

AGREEMENT TO FORM JOINT POWERS AUTHORITY

by and between the

Association of Monterey Bay Area Governments

Fresno Council of Governments

Kings County Association of Governments

Madera County Transportation Commission

Tulare County Association of Governments

Sacramento Area Council of Governments

Santa Barbara County Association of Governments

AGREEMENT TO FORM JOINT POWERS AUTHORITY

THIS AGREEMENT is made this ____ day of _____, 2011, by and between the ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS, FRESNO COUNCIL OF GOVERNMENTS, KINGS COUNTY ASSOCIATION OF GOVERNMENTS, MADERA COUNTY TRANSPORTATION COMMISSION, SACRAMENTO AREA COUNCIL OF GOVERNMENTS, TULARE COUNTY ASSOCIATION OF GOVERNMENTS and SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS (hereinafter sometimes referred to individually as "Member Agency" and collectively as "Member Agencies").

W I T N E S S E T H:

WHEREAS, each Member Agency has an interest in and is authorized to operate van pool services and related activities, including, but not limited to, obtaining grant funds and borrowing funds for purchasing and leasing vans; and

WHEREAS, Federal Transit Administration and State matching funds have provided for the establishment of the "Agricultural Industries Transportation Services" and "RideShare" demonstration programs to help workers have an efficient and safe means of commuting to work within the southern San Joaquin Valley; and

WHEREAS, the California Department of Transportation ("Caltrans") has determined that the Kings County Area Public Transit Agency's vanpool programs should be replicated regionally as a means of addressing the non-traditional transportation needs of California residents; and

WHEREAS, the Member Agencies desire to share resources in order to further their above-described interest by forming a new public entity to handle such matters within the areas of their various political boundaries; and

WHEREAS, the Joint Exercise of Powers Act, found in California Government Code Sections 6500 *et seq.*, authorizes the Member Agencies to form a joint powers authority as an entity that will allow them to share resources in order to further their common interest,

NOW, THEREFORE, the Member Agencies agree as set forth below.

Article I

General Provisions

1. Name.

The legal name of the joint powers authority shall be the "California Vanpool Authority," which shall also be known as "CalVans" (hereinafter called "Transit Authority").

2. Boundaries.

The boundaries of the Transit Authority shall be the same as the collective geographic boundaries of the Member Agencies.

3. Purposes and Functions.

The purposes and functions of the Transit Authority shall be to operate van pool services and related activities, including, but not limited to, obtaining grant funds and borrowing funds for purchasing and leasing vans, within the boundaries described above in Section 2 of this Article I of this Agreement.

4. General Powers.

The Transit Authority shall have such powers as may be necessary for the accomplishment of the purposes and functions described above in Section 3 of Article I of this Agreement, including, but not limited to, the power in its own name to make and enter into contracts in its own name; to acquire and maintain insurance of all types; to employ agents and employees; to acquire, lease, construct, manage, maintain and operate any real property including building, works or improvements; to acquire, lease, hold or dispose of any personal property; to accept, hold, invest (pursuant to law, including, without limitation, California Government Code Section 6509.5), manage, and expend monies; to incur debts, liabilities or obligations; to obtain and secure funding from all available public and private sources, including local, state and federal government, including but not limited to, lease purchase agreements, public grants, private contributions, public and private loans, and other funds; and to sue and be sued in its own

name. The Transit Authority may accept grants, gifts, donations and other monies made in the public interest to carry out the purposes and functions as provided in this Agreement. To the extent budgeted, and as provided by law, the Board is authorized to pay expenses reasonably and necessarily incurred in the conduct of business, including travel expenses to attend meetings and conferences relating to the business of the Transit Authority.

5. Limitations.

Pursuant to California Government Code Section 6509, the powers of the Transit Authority are subject to the restrictions upon the manner of exercising such powers of one of the Member Agencies so designated, the designee being KINGS COUNTY ASSOCIATION OF GOVERNMENTS, which is a transportation planning agency as defined in paragraph (a) of California Public Utilities Code Section 99214 and paragraph (b) of California Government Code Section 29532 and, therefore, governed by California Public Utilities Code Sections 99200 through 99420, or any statutes superseding the same.

