

## **MANAGEMENT COMMITTEE RESOLUTION**

### **COOPERATIVE AGREEMENT WITH ACHD – TRANSIT STRUCTURES INSTALLATION AND MAINTENANCE OF A BUS STOP SYSTEM IN THE BOISE SERVICE AREA RESOLUTION VMC07-004**

**BY THE MANAGEMENT COMMITTEE OF VALLEY REGIONAL TRANSIT, WE DO HEREBY APPROVE VALLEY REGIONAL TRANSIT TO ENTER INTO THE COOPERATIVE AGREEMENT WITH ACHD TO PROVIDE AUTHORITY TO VALLEY REGIONAL TRANSIT FOR THE INSTALLATION AND MAINTENANCE OF A BUS STOP SYSTEM IN THE BOISE SERVICE AREA:**

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, ACHD is the single county-wide highway district in and for Ada County, Idaho, created pursuant to Idaho Code, Chapter 14, Title 40; and

WHEREAS, the parties desire by this Agreement that ACHD grant to VRT the right to construct, install, maintain, repair and control transit shelters, benches, signage and other related structures (collectively, the “**Transit Structures**”) in ACHD rights-of-way for the purpose of enhancing VRT’s transportation services and programs, pursuant to the terms and conditions as set forth in the attached agreement Exhibit 1; and

WHEREAS, Idaho Code § 40-2109(7) provides that Valley Regional Transit may enter into cooperative agreements with other authorities under the provisions of Idaho Code 67-2328; and

WHEREAS, Idaho Code § 67-2328 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; 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, 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 ValleyRide 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; and

WHEREAS, the Board of Valley Regional Transit on May 23, 2005, delegated the authority to the Management Committee to finalize the Cooperative Agreement with ACHD to provide authority to Valley Regional Transit for the installation and maintenance of a bus stop system in the Boise service area (Resolution VBD05-014).

**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 transit structures – 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 18<sup>th</sup> day of June, 2007.

APPROVED by the Committee Chair this 16<sup>th</sup> day of July, 2007.

**ATTEST:**

**APPROVED:**

ccn. rt  
**SECRETARY**

[Signature]  
**CHAIR OF MANAGEMENT COMMITTEE**

**COOPERATIVE GOVERNMENTAL AGREEMENT  
BETWEEN  
VALLEY REGIONAL TRANSIT  
AND  
ADA COUNTY HIGHWAY DISTRICT  
FOR  
TRANSIT STRUCTURES**

THIS COOPERATIVE GOVERNMENTAL AGREEMENT ("**Agreement**") is entered into this 1<sup>st</sup> 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. VRT provides publicly funded or publicly subsidized public transportation services and programs in Ada and Canyon Counties.

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

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

D. 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.

E. VRT desires by this Agreement that ACHD grant to VRT the limited right to construct, install, maintain, repair and control transit shelters, benches, signage and other related structures and improvements (collectively, the "**Transit Structures**") in the public right-of-way for the purpose of enhancing VRT's public transportation services and programs, pursuant to the terms and conditions as set forth below.

**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. **Access to Public Right-of-Way.**

ACHD hereby (i) agrees that VRT may construct, install, maintain, repair and control all Transit Structures located or to be located, from time to time, at the various stops on VRT's established and operating public transit routes, in such locations within the public right-of-way as prior approved by ACHD in writing in accordance with this Agreement, and (ii) grants to VRT, its agents, contractors and employees, the right to access and enter such public right-of-way for all purposes reasonably related thereto. Such Transit Structures must have a reasonable and operational nexus to the public transit system. This Agreement does not extend to VRT the right to use the public right-of-way to the exclusion of ACHD for any use within its jurisdiction, authority and discretion or of others to the extent authorized by law to use the public right-of-way. If the public right-of-way has been opened as a public Highway (as used in the Agreement, the term "Highway" is as defined in *Idaho Code* § 40-109(5)), VRT's authorized use is subject to the rights of the public to use the right-of-way for Highway purposes. VRT's authorized use is also subject to the rights of holders of easements of record or obvious physical limitations upon inspection of the public right-of-way, and to the statutory rights of utilities to use the public right-of-way. This Agreement it is not intended to, and shall not preclude or impede (i) the ability of ACHD to enter into other similar agreements in the future allowing third parties to also use the public right-of-way, provided that such use does not unreasonably interfere with VRT's rights regarding the Transit Structures as set forth in this Agreement, or (ii) the ability of ACHD to redesign, reconstruct, relocate, maintain and improve the public right-of-way and Highways as authorized by law. ACHD agrees during the term of this Agreement not to allow any bus benches within the public right-of-way without the prior consent of VRT; provided, however, that with respect to those certain bus benches owned by third parties that are located within the public right-of way and are subject to ACHD License Agreements (the "**Licensed Bus Benches**"), notwithstanding anything to the contrary elsewhere in this Agreement, the following provisions shall apply:

(a) With reference to any Licensed Bus Benches located within Boise City, ACHD will terminate all ACHD License Agreements for such benches based upon Boise City's ordinance that will cause such ACHD License Agreements to be invalid.

