

**RTD FLEXPASS AGREEMENT
TERMS AND CONDITIONS**

This RTD Flexpass Agreement (the “Agreement”) is made and entered into as of January 1, 2019 between the City and County of Denver (the “Applicant”) and the Regional Transportation District, a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, Section 32-9-101. et seq., C.R.S. (“RTD”). The Applicant and RTD may hereinafter be referred to individually as a “Party” and collectively as the “Parties.”

The purpose of this Agreement is to provide RTD monthly passes, which will be distributed by RTD, to all of the Applicant’s participating employees. Each RTD monthly pass purchased by Applicant is provided by RTD at a rate based upon the pricing schedule provided to the Applicant and attached hereto as **Exhibit A**. This Agreement 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.

In consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **ORDERING PROCEDURES:** RTD will sell RTD regular monthly passes (Local/Limited, Regional), including discounted passes (seniors 65+, individuals with disabilities, Medicare recipients, and youth ages 6-19), to Applicant. Applicant may not charge its employees for the FlexPass at Applicant’s profit. Employees’ orders can be entered through the 15th of each month. Applicant will be notified via email that the order is awaiting approval. Applicant will then have the 16th and 17th of each month to approve the order by logging into the RTD FlexPass website using the assigned username and password. If both approval dates fall on a weekend, or weekend and holiday, Applicant will have until 12 a.m. on the following business day to approve the order. Applicant agrees to approve all orders by these deadlines. Applicant’s failure to approve any orders by the deadline will result in the entire order being cancelled by RTD.

Please select all options that apply.

1. Applicant agrees to subsidize passes to its employees’ at fifty (50) percent.
2. Applicant agrees to offer passes to its employees via pre-tax payroll deduction.

2. **PAYMENT PROCEDURES:** An order will proceed to fulfillment upon Applicant’s approval. Passes will be mailed by RTD to the Applicant’s address specified in the employee order approximately by the 21st of each month. Applicant understands and agrees that the RTD Flex Pass Program, relying on mailing of transit passes to employees’ homes, entails a risk borne by Applicant and its employees that such passes can be lost in the mail or claimed to be lost in the mail. RTD will review an employee’s claim that a pass was lost in the mail and employee’s request for a replacement pass on a case-by-case basis. RTD has sole discretion as to whether to issue a replacement pass. Applicant must approve and pay for all orders by stated deadlines. Employees and Applicant must pay using an electronic payment method. The following payment methods are accepted: Visa, MasterCard, Discover, American Express, Wire Transfer, and PayPal.

3. **MAXIMUM CONTRACT AMOUNT; FINANCIAL OBLIGATIONS SUBJECT TO APPROPRIATION.** **The Applicant's maximum payment obligation shall not exceed FORTY-FOUR THOUSAND AND 00/100 DOLLARS (\$44,000.00).** The Applicant's payment obligations hereunder, whether direct or contingent, extend only to funds appropriated annually by the Council of the City and County of Denver (the "City"), 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 the City to make timely payments on grounds of failure to appropriate or encumber sufficient funds may be treated as a default by RTD.
4. **AGREEMENT MODIFICATIONS OR TERMINATION:** This is a month-to-month rolling Agreement that will terminate at 11:59 p.m. on December 31, 2019, unless earlier notice of cancellation by Applicant is received by RTD. Earlier notice shall be in writing and received 30 days' prior to the stated termination date. The discontinuance of business by the Applicant after executing this Agreement shall result in automatic termination of this Agreement. Any modifications to subsidy percentages must be submitted to RTD in writing 30 days' prior to implementation.
5. **RTD RESERVATION OF RIGHTS.** RTD reserves the right to pursue claims or demands against, revoke the Smart Card of, or seek prosecution of anyone, who duplicates, alters, or commits unauthorized use of a Smart Card. Nothing in this Agreement shall be construed to limit RTD's right to establish routes or perform any functions authorized by the RTD Act. Nothing herein shall be construed to provide the Applicant with rights to receive any particular routes or levels of service.
6. **LIABILITY.** Without waiving the privileges and immunities conferred to the Parties by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq. (the "CGIA"), each Party shall be responsible for any claims, demands or suits arising out of its own negligence. It is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Agreement shall be construed as an expressed or implied waiver by a Party of its governmental immunity including limitations of amounts or types of liability or the governmental acceptance by RTD of the liabilities allowable under the CGIA.
7. **MERGER.** This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and all prior agreements, understandings or negotiations with respect to the subject matter of this Agreement will be deemed merged herein. No representations, warranties, promises or agreements, express or implied, will exist between the Parties, except as stated herein.
8. **AMENDMENT.** This Agreement shall not be amended or modified except in writing executed by the Parties and expressly stating that such document is an amendment or modification to this Agreement.
9. **NO ASSIGNMENT.** Applicant shall not assign this Agreement to any other person or entity without prior written permission from RTD.