6. Separate Legal Entity.

The Transit Authority shall be a public entity duly formed under the laws of the State of California. It shall be a legal entity that is separate and distinct from Member Agencies. The debts, liabilities, and obligations of the Transit Authority shall be the sole responsibility of the Transit Authority and not of its officers, employees, agents or Member Agencies.

7. Term.

This Agreement will continue in full force and effect and the Transit Authority will continue to exist as a separate entity, until such time as this Agreement is rescinded or terminated by a vote in accordance with Section 7 of Article II of this Agreement.

Article II
Organization

1. Board of Directors.

The powers of the Transit Authority are vested in its Board of Directors ("Board"). The Board shall be composed of representatives from the Member Agencies. Each Member Agency shall appoint one voting member of the Board and one alternate member. Each appointed and alternate Board member shall be a member of the governing body of the Member Agency that he or she represents and shall serve at the pleasure of the Member Agency. Each Member Agency shall have one vote. Each Member Agency shall notify the Transit Authority in writing upon making an appointment or change thereof.

2. Officers.

The officers of the Transit Authority shall be elected, appointed and serve as hereinafter set forth.

(a) The Chair of the Board shall be elected at the first meeting of the Board. Thereafter, the Chair of the Board shall be elected annually at the last regular meeting in each calendar year and shall begin serving as Chair at the first regular meeting in the next calendar year. Any vacancy in the office of Chair shall be filled at the next regular meeting of the Board. Any member of the Board may be authorized to represent the Board upon approval by the Board.

(b) The Vice Chair of the Board shall be elected at the first meeting of the Board. Thereafter, the Vice Chair of the Board shall be elected annually at the last regular meeting in each calendar year and shall begin serving as Vice Chair at the first regular meeting in the next calendar year. Any vacancy in the office of Vice Chair shall be filled at the next regular meeting of the Board. The Vice Chair will have all the powers and act in the place of the Chair in the absence of the Chair.

(c) The Executive Director of the Transit Authority shall serve as Secretary. The Secretary will keep a public record of the Board's resolutions, transactions, findings and determinations, and the preparation of minutes of every meeting.

3. Quorum.

A simple majority of the Board must be present to constitute a quorum for action on the business of the Board.

4. Ex Officio Members.

The California Department of Transportation and the San Joaquin Valley Air Pollution Control District may each designate one non-voting representative to serve as an ex officio member of the Board.

5. Meetings.

The Board shall by resolution establish the date, time, and place for regular meetings. Special meetings may be called by either the Chair of the Board or the Executive Director and as otherwise allowed by law. All meetings of the Board shall be in conformance with the Ralph M. Brown Act (California Government Code Sections 64950, *et seq.*), as will meetings of its committees, if any, to the extent required by law.

6. Executive Director.

The Board shall appoint an Executive Director (hereinafter referred to as "Executive Director"), who shall be charged with managing the operations of the Transit Authority, subject to the authority and direction of the Board.

7. Voting.

Except as otherwise specified herein, all actions, decisions, resolutions, rules and minute orders of the Board shall be approved by at least a two-thirds vote of the Board members present at any meeting at which a quorum, meaning a simple majority of the Board, is present.

8. Bylaws.

The Board may adopt, by resolution, bylaws or rules of procedure to govern organization and operations of the Board and the Transit Authority, and to govern the

conduct of the Board's meetings. The bylaws may include rules for the establishment of committees of the Board and may also provide for the establishment of a technical advisory committee to provide program recommendations to the Board. Any bylaws adopted by the Board shall be approved by a unanimous vote of the entire Board.

Article III

Finances

1. Contributions, Payments and Advances.

As allowed by California Government Code Section 6504, funding for the Transit Authority may include, but shall not be limited to, the following:

- (a) Contributions may be made from the treasuries of one or more of the Member Agencies for the purposes set forth in this Agreement;
- (b) Payments may be made directly by one or more of the Member Agencies to defray the costs of achieving the purposes of the Transit Authority;
- (c) Public funds may be advanced by one or more Member Agencies, with the understanding that such advances will be repaid as provided in this Agreement; and
- (d) Personnel, equipment or property of one or more of the Member Agencies may be used in lieu of other contributions or advances.

Any advance made in accordance with paragraph (c) of this Section 1 shall be repaid in the manner agreed to by the advancing Member Agency and the Board, at the time the advance is made.

