

MANAGEMENT COMMITTEE RESOLUTION

ACHD COMMUTERIDE AGREEMENT RESOLUTION VMC07-003

**BY THE MANAGEMENT COMMITTEE OF VALLEY REGIONAL TRANSIT (VRT)
APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH ACHD IN REGARD TO
CONTINUED OPERATION OF ACHD COMMUTERIDE:**

WHEREAS, pursuant to Idaho Code, Chapter 21, Title 40, and as a result of the approval of the voters of Ada and Canyon Counties on November 3, 1998, a regional public transportation authority (now known as "**Valley Regional Transit**") was created to serve Ada and Canyon counties; and

WHEREAS, Idaho Code § 40-2109(1) confers to Valley Regional Transit, as a regional public transportation entity, exclusive jurisdiction over all publicly funded or publicly subsidized transportation services and programs except those transportation services and programs under the jurisdiction of public school districts and law enforcement agencies within Ada and Canyon Counties; and

WHEREAS, Idaho Code § 40-2108(2) and (5) provide that Valley Regional Transit, as a regional public transportation entity, has power to raise and expend funds as provided in Idaho Code Chapter 21, Title 40 and to make contracts as may be necessary or convenient for the purposes of the Regional Public Transportation Authority Act; and

WHEREAS, VRT is dedicated to implementing the policy of the state set forth in Idaho Code § 40-2102 to improve public transportation; to increase the use of transportation alternatives to single occupancy motor vehicles; to promote cooperative agreements among governmental entities in providing public transportation services; and to attain greater efficiency in the use of public transportation funds in a manner consistent with the needs, health, safety and general welfare of the people of Idaho; and

WHEREAS, ACHD is the single countywide highway district in and for Ada County, Idaho created pursuant to Idaho Code, Chapter 14, Title 40, with exclusive jurisdiction over the public right-of-way; and

WHEREAS, ACHD is dedicated to reducing traffic congestion during peak commute times and improving air quality by providing alternative public transportation and entering into cooperative agreements with VRT; and

WHEREAS, ACHD has successfully operated the Commuteride program for over 20 years; and

WHEREAS, VRT and ACHD desire to enter into this Agreement for purposes of

setting forth VRT's authorization of the continuation by ACHD of ACHD Commuteride, pursuant to the terms and conditions set forth in Exhibit 1.

WHEREAS, Ada County Highway District approved a similar resolution on May 30, 2007; and

WHEREAS, Idaho Code § 40-2109(5) provides that the Board of Valley Regional Transit may adopt resolutions consistent with law, as necessary, for carrying out the purposes of Chapter 21, Title 40, Idaho Code and discharging all powers and duties conferred to Valley Regional Transit Pursuant to Chapter 21, Title 40.

WHEREAS, the Board of Valley Regional Transit has created a Management Committee, conferring specific authority upon it to discharge its powers, pursuant to Resolution 2003-002.

NOW THEREFORE, BE IT RESOLVED BY THE MANAGEMENT COMMITTEE OF VALLEY REGIONAL TRANSIT:

Section 1. That the Management Committee authorizes the VRT Board Chair to sign, on behalf of the Valley Regional Transit Board, the Cooperative Agreement with ACHD for continued operation of ACHD Commuteride - Exhibit 1.


Section 2. That this resolution shall be in full force and effective immediately upon its adoption by the Management Committee of Valley Regional Transit and its approval by the Committee Chair.

ADOPTED by the Management Committee of Valley Regional Transit, this 18th day of June, 2007.

APPROVED by the Committee Chair this 16th day of July, 2007.

ATTEST:

APPROVED:



SECRETARY



CHAIR OF MANAGEMENT COMMITTEE

**COOPERATIVE GOVERNMENTAL AGREEMENT
BETWEEN
VALLEY REGIONAL TRANSIT
AND
ADA COUNTY HIGHWAY DISTRICT
FOR
ACHD COMMUTERIDE AUTHORIZATION**

THIS COOPERATIVE GOVERNMENTAL AGREEMENT ("**Agreement**") is entered into this 1st day of July, 2007, by and between VALLEY REGIONAL TRANSIT, the regional public transportation authority ("**VRT**") and ADA COUNTY HIGHWAY DISTRICT, a public body, corporate and politic ("**ACHD**").

RECITALS

A. VRT is the regional public transportation authority created to serve Ada and Canyon Counties, pursuant to Chapter 21, Title 40, Idaho Code, and as a result of the November 3, 1998 public referendum, with exclusive jurisdiction within such counties over all publicly funded or publicly subsidized transportation services and programs except those public transportation services and programs under the jurisdiction of public school districts and law enforcement agencies.

