

CITY OF LITTLETON, COLORADO

Resolution No. 29

Series of 2014

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LITTLETON, COLORADO, APPROVING THE FUNDING
AGREEMENT FOR RTD FUNDING OF LOCAL
TRANSPORTATION SERVICES**

WHEREAS, the city and the Regional Transportation District desire to enter into an agreement regarding the funding and operation of the Shopping Cart transportation service, which provides senior residents of the city with transportation to and from various medical, retail and commercial establishments within the city and various other locations; and

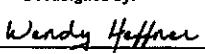
WHEREAS, the city council deems such an agreement to be in the best interest of the city.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF LITTLETON, COLORADO, THAT:**

The Funding Agreement for RTD Funding of Local Transportation Services is hereby approved.

INTRODUCED, READ AND ADOPTED at a regularly scheduled meeting of the city council of the City of Littleton, Colorado, on the 18th day of March 2014, at 6:30 p.m. at the Littleton Center, 2255 West Berry Avenue, Littleton, Colorado.

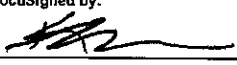
ATTEST:

DocuSigned by:

Wendy Heffner
City Clerk

DocuSigned by:

Phil Gorman
President of City Council

APPROVED AS TO FORM:

DocuSigned by:

Kristin Schiedorn
City Attorney

**FUNDING AGREEMENT
FOR RTD FUNDING OF LOCAL TRANSPORTATION SERVICES
(CITY OF LITTLETON SHOPPING CART)**

This Funding Agreement for RTD Funding of Local Transportation Services (City of Littleton Shopping Cart) ("Agreement") is made this 18 day of March 2014, between the Regional Transportation District, a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. § 32-9-101, *et seq.*, ("RTD") and the City of Littleton, Colorado, a Colorado home rule city (hereafter referred to as "Local Entity"). The Local Entity and RTD may also be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

- A. RTD is authorized by the Regional Transportation District Act, C.R.S. §§ 32-9-101, *et seq.* (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.
- B. Pursuant to the Colorado Constitution, Article XIV, Section 18(2)(a), and C.R.S. §§ 29-1-203 *et seq.*, both RTD and the Local Entity may cooperate or contract with each other to provide any function, service, or facility lawfully authorized to each, and any such contract may provide for sharing of costs.
- C. RTD currently operates a variety of fixed-route bus, light rail, and other transit services in and around the Local Entity.
- D. The Parties agree that the transit services described in Exhibit A ("Services") provide mobility and access to the business and residential areas in and around the Local Entity.
- E. RTD wishes to financially contribute to the provision of the Services according to the terms and conditions as agreed by the Parties, as set forth herein.

TERMS AND CONDITIONS

NOW THEREFORE, 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.

- A. **Exhibits.** The following exhibits are attached and incorporated into this Agreement by this reference:

Exhibit A: Description of the Services
Exhibit B: Description of the RTD Funding

Exhibit C: Communication and Notices – Contacts

Exhibit D: Special Provisions

- B. Recitals.** The recitals set forth above are incorporated herein by this reference.
- C. Scope.** The Parties may have previously entered into various other agreements which remain in effect until terminated and are not voided by or otherwise amended by this Agreement, unless expressly set forth herein.
- 2. OPERATIONS, MANAGEMENT AND CONTROL OF THE SERVICES.** The Local Entity shall continue to manage and operate, either directly or through its designated agent(s), the Services. The Local Entity and/or its designated agent(s) shall be solely responsible for all operations, management, marketing, administration, and Services delivery functions, including provision of vehicles, vehicle maintenance, insurance and accounting. Except as specifically provided herein, RTD shall have no responsibility for the operations and management of the Services. RTD shall have no responsibility for, or authority or control with respect to, the supervision and management of any employees or contractors who work in connection with the Services. The Local Entity shall operate the Services in compliance with all applicable laws, regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, including any amendment, extension or re-enactment of any of the same, and all other instruments, orders and regulations made pursuant to statute (collectively, "Laws"), and the Local Entity shall be solely responsible for compliance with all applicable Laws. Notwithstanding RTD's right to cease funding as provided in this Agreement, RTD has no obligation or intent, nor right pursuant to this Agreement, to otherwise continue the Services, if the Local Entity ceases to provide the Services.
- 3. SERVICES.** The hours, frequency, routes and schedule of the Services ("Operating Parameters") shall be as shown on **Exhibit A**. No changes shall be made to the Operating Parameters during the term of this Agreement without the written agreement of both Parties, or if changes are made to the Operating Parameters without the written consent of RTD, then RTD may, at its sole option, terminate this Agreement without any notice. In the event that RTD terminates this Agreement in accordance with this Section 3, RTD will not provide any funding for Services outside the Operating Parameters.
- 4. RTD FUNDING.** In partial support of the Services, RTD will reimburse the Local Entity for the Net Cost of the Services up to the amount and for the term set out in **Exhibit B** ("RTD Funding"). RTD Funding does not include any additional operating costs for services in excess of the Operating Parameters as set out in Exhibit A, including

