

REGULAR MEETING CALIFORNIA VANPOOL AUTHORITY

Board of Directors

1340 North Drive * Hanford, California 93230
(559) 852-2711

Meeting Date: February 14, 2013

Time: 10:00 AM

Place: Kings County Association of Governments
CalVans office at 1340 North Drive, Hanford, CA 93230

This Meeting may also be attended at the following locations:

- Association of Monterey Bay Area Governments, 147 Fourth Street, Community Room, Gonzales, CA 93936
- Fresno Council of Governments, Huron City Hall, Council Chambers, 36311 Lassen Avenue, Huron, CA 93234
- Kern Council of Governments, Conference Rm. 336 Pacific Ave., Shafter, CA 93263, **and second location of** 1401 19th Street, Board Room, Bakersfield, CA 93301
- Madera County Transportation Commission, Citizens Business Bank, Room 101, 2001 Howard Road, Madera, CA 93637
- Napa County Transportation and Planning Agency, 707 Randolph Street, Suite 100, Napa, CA 94559
- Sacramento Area Council of Governments, Sutter Buttes Room, 1415 L Street, Suite 300, Sacramento, CA 95814
- Santa Barbara County Association of Governments, 4th Floor Board of Supervisors Conference Room, 105 East Anapamu Street, Santa Barbara, CA 93101
- Tulare County Association of Governments, Conference Room, 210 N Church St., Suite B, Visalia, CA 93291
- Ventura County Transportation Commission, Conference Room, 950 County Square Drive, Suite 108, Ventura, CA 93003

The call in number for this meeting is 1-866-244-8528, Password 574681

Please note that the Brown Act requires that Board members calling in do so from one of the above locations noted above. Please contact Ronald Hughes the Executive Director at least 72 hours before the meeting date and time if you plan on calling in from another location.

A person with a qualifying disability under the Americans with Disabilities Act of 1990 may request the Authority to provide a disability-related modification or accommodation in order to participate in any public meeting of the Authority. Such assistance includes appropriate alternative formats for the agendas and agenda packets used for any public meetings of the Authority. Requests for such assistance and for agendas and agenda packets shall be made in person, by telephone, facsimile, or written correspondence to Ron Hughes, at the office of the California Vanpool Authority, at least 48 hours before a public Authority meeting.

A G E N D A

<u>Item #</u>	<u>Description</u>	<u>Action</u>
1.	CALL TO ORDER	
	Roll Call – Clerk of the Board	
2.	PUBLIC COMMENT (Unscheduled Appearances)	
	<p>The public may address the Board of Directors on any item relevant to the Authority. To comment on an agenda item, speakers should notify the Board or Staff member at the meeting location, when the agenda item is announced. The Board or Staff member will indicate whether speakers are to make their comments before or after any staff comment or report. Public comment shall precede discussion of the item by the Board of Directors. Comments by individuals and entities will be limited to five minutes or as may be reasonable as determined by the conducting officer.</p>	
3.	Consent Items:	Approval
	<p>All items listed as consent items are considered routine and will be enacted by one motion. For any discussion of any consent item, it will be removed at the request of any Board member and made a part of the regular agenda.</p>	
	A. Minutes of January 10, 2013 meeting	
4.	System Update	Information
	a. CalPERS Review	
	b. Recognition of one year anniversary	
	c. 2012 Transportation Excellence Award by TAMC	
	d. Submittal of Form 700.	
5.	Accept Application from Merced County Assoc. of Governments to join CalVans	Action
6.	Award of Bid for 30 Ford CNG 15-passenger vans	Action
7.	Award of Bid for 15 GMC/Chevrolet 15 passengers vans	Action
8.	Review MOU with KCAPTA pertaining to CalPERS contributions	Action
9.	Discussion on CalPERS Review	Action
10.	Adjournment	

Attachments:

<u>Item</u>	<u>Page</u>	<u>Description</u>
A-	6	Board Minutes of January 10, 2013
B-	13	One year update
C-	19	Letter from Merced County Association of Governments
D-	20	2012 Transportation Excellence Award
E-	21	MOU between CalVans and KCAPTA
F-	25	See attached e-mail from CalPERS Staff member Rueben Jiminez
G-	30	Bio for John D. Wahlin
H-	31	Attorney agreement from Best Best & Krieger

STAFF REPORT

3. Consent Items:

- A Minutes of January 10, 2013 meeting

4. System Update

- a. Recognition of one year anniversary

A significant portion of the transit taxes collected by the Federal Government are distributed based on the amount of transit services provided by each city with a population of 50,000 or more. Transit services being reported include the number of passengers, how far they traveled and how long they spent traveling. This information is reported for all transit modes, including vanpools provided by a public transit agency. As a public transit agency, CalVans reports this information for 27 cities that its vanpools travel to or from.

