

Consultant:

Issued Date: 11/16/2022

EcoPass ContractApplicant: City & County of DenverPrimary Contact Name: Christophe O'Brien Primary Phone: 720-913-0748Primary Email: Christopher.obrien@denver.gov Secondary Contact Name: _____

Secondary Phone: _____ Secondary Email: _____

Billing Address: 201 W. Colfax Avenue, Dept. 412, Denver CO 80202

Street

City

State

Zip

Full Time Employees: _____ Part Time Employees: _____ Part Time Included: Yes No

Locations	SLA	No. of Employees	Rate	Amount
				\$ 584,963.00
		Zero Fare Credit		-\$ 48,746.92
		Sub Total		\$ 536,216.08
		Pro-Rate Adjust		
		Contract Minimum Added		
		Total Amount Due		\$ 536,216.08

Contract will be valid from: January 1, 2023 through: December 31, 2023**MAIL SIGNED APPLICATION AND REQUIRED DOCUMENTATION ALONG WITH PAYMENT TO:**

RTD, Attn: EcoPass, 1660 Blake Street, 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 hereby agrees to all Contract 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 terminated except as stated herein.

By signing this Contract, Applicant agrees that the number of Employees listed above are the Applicant's Employees as defined in the terms and conditions. Applicant hereby certifies that Applicant's total Employee headcount described above is accurate and complete.

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ECOPASS CONTRACT TERMS AND CONDITIONS

This ECOPASS CONTRACT (the “**Contract**”) is made and entered into as of its date of issue between the **City & County of Denver (“Applicant” or “City”)**, and the Regional Transportation District (“**RTD**”), a political subdivision of the State of Colorado (the “**State**”) organized pursuant to the RTD Act (as defined herein). The Applicant and RTD may hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties.**”

RTD is authorized by the Regional Transportation District Act, C.R.S. §§ 32-9-101, *et seq.*, as amended (the “**RTD Act**”), to develop, maintain, and operate a mass transportation system for the benefit of the inhabitants of its District, as defined by the RTD Act. Pursuant to applicable law, both RTD and the Applicant may cooperate or contract with each other to provide any function, service, or facility lawfully authorized to each Party. RTD currently operates a variety of bus, light rail, commuter rail, and other transit services in and around the Applicant and sells various fare media products including pass programs to utilize RTD’s transit services. RTD and Applicant desire to participate in the EcoPass Program (the “**EcoPass Program**”). This program makes certain RTD transit services available to Eligible Employees (defined below) of the Applicant in accordance with the terms and conditions of this Contract.

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. **General**

1.1 **Term.** This Contract is valid and effective on the dates set forth on the first page of this Contract (the “**Term**”) or until terminated by the Parties in writing, whichever is sooner. Executed Contracts must be returned to RTD for processing by the 15th of the month prior to the date on which the Contract becomes effective.

1.2 **Termination.** (a) In addition to RTD’s rights to terminate this Contract in the event of default by Applicant, 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. (b) RTD will suspend any active EcoPasses on the termination date and shall issue a refund to Applicant, pro-rated for any period of available use unless Applicant paid the contract minimum amount (the “**Contract Minimum**”) applicable to Applicant’s Eligible Employees (defined below) headcount number and Service Level Area (“**SLA**”). (c) If Applicant terminates this Contract, RTD will not issue a refund to Applicant if Applicant paid the Contract Minimum. (d) All provisions of this Contract that provide rights or create responsibilities for the Parties after termination will survive termination of this Contract.

2. **EcoPass Implementation.** Applicant agrees to comply with the procedures set forth herein and in RTD’s most recent Reference Manual (the “**Manual**”) provided to the Applicant. RTD reserves the right to modify its procedures with notice to Applicant.

2.1 **Eligibility.** The Applicant must purchase EcoPasses for all full-time paid Employees physically located at each location provided in this Contract. As of the date of this Contract, Applicant may also elect to add all or none of its Part-Time Employees or Employees working remotely, as indicated by Applicant, at the same rate as full-time Employees. Applicant agrees to provide such updated headcount and pay the additional amount. “**Employee**” means all self-employed individuals, sole proprietors, partners, owners, agents, employees of residential businesses, and any other individuals working for themselves or a business on behalf of Applicant at each listed location. 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; provided however that RTD may permit the Applicant to include in this Contract employees from other employers that contract with Applicant when such employees are located at the same location as Applicant. “**Part-Time Employees**” means any paid Employees working less than an average of 32 hours a week. “**Eligible Employees**” means (i) all full-time paid employees and (ii) Part-Time Employees, if elected by the Applicant. Applicant may also include full-time paid interns as Eligible Employees. If Applicant hires paid summer interns or seasonal employees, such interns and seasonal employees must be added at a pro-rated cost based on the hire date. All other on-call, temporary, volunteer, out-of-State, retired or terminated

persons working for or on behalf of Applicant shall be ineligible for EcoPasses. EcoPasses shall not be provided or resold to ineligible persons.