(b) For any Licensed Bus Benches located outside of Boise City (or other underlying jurisdiction without an ordinance that would cause the ACHD License Agreements for such benches to be invalid), the ACHD License Agreements for such benches will remain in full force and effect unless ACHD, in its sole discretion, determines to terminate such ACHD License Agreements. Should ACHD determine to terminate any such ACHD License Agreements for any such benches, following notice of such termination from ACHD and the failure of the third party to remove the bench, VRT may remove the benches if determined appropriate by VRT. Either party may, but shall have no obligation to, remove any such benches.

If VRT determines to discontinue use of any structures in the public right-of-way for its system, VRT agrees to discontinue and remove such structures from the public right-of-way within ninety (90) days of such determination of non-use. VRT's right of access to the public right-of-way is limited to structures owned by VRT and used for its bus transit system.

## **2. Maintenance and Repair.**

VRT shall be responsible for all maintenance and repair of all Transit Structures placed by VRT in the public right-of way, except to the extent any repairs are necessitated by damage caused by ACHD, its agents, contractors or employees, which repairs shall be the responsibility of ACHD. The installation or construction of Transit Structures by VRT shall be accomplished in accordance with designs, plans and specifications approved in advance and in writing by ACHD as required to satisfy applicable laws, ACHD policies and good engineering practices. In approving such plans and specifications, ACHD assumes no responsibility for any deficiencies or inadequacies in the design or construction of the Transit Structures, and the responsibility and liability therefor shall be and remain in VRT. Subject to the foregoing, VRT agrees to keep all such Transit Structures in good repair. As determined by the outside consultant retained by the parties pursuant to this Agreement, VRT shall make all ADA required pedestrian access improvements as are directly attributable to the Transit Structures, including, without limitation, construction of pedestrian ramps and/or truncated domes. ACHD shall be responsible for all other ADA compliance requirements that are not directly attributable to the Transit Structures.

**3. Fee.** Throughout the term of this Agreement, VRT shall not be obligated to pay ACHD a fee for the authorization to use the public right-of-way, but shall reimburse ACHD for all authorized out-of-pocket or consulting expenses incurred as a result of this Agreement.

**4. No Title.** VRT shall have no right, title, or interest in or to the public right-of-way other than the right to use the same pursuant to the terms and conditions of this Agreement.

**5. Consultant Safety and Feasibility Study.** It is expressly agreed that the grant of rights in Section 1 shall be subject to the completion and review of an initial study by an outside engineering consultant mutually acceptable to both ACHD and VRT (the "**Initial Consultant**") to determine whether it is safe, legal, and otherwise feasible ("**Safety Review**") to install the Transit Structures at the locations in the public right-of-way as proposed by VRT. VRT shall pay the Initial Consultant's costs associated with this initial study (except for the amount of \$4,961.14, which shall be paid by ACHD in reimbursement to VRT for services paid by VRT to ACHD for bus stop data collection in fiscal year 2005). ACHD and VRT shall agree upon the scope of services to be provided by the Initial Consultant. The contract with the Initial Consultant shall be a three-party contract between the Initial Consultant, ACHD and VRT and shall be entered into pursuant to such bidding procedures and requirements as are compatible with the needs of both ACHD and VRT, and if the contract has been determined by both ACHD and VRT to be economically feasible (the "**Initial Consultant Contract**"). It is acknowledged and agreed that since VRT will be responsible for all payments under the Initial Consultant Contract, and since VRT's major funding source for same will be federal funds, the bidding procedures and requirements for VRT shall include any applicable federal funding requirements.

**6. Future Route Changes.** If, in the future, VRT proposes any change in or addition to its transit routes that would require a change or addition to the location of any Transit Structures within the public right-of-way, such change or addition shall be subject to (i) the written approval of ACHD as set forth in Section 1 and (ii) a subsequent Safety Review by an outside consultant, on a case by case basis, with the cost thereof paid by VRT. Such subsequent Safety Review shall be conducted either by the Initial Consultant under the Initial Consultant Contract (provided that the Consultant Contract has anticipated the same and has established the cost thereof) or by an outside consultant mutually acceptable to both ACHD and VRT (which may include the Initial Consultant) and chosen pursuant to the same terms as set forth in Section 5.