- b. 2012 Transportation Excellence Award by TAMC

TAMC (Transportation Agency for Monterey County) recently recognized the benefits the CalVans program brings to Monterey County. The Transportation Excellence Award goes to programs that stand out in making an impact in the regions transportation concerns. Staff was on hand to accept the award.

- c. Submittal of 700 Forms

It is that time of year to submit your Form 700, Statement of Economic Interests. Please forward or have your Staff forward a completed form to Trish Barberick, our Office Manager, no later than March 31, 2013. Please mail to: CalVans Attn: Trish Barberick, 1340 North Dr. Hanford, CA. 93230. If you have any questions, please contact Trish at trish.barberick@co.kings.ca.us or call 559-852-2703.

5. Accept Application from Merced County Assoc. of Governments to join CalVans

Attached is a letter from MCAG (Merced County Association of Governments) requesting membership into CalVans. MCAG is comprised of the County and Cities of Atwater, Dos Palos, Gustine, Livingston, Los Banos and Merced. Merced is similar in its make up to Madera and Fresno to the south. Those using the program will be a mix of agricultural and non-agricultural employees. The proximity of Merced to the Hanford office will allow staff to support the expansion without adding additional office space or personnel. Growth of the vanpool program in the area will result in additional revenue to support services to the area. Staff will work with MCAG Staff to leverage any available funds that might be used to promote vanpools in the area.

Staff recommends the approval of MCAG's request to become a member of CalVans. If approved, Staff will work with MCAG Staff in completing an Addendum to the CalVans Joint Powers Agreement.

6. Award of Bid for 30 Ford CNG 15-passenger vans

Staff prepared a bid package for purchasing 30 Ford CNG 15-passenger vans to add to its fleet. The funding for these vehicles comes from a Federal State of Good Repair Grant, a San Joaquin Valley Air District Public Benefits Grant and funds from the Fresno Measure C program; there will be no direct cost to CalVans. The bid was noticed in the local newspaper for a period of 30 days and direct mailed to 14 Ford dealerships. A call-in

time was established where those having questions could call in and let Staff know of any questions or concerns. None of the dealers took advantage of this option.

Staff received the following four bids. The table below lists the unit price, which includes taxes, the total for 30 units and the amount that each of the unsuccessful bidders exceeded the lowest bid:

<u>Bidder</u>	<u>Unit price</u>	<u>Total</u>	<u>Over low bidder</u>
Valley Ford	41,347.15	1,240,414.50	
Hansel Ford Lincoln Mercury	42,587.35	1,277,620.50	37,206.00
Swanson Farney Ford	43,602.00	1,308,060.00	67,645.50
Visalia Ford	44,718.80	1,341,564.00	101,149.50

Staff has reviewed the lowest bid and checked with A-1 Electric (the firm doing the CNG conversion) that will be converting the units to CNG. The price quoted covers the cost of all vehicles and their conversion. Valley Ford has made arrangements with to A-1 to have all necessary items on hand for the conversion. It is estimated that 2-3 vans can be converted each week. CalVans will be making partial payments on those vans that are completed and accepted.

Staff recommends that the bid be awarded to Valley Ford for the purchase of up to 30 new Ford 15-passenger vans and converted to operate on CNG.

7. Award of Bid for 15 GMC/Chevrolet 15 passengers vans

Staff prepared a bid package for purchasing 15 GMC/Chevrolet 15-passenger vans to add to its fleet. The bid package included the option to purchase up to 50 additional vans as needed in anticipation of receiving funding from FCRTA (Fresno County Rural Transit Agency). On the 31st of January the FCRTA Board approved one million dollars for the funding of 35 vanpools for agriculture workers in Fresno County. Last year they approved the same amount for 35 vanpools for general vanpool users. These have been placed and are in service, Staff anticipates that the new vans will go out quickly as the agricultural season starts up.