B. VRT is dedicated to implementing the policy of the state set forth in Idaho Code § 40-2102 to improve public transportation; to increase the use of transportation alternatives to single occupancy motor vehicles; to promote cooperative agreements among governmental entities in providing public transportation services; and to attain greater efficiency in the use of public transportation funds in a manner consistent with the needs, health, safety and general welfare of the people of Idaho.

C. ACHD is the single countywide highway district in and for Ada County, Idaho created pursuant to Idaho Code, Chapter 14, Title 40, with exclusive jurisdiction over the public right-of-way.

D. ACHD is dedicated to reducing traffic congestion and improving air quality by providing alternative public transportation and entering into cooperative agreements with VRT.

E. Idaho Code § 40-2109(7) provides that VRT may enter into cooperative agreements with the state, other authorities, counties, cities and highway districts under the provisions of Idaho Code § 67-2328, which expressly authorizes public agencies to enter into agreements with one another for cooperative action for purposes within the power, privilege, or authority of said agencies.

F. Pursuant to Idaho Code § 31-876 and Idaho Code § 40-1310, ACHD, for a period of over twenty years, has been a provider of public transportation services through "**ACHD Commuteride**," which provides vanpool and carpool services throughout a five county region, including area within the jurisdiction of VRT.

G. Idaho Code § 40-2110, among other things, provides that VRT and ACHD may, at their discretion, enter into a cooperative agreement to provide services-in-kind to maintain the continuity of an existing public transportation services.

H. VRT and ACHD desire to enter into this Agreement for purposes of setting forth VRT's authorization of the continuation by ACHD of ACHD Commuteride, pursuant to the terms and conditions set forth herein, for the stated purposes of maintaining the continuity of an existing public transportation service, and of implementing the policy of the state as set forth in Idaho Code § 40-2102 to improve public transportation; to increase the use of transportation alternatives to single occupancy motor vehicles; to promote cooperative agreements among governmental entities in providing public transportation services; and to attain greater efficiency in the use of public transportation funds in a manner consistent with the needs, health, safety and general welfare of the people of Idaho.

AGREEMENT

NOW, THEREFORE, in consideration of foregoing recitals, which are made a part of this Agreement and not mere recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Authorization.

Subject to the terms and conditions of this Agreement, VRT hereby grants to ACHD the authority to continue to independently operate ACHD Commuteride within the jurisdictional area of VRT, provided that such shall be at the sole cost, expense and liability ACHD.

2. Fee. Throughout the term of this Agreement, ACHD shall not be obligated to pay VRT a fee for the authorization granted hereby.

3. Revenue. All revenue generated from ACHD Commuteride shall belong to ACHD.

4. Term of Agreement. The term of this Agreement shall be for an initial term of ten (10) years from the date of full execution of this Agreement, with automatic renewals for successive periods of ten (10) years each; provided, however, that either party, upon at least one hundred eighty (180) days prior written notice to the other, shall be entitled to earlier terminate this Agreement. Upon termination of this Agreement, neither party shall have further recourse hereunder except with respect to liabilities incurred prior to such termination, and except as set forth in Section 5.

5. Termination Obligations. If VRT earlier terminates this Agreement for any reason other than the default of ACHD, ACHD may require VRT to pay ACHD an amount equal to the remaining undepreciated local match value, as of the date of termination, of any Commuteride equipment conveyed to VRT by ACHD. If this Agreement is earlier terminated by VRT because of the default of ACHD, however, VRT

shall have no such payment obligation. ACHD may, upon any early termination of this Agreement, retain ownership of any or all Commuteride Equipment, and VRT shall have no payment obligation with respect to any retained equipment.

6. Waiver and Estoppel Statement. ACHD acknowledges and agrees that the authority granted herein is temporary, non-transferable (subject to Section 13.7), non-exclusive and merely a permissive grant of authority pursuant to this Agreement. ACHD further acknowledges and agrees that it specifically assumes the risk that the authority that is granted pursuant to this Agreement may be terminated as provided herein before ACHD has realized the economic benefit of the cost of providing ACHD Commuteride, and ACHD hereby waives and is estopped from asserting any claim that this Agreement is in any way irrevocable because ACHD has expended funds for a period insufficient for ACHD to realize the economic benefit from such expenditure, other than agreed to be paid by VRT as set forth in Section 5. Any and all costs and expenses associated with ACHD Commuteride shall be at the sole cost and expense of ACHD.