**7. Advertising and Advertising Revenue; Location of Transit Structures.**

7.1 Advertising. Advertising allowed by VRT to be displayed upon the Transit Structures shall be in compliance with all applicable state, county and local laws and regulations. All revenue generated from the display of advertising on any Transit Structure shall belong to VRT.

7.2 Location. VRT shall be entitled to locate its Transit Structures only within the public right-of-way as permitted under this Agreement, and shall remove, at its sole cost and expense, any of its Transit Structures, if any there be, as may be located elsewhere in the public right-of-way. Subject to the provisions set forth in Section 1, to the degree that any Transit Structures owned by other parties are subject to ACHD License Agreements, upon its execution hereof, ACHD shall either terminate or not renew any such ACHD License Agreements and shall direct such other parties to immediately remove their Transit Structures. During the term of this Agreement, ACHD shall not authorize, permit or license any Transit Structures to be located within the public right-of-way except for VRT Transit Structures and, as more specifically set forth in Section 17.3, shall cooperate with VRT and governmental authorities with jurisdiction regarding enforcement of applicable regulations concerning unauthorized Transit Structures in the public right-of-way. In any of the locations that VRT is permitted to locate its Transit Structures, VRT may remove, at its sole cost and expense, any Transit Structures placed by there by other parties.

**8. Relocation of Improvements.** ACHD utilizes an annually updated five-year work plan process with respect to the widening, realignment, redesign, improvement and/or reconstruction of Highways. On a regular basis, ACHD shall advise VRT of any anticipated widening, realignment, redesign, improvement and/or reconstruction of Highways as would be likely to cause a relocation, modification or other adaptation of any of VRT's Transit Structures, and the parties, to the extent reasonably possible, shall agree to a priority schedule regarding same. The parties intend that this enable the parties to cooperate with respect to planning and coordination as related to any such relocation, modification or other adaptation of any VRT Transit Structure. If ACHD ultimately determines that a Highway on and/or adjacent to the public right-of-way requires such widening, realignment, redesign, improvement and/or reconstruction as would necessitate the relocation, modification or other adaptation of any VRT Transit Structure, VRT, at its sole cost and expense, shall

be responsible for relocating, modifying or otherwise adapting the affected Transit Structure to such widening, realignment, relocation and/or reconstruction as required by ACHD, which shall be accomplished by VRT according to designs, plans and specifications prior approved by ACHD in writing. Any such relocation, modification or adaptation shall be subject to the provisions of Section 6, essentially the same as if it were a change in location thereunder. ACHD shall give VRT at least ninety (90) days prior written notice of the need for any such relocation, modification or adaptation by VRT. In response to such notice, VRT may also elect to remove an affected Transit Structure in lieu of any such relocation, modification or adaptation.

**9. 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. VRT, at any time, shall be entitled, upon written notice to ACHD, to remove any Transit Structure from the public right-of-way and vacate such location. Any such individual removal shall not terminate this Agreement. VRT, at any time, shall also be entitled, upon written notice, to remove all of its Transit Structures from the public right-of-way, and upon such removal this Agreement shall earlier terminate. This Agreement may also be earlier terminated as otherwise specifically provided herein. Subject to the foregoing, upon termination of this Agreement, neither party shall have further recourse hereunder except with respect to liabilities incurred prior to such termination, except as set forth in Section 10.

**10. Termination Obligations.**

Unless otherwise agreed in writing between ACHD and VRT, upon termination of this Agreement, VRT will promptly remove (if not already removed) all its Transit Structures and restore the public right-of-way to at least a condition comparable to that which existed when the Transit Structures were installed, normal wear and tear excepted. Should VRT fail to remove and restore as aforesaid, such failure shall be grounds for declaration of a default pursuant to Section 13. Following expiration of the notice and cure period under Section 13, and the continuing default of VRT with respect to such removal and restoration, VRT shall have no further right, title or interest in and to any remaining Transit Structure, and ACHD shall be entitled to (i) complete the removal and restoration and VRT shall reimburse ACHD for its reasonable out of pocket expenses actually paid in completing the same, or (ii) at the option of ACHD, to assume ownership of all or any part of the Transit Structures not removed. If VRT has installed any landscaping or irrigation in connection with its Transit Structures, VRT shall not be required to remove the same upon termination of this Agreement if a third party is under a continuing obligation to maintain and repair same.