All Bid packages must be submitted by the 12th of February, 2013 by 3 P.M. The bid packages were mailed to the following auto dealers:

<u>Company</u>	<u>City</u>
Delano Chevrolet Buick GMC	Delano, CA 93215-2739
Dow Lewis Motors	Yuba City, CA 95993
Ed Dena's Auto Center	Dinuba, CA 93618-9116
Elk Grove Buick GMC	Elk Grove, CA 95757
Fahrney Buick GMC	Selma, CA 93662-2606
Folsom Buick GMC	Folsom, CA 95630
Gill Buick GMC Cadillac	Madera, CA 93638-3615
Hughes Automobile Company	Santa Barbara, CA 93105
Keller Motors	Hanford, CA 93230-4964
Kitahara GMC Buick	Fresno, CA 93710-5017
Kuni Buick GMC Cadillac	Sacramento, CA 95825
Liberty Chevrolet	Selma, Ca 93662
Reliable Buick GMC Cadillac	Roseville, CA 95661
Richard's Chevrolet	Corcoran, CA 93212
Sequoia Chevrolet Buick GMC	Sanger, CA 93657-3154

Stowasser Buick GMC
Sturgen and Beck
Thompsons Buick GMC
Visalia Buick GMC
William L. Morris Chevrolet
Woodland Motors

Santa Maria, CA 93454
Tulare, CA 93274-5496
Placerville, CA 95667
Visalia, CA 93292-6642
Fillmore, CA 93015
Woodland, CA 95776

This bid package also included a time to call in and ask any questions a dealer might have about the bid specifications or process. Unfortunately, no one took advantage of the opportunity to call in. It is assumed that they have all the information they need to prepare their bid. Those that have contacted Staff directly state the bid package looks good and they had no concerns.

Staff will send out a recommendation next Tuesday, following the bid opening, as an addendum to the Board packet.

8. Review MOU with KCAPTA pertaining to CalPERS contributions

Prior to separation from KCAPTA, Staff made application to establish a separate CalVans entity in CalPERS. Staff was advised by CalPERS Staff to continue making employee contributions into KCAPTA until CalVans was set up as a separate entity, at that time it was indicated that this might take several months. Once established in CalPERS, member's contributions would be moved from KCAPTA to CalVans. This did not take place as quick as indicated for two reasons. The first was the issuance of new rules by IRS on what it takes to qualify as a member of CalPERS and due to the recent California legislation affecting retirement plans.

The attached MOU seeks to address how the CalVans contributions are tracked so as to protect KCAPTA from any liabilities, as well as setting a date at which time employee contributions can no longer be placed in KCAPTA's CalPERS account. CalVans Staff has reviewed the document and is going to request some additional time to secure outside council versed in retirement funds and employee benefits for advice on how to proceed so as not to create future problems. However, as KCAPTA is the only official CalPERS member they ultimately have the final say on the end date. With Board concurrence, Staff will submit a formal letter to KCAPTA seeking additional time to prepare a different method to account for employee contributions while waiting for CalPERS action.

9. Discussion on CalPERS Review

Staff has spent the past month working closely with CalPERS' Staff on providing documentation related to CalVans and its members. At one point it was indicated that a decision would be made last week, this has now been changed to the last week of this month. CalPERS Staff said they would complete their review and make recommendations at that time.

CalVans' attorney will attempt to make contact with attorneys at CalPERS to see if things can be moved faster at that level. Staff is recommending that advice be secured from an individual or firm versed in setting up or managing a retirement fund. This would be to advise CalVans in the interim and to make longer recommendations if necessary. In the interim we need to set up a temporary program for new employee's contributions that allows for movement into CalPERS if approved, and assistance if needed in arguing our case with CalPERS.

Staff has worked with our attorney to identify several attorneys that specialize in setting up and managing employee benefit plans. Staff is recommending that the services of John D. Wahlin, a partner with the firm of Best Best & Krieger LLP. be secured to assist in setting up an interim method of accounting for employee retirement contributions while waiting for a final decision by CalPERS. As noted above, their services may also be needed should we need to appeal CalPERS decision. Please see attached BIO.