2.2 **Services.** RTD shall allow each Eligible Employee with a valid EcoPass to ride free of charge on all Regular Services during the Term. “**Regular Services**” include all RTD or RTD contractor-operated local and regional bus service, call-n-ride service, commuter and light rail service, service to and from Denver International Airport, and the Flatiron Flyer. Any RTD operator or Transit Security Officer may request a valid fare or deny boarding to any Eligible Employee without a valid EcoPass. EcoPass is not valid on Special Services as designated by RTD. “**Special Services**” include, but is not limited to, Access-a-Ride and other special event services designated by RTD from time to time.

2.3 **Required Documentation; RTD Audits.** (a) By providing an executed Contract and payment to RTD, all Applicants hereby certify the headcount of Eligible Employees. (b) Sole proprietors and general partnerships must provide RTD with proof of current registration with the State Department of Revenue and prior year Schedule C income tax return. (c) RTD has the right to audit or survey the number of Employees at each of Applicant’s locations at any time to determine the appropriate headcount for the Applicant and Applicant’s compliance with this Contract. Within 15 days of any request by RTD, Applicant shall submit any documentation required by RTD to verify the number of Eligible Employees, status of Eligible Employees, and compliance with the Contract by Applicant and its Eligible Employees. Such requested documentation may include official payroll registers to verify the headcount of Eligible Employees. (d) Applicant may request that RTD adjust Applicant’s headcount of Eligible Employees based on certain circumstances. RTD reviews such requests on a case-by-case basis. Any adjustments shall be made in RTD’s sole discretion. (e) Applicant is also responsible for deactivating lost EcoPasses. Once deactivated, an EcoPass is no longer be valid. If a lost EcoPass is later found, it cannot be reactivated and RTD will not provide a refund to Applicant.

2.4 **Payment Procedures.** (a) In accordance with the terms and conditions of this Contract, Applicant shall make payments to RTD in the manner and amounts described in this section and pursuant to the most recent Manual provided to the Applicant. (b) Applicant agrees to pay RTD the total amount due described on the first page of this Contract for all EcoPasses for the entire Term prior to RTD’s issuance of the EcoPasses, unless a payment plan addendum is approved by RTD, which addendum shall be attached and deemed incorporated as a part of this Contract. For Contracts with durations of less than 12 months, the price of each EcoPass shall be prorated in monthly increments. (c) RTD’s deposit of the check does not constitute acceptance of the Contract. If RTD does not approve the Contract, RTD will issue a refund check to Applicant within 30 days of refusal. (d) No Contract will be accepted by RTD for an amount below the Contract Minimum. (e) Applicants shall not charge an Eligible Employee for an EcoPass at an amount greater than the amount received by RTD for the EcoPass. (f) Home businesses are charged at an SLA “D” rate.

2.5 **Default and Remedies.** (a) If Applicant fails to pay any amounts when due under this Contract, including scheduled payments pursuant to any payment plan addendum approved by RTD, Applicant shall be in default with respect to this Contract. In addition to all other legal remedies, RTD shall have the right to immediately suspend or deactivate EcoPasses held by Applicant and all of its Eligible Employees on the date of the missed payment. RTD may alternatively allow the Contract to continue and charge interest at a rate of 1% compounded monthly on all balances due. RTD’s failure to terminate this Contract immediately after any missed payment shall not constitute a waiver of RTD’s right to terminate for any future missed payment. (b) RTD may cancel any or all individual EcoPasses and/or immediately terminate this Contract and Applicant shall have no right to reimbursement of unused balances in the event that (i) RTD determines that the information provided by the Applicant has been falsified and/or EcoPasses have been given to ineligible persons; (ii) Applicant fails to comply with any terms or conditions of this Contract; or (iii) Applicant discontinues its business. (c) 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, criminal or willful misconduct. RTD may also provide any information with respect to such events to law enforcement for prosecution.

