

NEIGHBORHOOD ECOPASS CONTRACT TERMS AND CONDITIONS (2018)

This NEIGHBORHOOD ECOPASS CONTRACT (the “**Contract**”) is made and entered into as of its date of issue between Applicant named herein (hereafter referred to as the “**Applicant**”) 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 “**Neighborhood EcoPass Program**.” This program makes certain RTD transit services available to Eligible Residents (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. No Contract will be accepted for a period of less than three months.

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) Upon receipt of such notice of termination, RTD will suspend any active Neighborhood EcoPasses (“**EcoPasses**”) on the termination date and shall issue a refund to Applicant, pro-rated for any period of available use. (c) All provisions of this Contract that provide rights or create responsibilities for the Parties after termination will survive termination of this Contract.

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

2.1 **Eligibility.** To be eligible for the Neighborhood EcoPass Program, a neighborhood must be represented by either a county, municipality, or a registered homeowners/neighborhood association (an “**Association**”) and the neighborhood must be located within the Regional Transportation District boundaries (an “**Eligible Neighborhood**.” An Applicant must have one or more designated individuals assigned to be the contact person for RTD and the Eligible Neighborhood. “**Eligible Residents**” must be approved by the Association and are Eligible Residents as long as they reside in a household (“**Eligible Household**”) located in the Eligible Neighborhood. For any new Eligible Neighborhoods, all housing units within that residential block must be included in the Eligible Neighborhood when calculating the price of the EcoPass. All children 5 years old and younger may use any Regular Services for free (up to three children with each paying adult) and will not be issued an EcoPass. An EcoPass may not be provided or resold to anyone residing outside the Eligible Neighborhood.

2.2 **Services.** (a) RTD shall allow each Eligible Resident 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 Resident without a valid EcoPass. An EcoPass is not valid on Special Services as designated by RTD. “**Special Services**” include, but are not limited to, Access-a-Ride, BroncosRide, and other special event services designated by RTD from time to time.

2.3 Required Documentation; Issuance of Neighborhood EcoPasses; Adding Blocks to Existing Eligible Neighborhoods. (a) The Applicant must submit the following documentation for approval before a Contract is executed by RTD: A detailed map showing every residential block and housing unit covered by the Contract. If an apartment or condo building or buildings constitutes a residential block for purposes of this Contract, the location of such buildings must be shown on the map. (b) RTD will issue EcoPasses throughout the year for (i) lost, stolen or damaged EcoPasses, and (ii) the addition of Eligible Households and/or additional blocks added to the Contract pursuant to this section. For new Eligible Households, if RTD finds that the number of Eligible Households varies from the contracted amount, the Applicant agrees to pay for those Eligible Households. (c) Applicant may submit a request to RTD to adjust Applicant’s number of Eligible Households based on the addition of Eligible Households and/or new blocks to an existing Eligible Neighborhood, so long as such new blocks are contiguous with the Eligible Neighborhood. RTD may review requests to add households and/or blocks to an Eligible Neighborhood on a case-by-case basis. Any adjustments shall be made in RTD’s sole discretion.

2.4 RTD Audits; Deactivation of EcoPasses. (a) RTD has the right to audit the number of Eligible Residents and/or Eligible Households located in the Eligible Neighborhood at any time to determine compliance with this Contract. (b) Applicant is responsible for deactivating lost EcoPasses or EcoPasses held by ineligible persons. Once deactivated, an EcoPass is no longer valid. If a lost EcoPass is later found, it cannot be reactivated and RTD will not provide a refund to Applicant.

2.5 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 sum 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. Applicant shall pay RTD an additional 3% processing fee for any credit card payments. 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 amount applicable to Applicant’s Eligible Household headcount number. (e) Applicants shall not sell EcoPasses to Eligible Residents for a profit.

2.6 Pricing and Surveys. (a) For each new Eligible Neighborhood, the cost of an EcoPass is \$175 per household for the first two full years that such Eligible Neighborhood has a Contract with RTD. Thereafter the cost of an EcoPass will be based on RTD utilization reports. (b) For each existing Eligible Neighborhood for which RTD utilization reports are available, the cost of an EcoPass will be based on such utilization reports.

2.7 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 Residents 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, or (ii) Applicant fails to comply with any terms or conditions of this Contract. (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.

2.8 **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 Eligible Residents ("**Resident 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 Resident Information. RTD agrees to notify Applicant, within seventy-two (72) hours, of the receipt of a subpoena for any ridership tracking data.

3. **RTD Reservation of Rights.** RTD reserves the right to pursue claims or demands against, revoke the EcoPass of, or seek prosecution of anyone, who duplicates, alters, or commits unauthorized use of an EcoPass. 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 RTD 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. **Miscellaneous.**

5.1 **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.

5.2 **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.

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

5.4 **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.

5.5 **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.

5.6 **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.

5.7 **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.

5.8 **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 Eligible Resident 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.

5.9 **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.

5.10 **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.

5.11 **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.

5.12 **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.

The Parties have executed this Contract as of the date first set forth herein.

Revised: 10/12/2018