California Vanpool Authority (CalVans)

Minutes of Board Meeting

A regular meeting of the California Vanpool Authority was called to order by Joe Neves, Chairman of the Board at 10:00 a.m. on January 10, 2013, in the conference room of CalVans, 1340 North Drive, Hanford, CA. 93230

California Vanpool Authority Members

AMBAG – Association of Monterey Bay Area Governments
Fresno COG – Fresno Council of Governments
KCAG – Kings County Association of Governments
Kern COG – Kern Council of Governments
MCTC – Madera County Transportation Commission
NCTPA – Napa County Transportation & Planning Agency
SACOG – Sacramento Area Council of Governments
SBCAG – Santa Barbara County Association of Governments
TCAG – Tulare County Association of Governments
VCTC – Ventura County Transportation Commission

1. CALL TO ORDER

Roll Call – Clerk of the Board

Directors present:

AMBAG	Scott Funk, Council member	Primary
Fresno COG	Sylvia Chavez, Mayor of Huron *Joined @ 10:05	Primary
KCAG	Joe Neves, Supervisor District 1	Primary
Kern COG	Jon Johnston, Council member	Primary
MCTC	Robert Poythress, Mayor of Madera *Joined @ 10:02	Primary
SACOG	Sharon Sprowls	Alternate
SBCAG	Janet Wolf, Supervisor District 3 *Joined @ 10:02	Primary
TCAG	Rudy Mendoza, Council member	Primary
VCTC	John Zaragoza, Supervisor District 5	Alternate

Directors absent:

NCTPA Keith Caldwell

Counsel present: Zack Smith

Staff/Visitors in attendance:

Ron Hughes, Heather Corder, Temo Ortiz and Trish Barberick from CalVans.

Also in attendance were Alan Holmes, Jason Mackey, Teresa Nickell, Bob Snoddy, Christine Chavez and Angie Dow.

2. UNSCHEDULED APPEARANCES:

There were no unscheduled appearances.

3. CONSENT CALENDAR:

- A. Minutes of October 11, 2012
- B. Approval of Agreement with Lemoore High School.
- C. Authorize Sub Recipient Agreement with KCAPTA

Motion was made, seconded Funk/Poythress and unanimously carried to approve the consent calendar A: Approval of minutes of October 11, 2012, B: Approval of Agreement with Lemoore High School and C: Authorize Sub Recipient Agreement with KCAPTA. (Jon Johnston and John Zaragoza abstaining from A: Approval of minutes of October 11, 2012.)

4. SYSTEM UPDATE.

a. Reporting of FTA funds generated for other agencies.

Ron explained that a significant portion of the transit taxes collected by the Federal Government are distributed based on the amount of transit services provided by each city with a population of 50,000 or more. Transit services being reported include the number of passengers, how far they traveled and how long they spent traveling.

This year's apportionment came close to doubling last year's apportionment, which doubled the apportionment the year before. Staff's goal would be to use some of the funds generated for the replacement of older vans. This has been done in the past with funds generated for KCAPTA. This keeps participants cost down and is one of the reasons Kings County has one of the highest per capita uses of vanpools. It is recommended that we all share in the revenue.

b. Increase in number of Agricultural Vanpools being used.

Staff explained that normally at this time of year, the number of agricultural vanpools start to drop off as the winter season arrives. This is not the case this year. An increasing number of growers in the Salinas Valley encourage their workers to use vouchers and travel to Yuma and Imperial Valley for their winter operations.

Over the next several weeks 854 workers for 7 growers will be using over 61 vanpools in Yuma and Imperial Valley. This benefits growers and workers. Due to the shortage of workers, growers are able to keep their employees and continue their operations. H2A workers are also used because they meet the DOL requirements in using CalVans for transportation.

Commissioner Zaragoza requested clarification of H-2A.

Ron responded that the Department of Labor describes H-2A as a work authorization for non-U.S. Citizens: Temporary Agricultural Workers (H-2A Visas). The DOL certifies that temporary immigrants with an H-2A work contract to work in the U.S. if lodging and transportation is provided by an employer.

c. Review of first quarter financials.

The approved budget recognized a surplus of \$224,593 that was allocated for future capital needs.

This being CalVans first full years budget, Staff worked hard to keep expenses down while trying to maximize revenues generated by those that use the system. Based on the first quarter, the increase use of agricultural vanpools will result in sufficient revenue to cover all costs related to the agricultural vanpools. The number of general vanpools continues to grow even as gas prices have dropped.

