

**FUNDING AGREEMENT
FOR RTD FUNDING OF LOCAL TRANSPORTATION SERVICES
(DENVER REGIONAL COUNCIL OF GOVERNMENTS VANPOOL PROGRAM)**

This Funding Agreement for RTD Funding of Local Transportation Services (Denver Regional Council of Governments Vanpool program) (“Agreement”) is made this _____ day of _____, 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 Denver Regional Council of Governments (DRCOG), a body politic and corporate, organized and existing pursuant to various laws including but not limited to C.R.S. § 30-28-105 and C.R.S. § 29-1-201 *et seq.* (“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 (“Vanpool Services” or “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 Vanpool 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 Vanpool Services. The Local Entity and/or its designated agent(s) shall be solely responsible for all operations, management, marketing, administration, and Vanpool 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 Vanpool Services. RTD shall have no responsibility for, or authority or control with respect to, the supervision and management of any Local Entity employees, contractors, subcontractors, or vendors who work in connection with the Vanpool Services. The Local Entity shall operate the Vanpool 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 Vanpool Services, if the Local Entity ceases to provide the Vanpool Services.
- 3. SERVICES.** The Vanpool Services shall be provided as described in **Exhibit A**. No material changes shall be made to the Vanpool Services during the term of this Agreement without the written agreement of both Parties, or if changes are made to the Vanpool Services without the written consent of RTD, then RTD may, at its sole option, terminate this Agreement with 30 business days’ notice by RTD and 30 business days for Local Entity to cure the deficiency (“the cure period”). In the event that RTD terminates this Agreement in accordance with this Section 3, RTD will not provide any funding for the Vanpool Services after the cure period, provided that the Local Entity has not cured the deficiency.
- 4. RTD FUNDING.** In partial support of the Vanpool Services, RTD will subsidize the Vanpool Services according to the subsidy schedule set out in **Exhibit B** (“RTD Funding”). RTD Funding does not include any additional operating costs for services in excess of the Vanpool Services as set out in Exhibit A, including 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 Vanpool Services. Such records shall include any financial information to support and document the operating costs and revenues relating to the Vanpool 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 Vanpool 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 Vanpool Services are “in partnership with RTD” on all new vehicles used to furnish the Vanpool Services and financially supported in part by RTD, if in the RTD referenced area, through this Agreement.

B. The Local Entity and/or its designated agent(s) will market the Vanpool 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 Vanpool Services.

8. SERVICE MONITORING. Local Entity and RTD shall collaboratively monitor and determine appropriate Vanpool Services performance measures. The joint management

advisory committee and equal members of Local Entity and RTD staff shall continue to implement this Agreement and report progress to the respective organizations.

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 Vanpool 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 Vanpool 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.G. Nothing herein obligates either Party 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. 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.
- E. 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.
- F. 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 either Party 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.
- G. 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.
- H. 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.
- I. 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.*

- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. 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.
- O. 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.
- P. 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) RTD shall have no responsibility for any federal and state taxes and contributions for Social Security, unemployment insurance, income withholding tax, and other taxes measured by wages paid to employees of Local Entity and/or its designated agent(s). 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.

Q. 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.

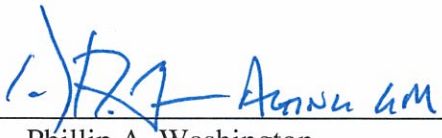
R. Counterparts. This Agreement may be executed in counterparts. Signatures on separate originals shall constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures shall constitute original signatures.

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

REGIONAL TRANSPORTATION
DISTRICT

DENVER REGIONAL COUNCIL OF
GOVERNMENTS

By: 
Phillip A. Washington
General Manager

By: _____
Jennifer Schaufele
Executive Director

ATTEST:

Approved as to legal form for RTD:



Rolf G. Asphaug
Deputy General Counsel

Exhibit A
Description of the Services

Vanpooling is a transportation option in which commuters/employees whose residences are geographically clustered ride together to and from their work sites in a van that is driven and maintained by one of the vanpool participants. Typically, the vans carry from six (6) to twelve (12) riders and are provided by the vanpool program. Vanpools are organized to be sustainable and to render regular, on-going service to vanpool members on a break-even, cost sharing, fare basis. Vanpools eliminate the costs associated with dedicated drivers and expensive equipment.