7. Compliance With Law. In connection with the authority granted herein, ACHD covenants and agrees to comply with and observe in all respects any and all applicable federal, state and local statutes, ordinances, policies, rules and regulations.

8. Default. Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations (or breached any of its representations or warranties) under this Agreement unless such party, prior to expiration of said thirty (30) day period has rectified the particulars specified in said notice of default; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) days period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

9. Indemnification. ACHD hereby indemnifies and holds VRT harmless from and against any and all claims or actions for loss, injury, death, damages, mechanics, and other liens, arising out of the exercise of the authority granted herein by ACHD, its agents, contractors and employees, and including any attorney fees and costs that may be incurred by VRT in defense of such claims or actions indemnified against by VRT hereunder, except to the extent caused by the willful or grossly negligent act or omission of VRT, its agents, contractors or employees.

10. Liability Insurance. ACHD agrees to carry liability insurance in a sum equal to the statutory limit set forth in Idaho Code § 6-926 (currently \$500,000) as may be adjusted by the Idaho legislature from time to time. ACHD agrees to provide notice to VRT of such coverage, with VRT as an additional insured, on an annual basis.

11. Good Faith and Cooperation. The parties shall in all instances cooperate and act in good faith in compliance with the terms, covenants and conditions of this Agreement and each shall deal fairly with the other.

12. Additional Provision. VRT is in the process of creating and implementing a performance management system, which will include collecting and reporting on regional public transportations services. VRT is desirous of having ACHD, in particular its Commuteride staff, participate in same. VRT is also desirous of having Commuteride projects included in the VRT Board review projects for the Transportations Improvement Program. ACHD is agreeable to accommodating VRT with respect to such participation and inclusion and will take such steps as may be reasonably required, and will provide such information as may be reasonably requested. ACHD is agreeable to accommodating VRT with respect to such participation and inclusion and will take such steps as may be reasonably required and will provide such information as may be reasonably requested, provided that ACHD is acknowledged as the service provider for "ACHD Commuteride" in all documents, publications, promotions and statistics.

13. Miscellaneous.

13.1 Authority. The parties hereby warrant that the person executing this Agreement on behalf of each party is, at the time of its execution, duly authorized to do so by its governing body, and is fully vested with the authority to bind that party in all respects.

13.2 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable, the remainder shall be construed to conform to the intent of the parties, and shall survive the severed provisions.

13.3 Entire Agreement. Except as provided otherwise herein, this Agreement and any attachments hereto constitute the entire Agreement between VRT and ACHD concerning the subject matter hereof.

13.4 Further Assurances. Each Party shall cooperate fully with the other and execute such further instruments, documents and agreements and give such further written assurances, as may be reasonably requested by the other to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Agreement.

13.5 Captions and Headings. The captions and headings in this Agreement are solely for reference purposes, and shall not affect the interpretation of any provision of this Agreement.

13.6 Third Parties. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

13.7 Assignment. Either party shall be entitled to assign this Agreement to an entity which is either statutorily authorized to be its successor or is an entity controlled by the assigning party, provided that such assignee assumes all the obligations, warranties, covenants and agreements of the assigning party herein contained. Otherwise, neither party shall be entitled to sell, assign or otherwise transfer this

Agreement or any of its rights hereunder without the prior written consent of the other party, which consent will not be granted unless such purchaser, assignee or transferee assumes all the obligations, warranties, covenants and agreements of the assigning party herein contained.

13.8 Attorney Fees and Costs. In any suit, action or appeal there from to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees.

13.9 Successors and Assigns. The terms and conditions hereof shall be binding upon and inure to the benefit of the respective parties, their administrators, executors, successors and assigns.

13.10 Survival. The terms, covenants and conditions set forth herein shall survive the termination of this Agreement.

13.11 FTA Rules and Regulations. FTA rules and regulations in effect at the time of the execution of this Agreement shall control the interpretation and implementation of this Agreement throughout the term of the Agreement.

13.12 Constitutional Debt Limitation. Nothing in this Agreement shall be construed to obligate either party to any indebtedness or liability, in any manner, or for any purpose that would be in violation of the yearly debt limitation imposed by Article VIII, Section 3 of the Idaho Constitution.

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

VRT:

VALLEY REGIONAL TRANSIT

By: 

Its: Chair of board

ACHD:

ADA COUNTY HIGHWAY DISTRICT

By: 

Its: President of Board