10. **GOVERNING LAW.** This Agreement will be interpreted and enforced according to State laws, the applicable provisions of federal, State, and local laws, and the applicable rules and regulations promulgated under any of such laws.
11. **AUTHORITY.** The Parties represent that each has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law to legally authorize the signatories to execute this Agreement on behalf of the Parties.
12. **SEVERABILITY.** To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, the terms of the Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure will not affect the validity of any other terms or provision hereof.
13. **WAIVER.** The waiver of any breach of a term hereof will not be construed as a waiver of any other term, or the same term upon a subsequent breach.
14. **NO THIRD-PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, will be strictly reserved to the Parties hereto, and nothing contained in this Agreement will give or allow any such claim or right of action by any other or third person under this Agreement, including any individual Employee of the Applicant. It is the express intention of the Parties to this Agreement that any person or entity other than the Parties receiving services or benefits under this Agreement be deemed an incidental beneficiary only.
15. **CONFLICT OF INTEREST.** The Parties agree that no official, officer or employee of RTD or the Applicant will have any personal or beneficial interest whatsoever in this Agreement or the work performed pursuant to this Agreement in conflict with the applicable Party's ethical standards.
16. **CHANGES IN LAW.** This Agreement is subject to such modifications as may be required by changes in Applicant, federal, State, or local law, or their implementing regulations other than changes in Applicant law enacted following execution of this Agreement. Any such required modification will automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein.
17. **INDEPENDENT CONTRACTORS.** The Parties hereto are independent contractors and not partners or joint ventures of one another. Nothing herein shall be deemed to be a guarantee of the performance of the other Party nor constitute that either Party is an agent or representative of the other.
18. **SECTION HEADINGS.** The captions and headings set forth in this Agreement are for convenience of reference only and will not be construed to define or limit its terms and conditions.

Contract Control Number:

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:

By _____

By _____

By _____



Contract Control Number: CSAHR-201948043-00

Contractor Name: RTD

By: 

Name: David A Gorman
(please print)

Title: GM: CEO
(please print)

ATTEST: [if required]

By: Aimée Beckwith

Name: Aimée Beckwith
(please print)

Title: Associate General Counsel
(please print)

4/23/19



RTD FLEXPASS AGREEMENT
Exhibit A
RTD Pricing Schedule

Monthly Pass Costs:

Local Full Fare	\$114.00
Local Discount*	\$57.00
Local Youth**	\$34.20
Regional Full Fare	\$200.00
Regional Discount*	\$99.00
Regional Youth**	\$60.00

Discounted fares:

* Discount fares apply to seniors 65+, individuals with disabilities, and Medicare recipients.

** Youth discount fares apply to youth ages 6-19 (up to three children ages 5 and younger ride free with a fare-paying adult).

[Proof of eligibility](#) is required for all passengers using discounted fare products.

[Active duty members of the U.S. military](#) ride for free on all RTD services.