As a transportation mode, vanpools provide personalized transportation at low cost and offer greater opportunities for increased capacity as compared to carpooling. Vanpools also offer a cost-effective alternative to conventional transit service in areas of low population density and longer commute distances.

The Local Entity is a federally designated transportation and air quality planning organization. The DRCOG Vanpool Program is one of the alternative transportation programs sponsored by the Denver Regional Council of Governments. The DRCOG Vanpool Program began offering service to long distance commuters in the early eighties and has grown to include a fleet of approximately 102 vans used by approximately 604 individuals. The majority of the program's operating expenses are recovered from fares paid by the individuals participating in the program. The program targets commuters who live in the Denver metropolitan area.

DRCOG has a contract with vRide as DRCOG's designated agent to provide the vehicles for all Vanpool Services under this Agreement. DRCOG does not own or directly operate any vans.

RTD supports this program because RTD's mission is to increase the regional transit market share by meeting constituents' present and future public transit needs by providing safe, clean, reliable, courteous, accessible and cost-effective multi-modal service throughout the District.

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Exhibit B
Description of the RTD Funding

RTD Funding is available only for January 1, 2014-December 31, 2014, and will not exceed \$700,000 in accordance with the following schedules:

RTD Subsidy payments by miles and ownership (2014)

Monthly Round Trip Miles	vRide-Owned
500	\$ 575.00
750	\$ 615.00
1000	\$ 665.00
1250	\$ 615.00
1500	\$ 660.00
1750	\$ 780.00
2000	\$ 780.00
2250	\$ 780.00
2500	\$ 830.00
2750	\$ 830.00
3000	\$ 850.00
3250	\$ 850.00

To be eligible for an RTD subsidy, the vanpool must have an origin or destination within the RTD service area. For vanpools that do not have both an origin and a destination within the RTD service area, the subsidy amount will be reduced as a percentage of the original subsidy

amount, based upon the number of commute trip miles the vanpool travels per month within RTD boundaries divided by the total commute trip miles per month.

Exhibit C
Communication and Notices – Contacts

For the Local Entity:

Denver Regional Council of Governments
1290 Broadway, Suite 700
Denver, Colorado 80203-5606
Attn: Roxie Rosen
303.480.6709

For the RTD:

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

Exhibit D
Special Provisions

1. **REPORTS.** On a monthly basis the Local Entity and/or its representative will submit a report to RTD providing a summary of Vanpool Program. The Monthly Report must include the following: (1) the number of vans on hand and available to be placed into revenue service; and (2) the number of vans in service and (3) the number of passengers carried in each active van. Once a year, within 90 calendar days after the end of the calendar year, the Local Entity will submit an annual report to RTD providing a summary of Vanpool Program revenues and expenses for the year, an annual ridership breakdown including number of available seats and number of passengers carried, a summary of major events that took place within the Vanpool program and a summary report for all planned major events for the upcoming year.
2. **PROCEEDS FROM VEHICLES SOLD, DESTROYED OR DAMAGED.** In the event that the Local Entity has utilized RTD funds to purchase vans for use in the Vanpool Program and any of these vehicles are sold prior to the expiration of their useful life, or if the vehicle is destroyed or damaged and the Local Entity receives any proceeds, RTD's share of all proceeds must be reinvested back into the Vanpool Program or returned to RTD.
3. **ADDITIONAL RECORD KEEPING AND REPORTING REQUIREMENTS.** In addition to the requirements set out in Section 6 of the Agreement, the Local Entity or its designated agent will maintain and make available for RTD audit, records of passenger boardings, passenger mileage, vehicle mileage, and any other information RTD requests. Data required by NTD of Parties shall be kept in accordance with FTA requirements and regulations. The Local Entity or its designated agent will report directly to NTD all required data in order to be in compliance of all NTD reporting requirements for vanpool services. All mileages reported for RTD subsidy reimbursement must be reported in full to the NTD as mileages credited to the Denver, Colorado urbanized area.
4. **MARKETING MATERIALS.** The Local Entity will provide RTD with copies of any marketing materials for the Vanpool Services. RTD will have 10 business days to review any materials and provide comment to the Local Entity. The Local Entity will have final say on any issues related to marketing materials or marketing plans.
5. **NON-COMPETE.** RTD will not implement a vanpool program that directly competes with Local Entity's Vanpool Program in the same calendar year in which RTD provides funding pursuant to this Agreement, but this provision does not affect RTD's planning efforts for years when it has not agreed to provide funding.