2. Limitation of Financial Commitment.

The Board shall not obligate the Transit Authority to expenditures of funds not appropriated by the legislative bodies of the Member Agencies or received directly from the State or federal government.

3. Approval of Funding Applications.

The Transit Authority shall receive approval from a Member Agency prior to applying for federal, state or local funds within the jurisdiction of said Member Agency.

4. Treasurer.

Pursuant to California Government Code Section 6505.5, the Transit Authority designates the Treasurer of the County of Kings to be the depository and have custody of all money of the Transit Authority, from whatever source. The Treasurer of the County of Kings shall comply with the provisions of paragraphs (a) through (e) of Government Code Section 6505.5 and otherwise act in accordance with Government Code Section 6505.5 and other applicable law. The Kings County Board of Supervisors shall determine the charges to be made against the Transit Authority for the services rendered by its Treasurer.

5. Auditor.

The Auditor shall draw warrants to pay demands against the Transit Authority when approved by the Treasurer. The Transit Authority shall use the Auditor of the County of Kings, who shall comply with all of the applicable provisions of California Government Code Section 6505.5. The Auditor shall provide for strict accountability of all funds and report of all receipts and disbursements pursuant to California Government Code Section 6505. The Kings County Board of Supervisors shall determine the charges to be made against the Transit Authority for the services rendered by its Auditor.

6. Budget.

The Board shall adopt a budget no later than sixty (60) days after the first meeting of the Board, and no later than June 30th of each year thereafter. Each budget shall be adopted by a majority vote of the entire Board.

7. Disposition of Assets.

Upon termination of this Agreement, after the payment of all obligations of the Transit Authority, any surplus money or other assets remaining shall be distributed to the Member Agencies in proportion to the contributions made.

8. Liability of Transit Authority.

Funds of the Transit Authority shall be used to defend, indemnify, and hold harmless the Transit Authority, any Member Agency, any member of the Board or

alternate, and any employee or officer of the Transit Authority for their actions taken within the scope of their duties while acting on behalf of the Transit Authority.

9. Liability of Individuals.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially for the Transit Authority.

10. Transit Equipment.

At the option of the Board, California Government Code Section 6518 shall be applicable to the Transit Authority.

11. Audit.

To the extent required by law, the Transit Authority shall comply with the audit and other requirements set forth in paragraphs (a) through (e) of California Government Code Section 6505. The Transit Authority shall promptly deliver copies of the annual audit report to the Board and the Member Agencies.

12. Accounts and Records.

The Board shall establish and maintain such funds and accounts of the Transit Authority as may be required by good accounting practice. The books and records of the Transit Authority shall be open to inspection at all reasonable times to the Member Agencies and their respective representatives.

13. Insurance.

Within thirty (30) days after the execution of this Agreement by the Member Agencies, Transit Authority shall obtain and continuously maintain general liability insurance with limits of at least Ten Million and No/100 Dollars (\$10,000,000.00). Coverage shall be placed with a carrier with an A.M. Best rating of no less than A-:VII, or equivalent.

Article IV

Miscellaneous

1. Custodians of Transit Authority Property.

The Executive Director of the Transit Authority shall have charge of, handle, and have access to, all property of the Transit Authority. Pursuant to California Government Code Section 6505.1, the Executive Director shall file an official bond in an amount determined by the Member Agencies through the Board. To the extent permitted by law, this requirement may be satisfied by the Executive Director filing an official bond obtained in connection with another public office or by the Transit Authority obtaining a fidelity bond or bonds covering all officers and staff of the Transit Authority who have charge of, handle, or have access to any property of the Transit Authority.

2. Severability.

Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

3. Withdrawal.

A Member Agency may withdraw from the Transit Authority by filing its written notice of withdrawal with the Executive Director 180 days before the actual withdrawal. Such a withdrawal shall be effective on the last day of that 180-day period. The withdrawal of a Member Agency shall not in any way discharge, impair or modify the voluntarily-assumed obligations of the withdrawn Member Agency in existence as of the effective date of its withdrawal. Withdrawal of a Member Agency shall not affect the remaining Member Agencies. A withdrawn Member Agency shall not be entitled to the return of any funds or other assets belonging to the Transit Authority, until the effective date of termination of the Transit Authority or upon a vote of all remaining Member Agencies.

