of business, or upon termination of this agreement, the cost of a Regional monthly pass for each month remaining in the calendar year, may apply. Upon receipt of the returned pass, RTD will either provide a replacement Eco Pass for a new employee at no charge to Denver or apply a pro-rated credit to Denver's account. Denver must submit supporting document justifying a credit request for reduction in headcount. If Denver I.D. cards have been used in place of Eco Pass I.D.'s, Denver shall provide RTD with the removed decal from the employee's I.D. card. Credits will apply to a new or replaced employee or to the next year's contract. No refunds will be issued unless contract is not renewed.

7. **CANCELED PASSES:** RTD reserves the right to cancel any or all passes if it has reason to believe that the information provided by Denver has been falsified and/or passes have been given to ineligible persons. Any canceled passes must be returned to RTD immediately upon cancellation. In the event passes are not returned pursuant to this Agreement, subject to Paragraph #4 of this Agreement, Denver shall be liable for the price of all passes not returned, as stated in Paragraph #5, with interest at the rate of 1% compounded monthly on all balances due. Also subject to Paragraph #4 of this Agreement, Denver shall be liable for reasonable attorney fees, court costs, and other reasonable expenses incurred in the event RTD pursues legal action to obtain the return of any passes or amount owing under this Agreement.

8. **CONFISCATION OF PASS:** RTD has the right to confiscate the Eco Pass and pursue claims or demands against, or seek prosecution of, anyone

who duplicates, alters, or commits unauthorized use of the Eco Pass with intent to defraud. RTD agrees not to pursue any claims or demands against Denver for issuing the Eco Pass based on any counterfeiting or alleged counterfeiting of the Eco Pass, unless the counterfeiting event is the result of Denver's gross negligence or willful misconduct, and RTD agrees that Denver does not by this Agreement waive any privileges and immunities conferred by the Colorado Governmental Immunity Act,

9. LOST OR STOLEN PASSES: Lost passes will be replaced the first time for free. A pass which is lost a second time in a calendar year will be replaced for \$25. No passes will be replaced for third time in a calendar year. However, employees who give notice of termination and lose their pass within two weeks of termination, or lose their pass upon termination of this Agreement by Denver will not be issued a replacement pass. If the terminated employee's pass is not returned, Denver may order a replacement decal at the monthly pro-rated amount based upon the pricing schedule provided to Denver, in addition to the \$50 non-return fee as stated in Paragraph #5 of this Agreement. Those stolen passes which have an accompanying police report will be replaced for a \$5.00 processing fee the first time. All police reports must have a case number. If the same employee has the pass stolen a second time, the fee will be \$50 regardless of whether a police report is provided. A pass will not be reissued a third time. In the event that a replacement I.D. is provided and then the original "lost" I.D. is found, RTD will not provide a refund.

10. HOW THE PASS MAY BE USED: RTD shall allow each employee displaying a valid Eco Pass to ride free on all parts of its regular route transportation system but not limited to, parts which are operated by contractors to RTD, as well as on any fixed guideway rapid transit system which RTD operates. There is a \$5.00 fee for skyRide to Denver International Airport (DIA), except for Eco Passes issued to Denver employees employed at DIA. Eco Pass is not valid on any special service as designated by RTD, including special services, i.e., RockiesRide and BroncosRide operated pursuant to the Americans with Disabilities Act (ADA).

11. CHANGE OF ADDRESS: If Denver changes an eligible location at any time during the Agreement period, it must notify RTD within 30 days. Denver agrees to pay to RTD the prorated increase of all Eco Passes if the new location is in a higher service level. Denver will receive a prorated refund if the new location is in a lower RTD service level.

12. TERMINATION OF AGREEMENT: This Agreement shall continue in full force and effect through the expiration date specified, unless it is terminated by either party. Except as provided in Paragraph #4, either party may terminate this Agreement by giving the other party written notice of termination at least 60 days prior to the termination date. Upon return of all passes and decals, RTD shall issue a pro-rated refund for any period of available use. The discontinuance of business by Denver after execution of the contract shall result in termination of this Agreement. Denver's sole remedy in that event shall be a refund if all canceled passes are returned to RTD, pro-rated for any period of available use. Denver or any person or entity legally responsible shall be liable for immediate return of all Eco Passes or will be charged additional fees for each pass holder pursuant to Paragraph #5.

14. GUARANTEED RIDE HOME: Denver's employees are entitled to use the Guaranteed Ride Home Program as stipulated by the Denver Regional Council of Governments.

15. CAPTIONS OR HEADINGS: The captions or headings on any paragraphs to this Agreement are for reference only and do not affect any of the terms and conditions contained herein. Without 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. No person not a party to this Agreement shall have any rights or entitlement of any nature under it.

16. 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

For RTD:
Regional Transportation District
Attn: Theresa Sabrsula, Employer Outreach Manager
1600 Blake St.
Denver, CO 80202-1399

Fax: 720-913-5720

Fax: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.

16. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth herein.

Revised: 2/1/2010

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

ATTEST:

CITY AND COUNTY OF DENVER:

By: _____
STEPHANIE Y. O'MALLEY,
Clerk and Recorder, Ex-Officio
Clerk of the City and County of Denver

By: _____
M A Y O R

RECOMMENDED AND APPROVED:

By: _____
Director of Career Service Authority

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DAVID R. FINE, Attorney for the
City and County of Denver

By: _____
Manager of Finance
Contract Control No. CE11011

By: _____
Assistant City Attorney

By: _____
Auditor

"CITY"

By: _____
Phillip A Washington, General Manager

"RTD"