If ACHD earlier terminates this Agreement for any reason other than the default of VRT, ACHD shall pay VRT an amount equal to one-half (1/2) of the amounts that would be assessed by the Federal Transportation Authority ("FTA") against VRT for the early termination of this Agreement assuming a useful life of 10 years for all Transit Structures. Additionally, ACHD shall repay VRT any sums assessed by FTA for any

concrete pads remaining on the public right-of-way that have not been completely amortized. If this Agreement is terminated by ACHD because of the default of VRT, however, ACHD shall not be obligated to pay any amounts under the two immediately preceding sentences.

**11. Waiver and Estoppel Statement.** VRT acknowledges and agrees that the authorized use granted herein is temporary, non-transferable (subject to Section 18.7), and merely a permissive use of the public right-of-way pursuant to this Agreement. VRT further acknowledges and agrees that it specifically assumes the risk that the access right that is granted pursuant to this Agreement may be terminated as provided herein before VRT has realized the economic benefit of the cost of installing, constructing, repairing, or maintaining the Transit Structures, and VRT hereby waives and is estopped from asserting any claim that this Agreement is in any way irrevocable because VRT has expended funds on the Transit Structures and this Agreement has not been in effect for a period sufficient for VRT to realize the economic benefit from such expenditures, other than agreed to be paid by ACHD as set forth in Section 10. Any and all costs and expenses associated with VRT's use of the public right-of-way, or the repair and maintenance of the Transit Structures, shall be at the sole cost and expense of VRT except as otherwise provided herein.

**12. Compliance With Law; No Waste or Nuisance.** In connection with VRT's use of the public right-of-way, throughout the term of this Agreement VRT covenants and agrees to (i) comply with and observe in all respects any and all applicable federal, state and local statutes, ordinances, policies, rules and regulations, and (ii) commit no waste or allow any nuisance on the public-right-of way.

**13. 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.

**14. Force Majeure.** Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, walkouts, riots, flood, earthquakes, fire or other casualty, the elements or acts of God, or other causes, other than financial, beyond a party's reasonable control

**15. Indemnification.** VRT hereby indemnifies and holds ACHD harmless from and against any and all claims or actions for loss, injury, death, damages, mechanics, and other liens, arising out of the failure or neglect of VRT, its agents, contractors and employees to properly and reasonably make authorized use of the public right-of-way or properly repair or maintain the improvements thereon, or that otherwise result from the use and occupation of the public right-of-way or its Transit



Structures by VRT, and including any attorney fees and costs that may be incurred by ACHD 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 ACHD, its agents, contractors or employees.

**16. Liability Insurance.** VRT 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. VRT agrees to provide notice to ACHD of such coverage, with ACHD as an additional insured, on an annual basis.

**17. Special Provisions.**

17.1 Third Party Construction. If, as a result of any construction, improvement, repair or maintenance by or caused by a third party (such as, by way of example and not limitation, third party new construction or third party relocation of sewer or utility lines), it is determined by ACHD that relocation, modification or other adaptation of any of VRT's Transit Structure will be required, ACHD, to the extent permitted under its statutory authority, shall require that the third party, at such third party's sole cost and expense, be responsible for such relocation, modification or other adaptation, as is appropriate under the circumstances.

17.2 Good Faith and Cooperation. It is agreed by ACHD and VRT that it is in their mutual best interest and the interest of the public that the Transit Structures be located within the public right-of-way as herein contemplated, and, to that end, 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.

17.3 Regulation and Enforcement. ACHD and VRT acknowledge and agree that regulation and enforcement regarding signs, benches, advertising and related issues are matters within the underlying jurisdiction and control of the cities and/or counties in which the Transit Structures are located. ACHD will cooperate with any other jurisdictions in Ada County enacting sign ordinances.

**18. Miscellaneous.**

18.1 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.

18.2 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.

18.3 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.

18.4 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.

18.5 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.

18.6 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.

18.7 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.

18.8 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.

18.9 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.

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

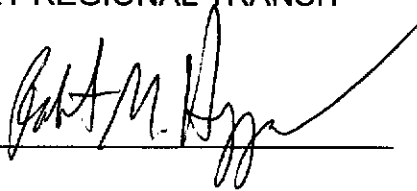
18.11 FTA Rules and Regulations. FTA rules and regulations in effect at the time of the execution of this Agreement shall control the interpretation and implementation of this Agreement throughout the term of the Agreement. Any Transit Structures purchased with FTA funds shall be used only as permitted under said FTA rules and regulations.

18.12 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

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