4. Joining the Transit Authority.

Other public entities may join the Transit Authority by filing a written request for inclusion with the Executive Director. The request for inclusion shall be reviewed by the Transit Authority and voted on by the entire Board. By a two-thirds majority vote of the entire Board, a public entity may be accepted as part of the Transit Authority. Thereafter, upon execution of this Agreement, including any amendments thereto, the new member shall become a full and equal member of the Transit Authority.

5. Amendment.

This Agreement may be amended at any time with the unanimous written approval of all Member Agencies.

6. Ratification and Effective Date.

This Agreement shall become effective upon the signature of the last of the aforementioned Member Agencies to sign this Agreement.

7. Notices to Transit Authority and Member Agencies.

Any notices to the Transit Authority and/or Member Agencies required or given pursuant to this Agreement shall be delivered or mailed, U.S. first class, postage prepaid, addressed as follows:

Transit Authority:

California Vanpool Authority
1340 North Drive
Hanford, CA 93230

Member Agencies:

Association of Monterey Bay Area
Governments (AMBAG)
455 Reservation Rd., Suite G
Marina, CA 93933

Fresno Council Governments (FCOG)
2035 Tulare St., Suite 201
Fresno, CA 93721

Kings County Association of
Governments (KCAG)
339 West "D" Street, Suite B
Lemoore, CA 93245

Madera County Transportation
Commission (MCTC)
2001 Howard Road, Suite 201
Madera, CA 93637

Sacramento Area Council of
Governments (SACOG)
1415 L Street
Sacramento, CA 95814

Tulare County Association of
Governments (TCAG)
5955 S. Mooney Blvd.
Visalia, CA 93277

Santa Barbara County Association
of Governments (SBCAG)
260 North San Antonio Road, Suite B
Santa Barbara, CA 93110

Any party may change the address to which notices pursuant to this Section are given by giving notice of its new address according to the provisions of this Section.

8. Notice of a Joint Powers Agreement.

Within thirty (30) days after the effective date of this Agreement or any amendment thereto, the Transit Authority shall cause a notice of this Agreement or any amendment thereto, to be prepared and filed with the office of the California Secretary of State. Additionally, the Transit Authority shall furnish an additional copy of the aforementioned notice of this Agreement or any amendment thereto, to the California Secretary of State, who shall forward such copy to the Controller of the State of California. The aforementioned notices shall contain:

- (a) The name of each Member Agency that is a party to this Agreement;
- (b) The date that this Agreement became effective;

(c) A statement of the purpose of this Agreement or the power to be exercised by the Transit Authority; and

(d) A description of the amendment or amendments made to this Agreement, if any.

9. Venue.

The proper venue for any lawsuit based on any cause of action arising out of or in any way related to this Agreement or the operation of the Transit Authority shall be brought in a court of competent jurisdiction located in Kings County, California.

10. Headings.

The headings used in this Agreement are for convenience only and have no effect on the content, construction, or interpretation of the Agreement.

11. Counterparts.

This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Member Agencies have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and, if appropriate, their official seals to be hereto affixed, to be effective as of the day and year first above written.

ASSOCIATION OF MONTEREY BAY
AREA GOVERNMENTS

Dated: _____

Chairperson

Approved as to Form:

Dated: _____

County Counsel, County of Monterey

FRESNO COUNCIL OF GOVERNMENTS

Dated: _____

Chairperson

Approved as to Form:

Dated: _____

County Counsel, County of Fresno

KINGS COUNTY ASSOCIATION OF
GOVERNMENTS

Dated: _____

Chairperson

Approved as to Form:

Dated: _____

County Counsel, County of Kings

MADERA COUNTY TRANSPORTATION
COMMISSION

Dated: _____

Chairperson

Approved as to Form:

Dated: _____

County Counsel, County of Madera

SACRAMENTO AREA COUNCIL OF
GOVERNMENTS

Dated: _____

Chairperson

Approved as to Form:

Dated: _____

Counsel, Sacramento Area Council of Governments

TULARE COUNTY ASSOCIATION OF
GOVERNMENTS

Dated: _____

Chairperson

Approved as to Form:

Dated: _____

County Counsel, County of Tulare

SANTA BARBARA COUNTY
ASSOCIATION OF OVERNMENTS

Dated: _____

Chairperson

Approved as to Form:

Dated: _____

Counsel, Santa Barbara County Association
of Governments