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(CITY OF LITTLETON SHOPPING CART)

any special events and holidays. Under no circumstances will RTD be obligated to pay more than the RTD Funding.

5. INVOICING AND PAYMENT.

- A.** The Local Entity will submit an invoice to RTD on a monthly basis for payment of the RTD Funding. Unless otherwise agreed by the Parties, the invoice shall include an itemized list of reimbursable operating expenses and a summary of service hours, mileage, passenger boardings, and any other information that RTD otherwise reasonably requests.
- B.** RTD will pay all approved invoices within thirty calendar (30) days after RTD has received the invoice. If RTD does not approve an invoice from the Local Entity, RTD will provide a written explanation of disputed items within ten (10) calendar days after RTD has received the invoice.

- 6. RECORDS.** The Local Entity, or its designated agent, will maintain full and complete financial records for the provision of the Services. Such records shall include any financial information to support and document the operating costs and revenues relating to the Services and any other financial information specifically requested by RTD. The Local Entity, or its designated agent, shall make these records available to RTD for audit for a period of three (3) years after final payment under this Agreement. If applicable, National Transit Database ("NTD") data shall be kept in accordance with Federal Transit Administration ("FTA") requirements and shall be reported as part of RTD's NTD submission.

7. MARKETING.

- A.** The Services will not be designated, marketed, or promoted as an RTD-branded service, except that the Local Entity shall allow RTD to display an appropriate RTD logo stating that the Services are "in partnership with RTD" on all vehicles used to furnish the Services and financially supported in part by RTD through this Agreement.
- B.** The Local Entity and/or its designated agent(s) will market the Services, and such marketing will include but is not limited to developing a marketing plan and implementing the plan. A marketing plan may include the following elements: advertising, public relations, collateral materials, websites, coordination with other transportation programs, outreach, and training. RTD will have the opportunity to review and approve any marketing materials for the Services.

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8. **SERVICE MONITORING.** RTD reserves the right, in its sole discretion, to set and to assess the performance expectations of the Services. If RTD determines that the RTD Funding is not warranted in accordance with RTD's performance expectations, RTD shall notify the Local Entity as soon as practicable.

9. **LIABILITY AND INSURANCE.**

- A. The Parties agree that RTD shall have no liability to third parties arising out of the operations or management of the Services, or any other service operated, directly or indirectly, by the Local Entity, and the Local Entity shall have no liability to third parties arising out of the operations or management of any RTD services. This provision shall survive termination of this Agreement.
- B. The Local Entity and/or its designated agent(s) shall cause RTD and its officers and employees to be named as additional insured on all insurance policies covering any operations of the Services.
- C. Without waiving the privileges and immunities conferred by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, 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 section or elsewhere in this Agreement shall be construed as an express or implied waiver by either Party of its governmental immunity including limitations of amounts or types of liability or the governmental acceptance by either Party of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

10. **GENERAL PROVISIONS.**

- A. **Available Funding.** This Agreement does not contain any multiple-fiscal year financial obligations by either Party that extend beyond its current fiscal year. The financial obligations of each Party under this Agreement shall be subject to and limited by the appropriation of sufficient funds therefore by its governing body. Funds for this Agreement, as set out in **Exhibit B**, have been budgeted, authorized and appropriated by the RTD Board of Directors only for the current fiscal year. If the Parties intend to provide RTD Funding for future years, Exhibit B must be amended in accordance with Section 10.D. Nothing herein obligates RTD to budget, authorize or appropriate funds for any future fiscal year.
- B. **Other Sources of Funding.** Nothing in this Agreement will prevent the Local Entity from collecting contributions or fees from entities other than RTD to help

defray any unreimbursed costs of providing the Service, except that RTD shall not be a party to any such arrangement.

