

PARTNERSHIP AGREEMENT

BETWEEN

THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION

AND

THE CALIFORNIA VANPOOL AUTHORITY

The United States Department of Labor, Wage and Hour Division (hereinafter referred to as "WHD" or "DOL"), and the California Vanpool Authority (hereinafter referred to as "CalVans") (collectively referred to as "the agencies" or "the parties") recognize the value of establishing a collaborative relationship with the specific and mutual goals of providing clear, accurate, and easy-to-access outreach to employers, employees, and other stakeholders, and of sharing resources to enhance opportunities for compliance and enforcement by sharing information consistent with applicable law, the parties agree to enter into this partnership.

This memorandum of understanding (MOU) agreement is intended to memorialize this understanding between WHD and CalVans. This MOU is a voluntary agreement that expresses the good-faith intentions of WHD and CalVans, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. This MOU does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. This memorandum outlines procedures to be followed by both WHD and CalVans in working together to address the need to provide clear, accurate, and easy-to-access outreach to employers, employees, and other stakeholders.

WHD, under its authority provided by 29 U.S.C. 211(b) is responsible for administering and enforcing federal labor laws, including the Fair Labor Standards Act, the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, worker protections provided in several temporary visa programs, and the prevailing wage requirements of the Davis-Bacon and Related Acts and the Service Contract Act. Nothing in this agreement limits WHD's enforcement of these statutes and other statutes. CalVans is a California public transit agency responsible for providing vanpool vehicles to eligible California residents who wish to vanpool to work.

**The parties agree as follows:**

**I. Purpose**

The agencies recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern to the state of California. The agencies are forming this partnership to more effectively and efficiently communicate and cooperate on areas of common interest, including providing employers and employees with compliance assistance information towards the goal of protecting the wages, safety, and health of America's workforce and sharing information as appropriate.

## **II. Points of Contacts**

- The agencies will designate a Point of Contact (POC) responsible for coordinating the partnership activities. The agencies will notify each other in the event of the separation or long-term absence of their contact persons.
- The agencies will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of the partnership.
- Information regarding the POCs, including name, title, address, phone and email address, will be shared between the parties at the time of execution of the MOU and at the time the identity of the contact person changes.
- Both parties will identify a liaison to facilitate communication for this agreement.
- The POCs will be responsible for coordinating the sharing of compliance assistance information as necessary.

## **III. Enforcement**

Where appropriate and to the extent allowable under law,

- The agencies will coordinate their respective enforcement activities and assist each other with enforcement.
- The agencies will make referrals of potential violations of each other's statutes.

## **IV. Effect of Agreement**

- By entering into this agreement, the agencies do not imply an endorsement or promotion by either party of the policies, programs, or services of the other.
- Nothing in this agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.
- This agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligation.
- This MOU agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or be binding upon the parties. This agreement is not intended to confer any right upon any private person or other third party.
- Nothing in this agreement will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations. This MOU agreement also does not limit or restrict the parties from participating in similar activities or arrangement with other entities.

- This agreement will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, and any other applicable federal and state laws including the California Public Records Act (Cal. Gov. Code § 6250, et seq.).
- All public materials bearing the United States Department of Labor ("USDOL") or WHD name, logo, or seal must be approved in advance by USDOL. Any such materials that include the opinions, results, findings and/or interpretations of data arising from the results of activities carried out under the Agreement shall state that they are the responsibility of the party carrying out the activity and do not necessarily represent the opinions, interpretation, or policy of the other partner.

### **Exchange of Information**

To the extent permitted by law, the agencies understand that in order to effectuate the purposes and provisions of this MOU, it will be necessary, from time to time, to exchange information, some of which may be considered confidential. It is the policy of each of the parties to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitation that any such cooperation must be consistent with its own statutory obligations and enforcement efforts. It is the view of the parties that an exchange of information in which both agencies are proceeding with a common legal interest is to their mutual benefit. The agencies to this MOU agreement recognize the importance of being able to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or making a public disclosure.