Commissioner Wolf requested consideration for part of the surplus be used for marketing.

Ron responded that there would not be any consideration for marketing funds until the funds are received and there is a surplus. Marketing funds will be readdressed at the March meeting.

d. Submittal of proposal to LA Metro.

Staff responded to an RFP from LA Metro asking for submittals from vanpool operators wishing to take advantage of the \$400 per month LA Metro offers to vanpool groups traveling to or from the LA area.

e. Staff vacancy in Ventura/Santa Barbara office.

Staff reported that the Transit Coordinator (Susan Haverland) for the Ventura/Santa Barbara area resigned. The recruitment for that position has been drafted and should take 30-45 days to complete. In the interim, Gus Banda (Transit Coordinator in Hanford) is covering until a replacement is found. Please send any contact information you might have.

Commissioner Wolf inquired what the rate of pay is.

Heather responded that the starting pay is \$26.93 per hour.

Ron responded that a job description will be posted on line and will be sent to all Board members, their alternates and the TAC.

Commissioner Zaragoza questioned if this position needed to be bilingual.

Staff responded they need to be Spanish/English bilingual.

f. Review Agency acceptance as member of CalPERS.

Staff explained that prior to separating from KCAPTA (Kings County Area Public Transit Agency) Staff submitted documentation applying for CalVans membership into CalPERS. Staff was directed to continue placing CalVans employees contributions in KCAPTA until CalVans was set up in CalPERS. At that time, CalVans Employees' contributions would be rolled over into CalVans plan. It was anticipated the process would take approximately six months.

A year has passed and the review process is still underway. It became more complicated by the recent legislative changes affecting CalPERS members.

CalVans Attorney, Zack Smith submitted a letter to CalPERS requesting a definite answer in regard to CalVans being a CalPERS member. CalPERS responded with an e-mail stating they would have an answer within thirty days. Thirty days have passed and Staff will be traveling to the CalPERS office in Sacramento to speak with the Manager in charge of Membership.

Commissioner Mendoza questioned if CalVans has entertained a private retirement plan.

Ron explained that most of CalVans employees were already CalPERS members through KCAPTA and the Attorney concurs that there shouldn't be a problem and CalVans will keep the pressure on to get this settled as soon as possible.

g. Meetings and Presentations.

Staff spoke at an H-2A Employer Roundtable Meeting in Somerton, Arizona to explain how the CalVans program works. DOL representatives have been promoting the program as a way to insure save transportation for workers.

A meeting was also held with representatives of several northern San Joaquin Counties. The representative for Merced County Association of Governments indicated that they were going to recommend submitting a request to join CalVans.

Staff will also be meeting with a Staff member of SANDAG (San Diego Association of Governments) whom requested a second meeting to discuss how the CalVans program might be applied in the San Diego area.

5. REVIEW INSURANCE RENEWAL OPTIONS.

Staff explained that the cost of insurance has dropped dramatically over the 11 years the program has existed. Over the last 4 years it has remained fairly constant.

Staff has worked closely with the agencies broker (Mackey and Mackey) to develop several options to the traditional insurance package the agency normally secures. The options to the customary insurance package involve raising the deductible. By raising the deductible and assuming more risk, the insurance premiums drops. The savings to the agency by doing this would be approximately \$85,000.

Staff recommended Option 2, which will require \$25,000 to be accessible by the insurance company for payment of claims. The funds would be replenished as funds were used to pay claims. Staff also recommended that the Executive Director be authorized to establish the line of credit.

Heather Corder (Accountant Auditor) explained it was a letter of credit for the insurance company proving we have \$25,000 in this account. Staff explained further by stating we would continue to set aside money we usually would be paying the insurance company until CalVans has enough set aside for the account.

Commissioner Sprowls requested clarification on option #1 regarding a \$5,000 deductible.

Jason from Mackey and Mackey explained the options. The \$5,000 is to cover damage the insurance would pay for everything else. By raising the deductible to \$25,000, the premiums would be less.

Jason also commented that he wished all Mackey and Mackey insurance holders had CalVans safety record and precautions in place. He also thanked CalVans for their support and business.

Commissioner Zaragoza questioned CalVans exposure.

Staff explained that CalVans would pay up to \$25,000 for each claim.

Commissioner Mendoza inquired into any fatalities.

Staff responded that there have not been any fatalities. CalVans safety features and precautions will be outlined at a future meeting.