- C. **Merger.** This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and all prior agreements, understandings or negotiations shall be deemed merged herein. No representations, warranties, promises or agreements, express or implied, shall exist between the Parties, except as stated herein
- D. **Amendment.** No amendment to this Agreement shall be made or deemed to have been made unless in writing executed and delivered by the Party to be bound thereby.
- E. **Governing Law.** This Agreement shall be interpreted and enforced according to the laws of the State of Colorado, the ordinances of the City, the applicable provisions of federal law, and the applicable rules and regulations promulgated under any of them. Venue for any action hereunder shall be in Denver District Court, Colorado.
- F. **Communication and Notices.** Any notices, bills, invoices or reports required by this Agreement shall be sufficiently delivered if sent by the Parties in the United States mail, postage prepaid, or by email to the Parties at the following addresses specified on **Exhibit C**. The addresses or contacts may be changed by the Parties by written notice to the other Party.
- G. **Term and Termination.** This Agreement shall be deemed to have commenced on January 1, 2014 and shall remain in effect until terminated in writing by the Parties or by court order. Unless otherwise agreed, either Party may terminate this Agreement on sixty (60) calendar days' written notice. In the event of termination by RTD for any reason other than default, RTD shall pay no more than the reimbursable costs of the Services up to the date of termination. All provisions of this Agreement that provide rights or create responsibilities for the Parties after termination shall survive termination of this Agreement. Nothing herein obligates RTD to make funds available for the Services in any future fiscal year, and nothing herein shall imply funding will be renewed at the same or any level.
- H. **Amendment.** The Parties may, by written agreement, amend this Agreement or the Exhibits to account for changes in RTD Funding and service levels. Nothing herein obligates either Party to make funds available other than as specifically provided in the attached Exhibits, and nothing herein shall imply funding or service will be renewed at the same or any level.

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- I. 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 undersigned signatories to execute this Agreement on behalf of the Parties and to bind the Parties to its terms.
- J. No Effect on RTD Rights or Authority.** Nothing in this Agreement shall be construed to limit RTD's right to establish routes or services or to perform any functions authorized by C.R.S. § 32-9-101 *et. Seq.*
- K. Assignment.** Other than as specifically provided herein, the Parties agree that they will not assign or transfer any of their rights or obligations under this Agreement without first obtaining the written consent of the other Party.
- L. Prohibited Interests.** No director, officer, employee, or agent of RTD shall be interested in any contract or transaction with RTD except in his or her official representative capacity unless otherwise provided by the RTD Code of Ethics.
- M. 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 shall not affect the validity of any other terms or provision hereof.
- N. Waiver.** The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon a subsequent breach.
- O. 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, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under this Agreement. 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.
- P. Changes in Law.** This Agreement is subject to such modifications as may be required by changes in City, state or federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein.

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Q. Status of Parties.

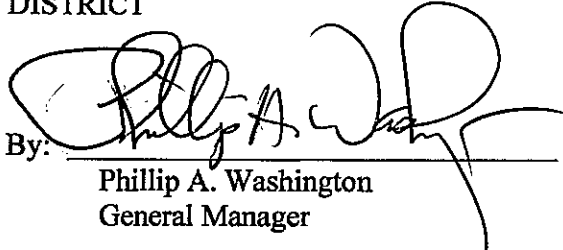
- (1) The Parties agree that the status of each Party shall be that of an independent contractor to the other, and it is not intended, nor shall it be construed, that one Party or any officer, employee, agent or contractor of such Party is an employee, officer, agent, or representative of the other Party. Nothing contained in the Agreement or documents incorporated by reference herein or otherwise creates any partnership, joint venture, or other association or relationship between the Parties. Any approval, review, inspection, direction or instruction by RTD or any party on behalf of RTD shall in no way affect either Party's independent contractor status or obligation to perform in accordance with this Agreement. Neither Party has authorization, express or implied, to bind the other to any agreements, liability, nor understanding except as expressly set forth in this Agreement.
- (2) The Local Entity and/or its designated agent(s) shall be responsible for all federal and state taxes and contributions for Social Security, unemployment insurance, income withholding tax, and other taxes measured by wages paid to employees, as well as any subcontractor or vendor. The Local Entity acknowledges that it and its employees are not entitled to workers' compensation benefits or unemployment insurance benefits from RTD, unless the Local Entity or a third party provides such coverage, and that RTD does not pay for or otherwise provide such coverage. The Local Entity shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by RTD) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for its own actions, its employees and agents.