In consideration of these concerns, and subject to any applicable laws and regulations regarding the handling of such information, the agencies agree as follows:

- The agencies agree to exchange information on laws and regulations of common concern and interest, to the extent practicable and allowable by law and policy.
- Exchange of such information pursuant to this MOU agreement is not considered a public disclosure under the Freedom of Information Act, 5 U.S.C. 552 or the California Public Records Act, Cal. Gov. Code §6250, et seq..
- The parties will be available to discuss and provide information to one another on topics of mutual interest, overlapping jurisdiction, or certain areas of expertise, when able.
- Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under federal or state statutes or laws. Confidential information may include: the identities of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any employee statements in WHD's enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations, of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by the attorney-client privilege and the attorney work-product privilege; personal information protected by any relevant law or regulation; individually identifiable health information; and confidential business information and trade secrets.

- When confidential information is exchanged it shall be used and accessed only for the limited purposes of carrying out activities pursuant to this agreement as described herein. The information shall not be duplicated or re-disclosed without the written consent or authority of the agency providing the information (hereinafter the "donor agency"), or a court order, or as required by law, including the Freedom of Information Act.
- In the event that there is a public proceeding, such as a trial, in which confidential information may be used or testimony of WHD's employees sought, the WHD requires that CalVans notify WHD.
- In the event that there is a public proceeding, such as a trial, in which certain records may be used or testimony of CalVans' employees sought, CalVans requires that WHD notify CalVans.
- Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU Agreement, the party receiving such a request or subpoena shall take reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information for ten (10) business days, and shall promptly notify the donor agency that such a request or subpoena has been received, so that the donor agency may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information. Additionally, material contained in DOL files, and information relating to that material, may not be provided to requesters in litigation to which DOL is not a party absent compliance with DOL's regulations governing production of material in response to third-party requests, located at 29 C.F.R. Part 2, Subpart C.
- Neither party shall have authority to waive any applicable privilege or doctrine on behalf of the other party, nor shall any waiver of an applicable privilege or doctrine by the conduct of one party be construed to apply to the other party.
- The agencies will notify one another, through the agency POC identified in this MOU agreement, upon commencement of litigation, a hearing, or other proceeding that may involve the release, through subpoena, introduction of written evidence, or testimony, of information exchanged under this agreement.
- For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this MOU Agreement remains the responsibility of the donor agency while in transit. The agencies agree to establish a communication protocol for notifying each agency's designated contact person when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information will notify the donor agency if the information is not received as of the next business date following the agreed upon delivery date. Confidential data will be destroyed no later than thirty (30) days after its use and may be transmitted via secure FTP. Use includes the time period required for compliance with federal records retention periods. Confidential data will not be electronically mailed, unless encrypted using approved encryption standards.
- For information security purposes, after an agency receives information from the donor agency, the donor agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical

and information technology safeguards in place for protecting that information by the agency that received it.

- However, in the event that the agency receiving the information experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this MOU Agreement, the agency experiencing the incident or disaster will send formal written notification to the donor agency's designated contact person within 3 days after detection of the incident or disaster. The written electronic notification will describe the security incident or disaster in detail including what data exchanged pursuant to this MOU Agreement may have been inadvertently disclosed.
- At the conclusion of an investigation and prosecution by either party, the receiving agency will return any and all confidential information to the donor agency, except as required by law, including the Records Retention Act.
- Liability of the U.S. Government is governed by the Federal Torts Claims Act.

Subject to the foregoing constraints:

- The agencies agree to exchange information on laws and regulations of common concern to the agencies, to the extent practicable.
- The agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent allowable by law and policy.
- The agencies will exchange information (statistical data) on the incidence of violations in specific industries and geographic areas, if possible.

#### **V. Resolution of Disagreements**

- Disputes arising under this MOU Agreement will be resolved informally by discussions between agency POCs, or other officials designated by each agency, upon request for such discussions made between the agency POCs.

#### **VI. Resource Provisions**

- Each party is responsible for funding efforts to fulfil its respective roles and responsibilities.

#### **VII. Period of Agreement**

- This agreement becomes effective upon the signing of both parties, and will expire 3 years from the effective date. This agreement may be modified in writing by mutual consent of both agencies. The agreement may be cancelled by either party by giving thirty (30) days advance written notice prior to the date of cancellation. Renewal of the agreement may be accomplished by written agreement of the parties.

This agreement is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

United States Department of Labor  
Wage and Hour Division

California VanPool Authority  
CalVans

By: \_\_\_\_\_  
Ruben Rosalez  
Regional Administrator  
Wage and Hour Division  
U.S. Department of Labor

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