2.6 **Notices.** (a) Any notice required to be given by the terms and provisions of this Contract or by any law or governmental regulation, by the Parties, shall be in writing (unless otherwise required by such law or regulation) and (a) shall be deemed to have been served and given upon personal delivery or (b) shall be deemed to have been served and given upon receipt if sent by electronic mail transmission or (c) shall be deemed to have been served and given two (2) business days after deposited by either registered or certified mail in a United States mail chute or general or branch United States post office with postage fully prepaid thereon with return receipt requested or (d) shall be deemed to have been served and given one (1) business day after being sent by overnight delivery from a location in the United States with a nationally recognized overnight courier service providing for written receipt. Notice shall be delivered or addressed to the Parties at the addresses set forth on the first page of this Contract. The Parties may designate different addresses for the mailing of notices, by providing notice to the other Party pursuant to this paragraph. (b) No personally identifying information with respect to Employees (“**Employee Information**”) shall be distributed or sold to any third party (including the Applicant) or used by RTD or its agents in any way, except as authorized by this Contract and RTD policies and procedures, as approved by Applicant or as required by law. RTD agrees to notify Applicant, within seventy-two (72) hours of when RTD itself receives notice or becomes aware of any security breach that could result in the unauthorized disclosure of Employee Information. RTD agrees to notify Applicant, within seventy-two (72) hours, of the receipt of a subpoena for any ridership tracking data.

2.7 **Change of Address.** If Applicant changes any designated location during the Term, the Applicant must notify RTD within 30 days in writing of such change. Applicant shall pay RTD the prorated increase of all EcoPasses if the new location is in a higher SLA. Applicant shall receive a prorated credit if the new location is in a lower SLA. Applicant may be liable for an increased Contract Minimum pursuant to the terms of this Contract.

3. **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 Contract 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.

4. **Liability.** Without waiving the privileges and immunities conferred to either Party 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 Contract shall be construed as an expressed or implied waiver by RTD 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.

5. **Financial Obligations Subject to Council Appropriation.** The Applicant’s payment obligations hereunder, whether direct or contingent, extend only to funds appropriated annually by the Council of 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, with RTD’s rights and remedies set forth in Sections 2.4 and 2.5 of this Agreement.

6. **Examination of Records.** Any authorized agent of the City, including the City Auditor or their representative, shall, until the expiration of three years after the final payment under this Agreement, have the right to access and examine any directly related books, documents, papers, or records of RTD solely involving transactions related to this Agreement.

7. **Miscellaneous.**

7.1 **Merger.** This Contract 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 Contract will be deemed merged herein. No representations, warranties, promises or agreements, express or implied, will exist between the Parties, except as stated herein.

7.2 **Amendment.** This Contract 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 Contract.

7.3 **No Assignment.** Applicant shall not assign this Contract to any other person or entity without prior written permission from RTD.

7.4 **Governing Law.** This Contract 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.

7.5 **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 Contract on behalf of the Parties.

7.6 **Severability.** To the extent that this Contract may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Contract, the terms of the Contract 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.

7.7 **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.

7.8 **No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, will be strictly reserved to the Parties hereto, and nothing contained in this Contract will give or allow any such claim or right of action by any other or third person under this Contract, including any individual Employee of the Applicant. It is the express intention of the Parties to this Contract that any person or entity other than the Parties receiving services or benefits under this Contract be deemed an incidental beneficiary only.

7.9 **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 Contract or the work performed pursuant to this Contract in conflict with the applicable Party's ethical standards.

7.10 **Changes in Law.** This Contract 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 Contract. Any such required modification will automatically be incorporated into and be part of this Contract on the effective date of such change as if fully set forth herein.

7.11 **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.

7.12 **Section Headings.** The captions and headings set forth in this Contract are for convenience of reference only and will not be construed to define or limit its terms and conditions.

[SIGNATURE BLOCKS ON NEXT PAGE]

Contract Control Number: CSAHR-202265775-00
Contractor Name: Regional Transportation District

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:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

CSAHR-202265775-00
Regional Transportation District

By:  6D0BE27723944E0...

Debra A. Johnson

Name: _____
(please print)

Title: GM/CEO

(please print)

ATTEST: [if required]

By:  4552A02C1DC2448

Aimee Beckwith

Name: _____
(please print)

Title: Senior Associate General Counsel

(please print)