R. Paragraph Headings. The captions and headings set forth in this Agreement are for convenience of reference only and shall not be construed so as to define or limit its terms and provisions.

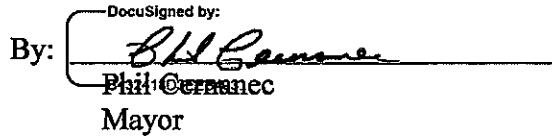
S. Counterparts. This Agreement may be executed in counterparts. Signatures on separate originals shall constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures shall constitute original signatures.

WHEREFORE, the Parties have entered into this Agreement as of the Effective Date.

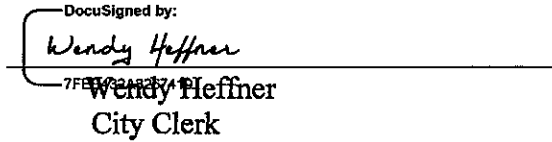
REGIONAL TRANSPORTATION
DISTRICT

By: 
Phillip A. Washington
General Manager

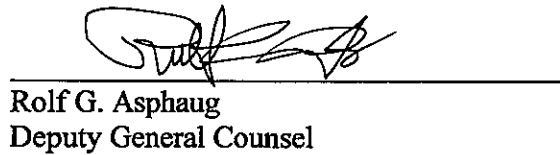
CITY OF LITTLETON

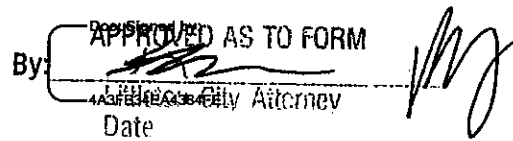
By: 
Phil Cernanec
Mayor

ATTEST:


Wendy Heffner
City Clerk

Approved as to legal form for RTD:


Rolf G. Asphaug
Deputy General Counsel

By: 
APPROVED AS TO FORM
City Attorney
Date

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Exhibit A
Description of the Services

Span of Service:

Monday- Friday	10:00am – 2:00pm 3:00pm – 5:00pm
Saturday-	10:00am – 2:00pm
Sunday-	n/a

Service Frequency:

Weekday-	Two trips are provided on Monday, Tuesday, Wednesday and Fridays. One trip provided on Thursdays. Saturday- One trip provided on Saturdays.
Sunday-	n/a

Annual Revenue Hours:

Weekday (Monday- Friday)-	1530
Weekend -	208
Holidays-	n/a
Total	1738

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- The Shopping Cart program is a fixed-route service for Littleton. It runs six days per week, Monday through Saturday, shuttling passengers to and from area grocery stores and the Southglenn Mall.
- Following apartment complexes are served:
 - Alyson Court—5807 S Gallup St.
 - Amity Plaza—200 W Sterne Parkway
 - Bradley House—5844 S Datura St.
 - Geneva Village—5444 S Prince St.
 - Southview Apts—5829 S Datura St. AND 5820 S Windermere St.
 - Wolhurst Adult Community—8201 S Santa Fe Dr.

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Exhibit B
Description of the RTD Funding

RTD shall contribute \$28,519.00 towards the cost of operating the Services, as described in Exhibit A, for the period January 1, 2014 through December 31, 2014. The amount provided in this Exhibit B shall be reduced pro rata for any reduction in the Service from that provided in Exhibit A.

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Exhibit C
Communication and Notices – Contacts

For the Entity:

City of Littleton
2255 West Berry Avenue
Littleton, Colorado 80165
Attn: Wendy Heffner
303.795.3753

For the RTD:

Regional Transportation District
1600 Blake Street
Denver, Colorado 80202
Attn: Bruce Abel
303.299.2839

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Exhibit D
Special Provisions

There are no special provisions for this Agreement.

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