Motion was made, seconded Poythress/Wolf and unanimously carried approving the insurance option #2 with a deductible of \$25,000, and authorizing Ronald Hughes, Executive Director, to execute documents on behalf of California Vanpool Authority in the transactions and/or signing of agreements as part of establishing and maintaining a \$25,000 letter of credit.

6. AUTHORIZE AWARD OF BID TO PURCHASE UP TO 70 15-PASSENGER CHEVROLET VANS.

This item was pulled from the agenda and will be brought back at a later date. A discussion followed.

Staff went out to bid for 10 vans with the option to purchase 60 additional 15-passenger vans. The bid documents were distributed locally as well as being mailed to firms outside the area.

Responses received were that they were busy, they questioned the additional documents they had to sign and the uncertainty in locking in a price that they would be held to should we buy additional units in the future.

One bid was received from Keller Motors.

Ron explained that another RFP will go out and an open line of communication on how to respond to the RFP will take place prior to the deadline of the new RFP. Staff will also follow up with phone calls and all RFP's will be sent certified.

Commissioner Wolf stated she would appreciate the following up and questioned the legality to be bound to the one proposal received.

Commissioner Sprowls commented that standard language used in RFP's, stipulates the choice to award a bid or not.

Staff responded that the standard language was used in the RFP.

7. AUTHORIZATION SUBMITTAL OF JARC APPLICATIONS.

Caltrans issued a Call of Projects using remaining 2012 JARC (Job Access and Reverse Commute) funds.

Staff proposed resubmitting earlier 5316 applications for areas that were not funded in the first round, with the current members' approval.

Motion was made, seconded Sprowls/Poythress and carried unanimously to resubmit the JARC applications that were not funded in the first round with the approval of each member.

8. 2012-2013 MEETING CALENDAR.

A copy of the 2012-2013 meeting calendar was distributed and discussed.

Ron explained that in November and December 2013, CalVans may not have meetings due to the holidays.

9. ADJOURNMENT.

The meeting was adjourned at 10:39 a.m.

Respectfully submitted,



Ronald H. Hughes
Executive Director

1/10/2013 tb



California Vanpool Authority –
Annual Update and Service Impact Report.

California's fastest growing public transportation option.

CalVans Celebrates its First-Year Anniversary February 2013

CalVans (California Vanpool Authority) is celebrating its first year anniversary. It has been a year since CalVans was formally established and assumed the vanpool program from the Kings County Area Public Transit Agency (KCAPTA). KCAPTA initiated and operated the program for over ten years. CalVans today represents an agency that has been crafted and expanded into a dedicated vanpool program that now serves over 5,400 vanpool riders utilizing over 460 vans. As a public transit agency, CalVans insures that over 5,000 workers get to and from work each day in a safe and affordable way. CalVans has an annual budget of \$7.7 million that is self-funded by its users and has a safety record and program that is a national model.

The CalVans Joint Powers Agency was formally established in January 2012 as a public transit agency with Board Members representing each of the following ten agencies:

Association of Monterey Bay Area Governments
Fresno Council of Governments
Kern Council of Governments
Kings County Association of Governments
Madera County Transportation Commission
Napa County Transportation and Planning Agency
Sacramento Area Council of Governments
Santa Barbara County Association of Governments
Tulare County Association of Governments
Ventura County Transportation Commission

Program Inception

The program was initiated in 2001 when Ms. Lois Buhn, a Corcoran State Prison employee, asked the KCAPTA Board if it would help her retain the Caltrans vanpool. Caltrans was planning to discontinue employee vanpools. The KCAPTA Board agreed to provide a vanpool for Ms. Buhn if her group paid 100% of vanpool-related costs. With this van, the KCAPTA vanpool program was launched. Additional vanpools were approved, growing the program over the years.

KCAPTA expanded its program to include vanpools for agricultural workers in 2001. This expansion was driven by two incidents. The first incident was a letter from the California Division of Labor Standards Enforcement informing KCAPTA that providing farmworkers with vanpools would be in violation of the Labor Code and would result in legal action against KCAPTA. The second incident was a tragic accident in 1999 that resulted in the death of 13 farmworkers near the community of Five Points.

The 1999 accident caused the Governor to look at ways to improve farmworker transportation safety. A series of public hearings was conducted by Caltrans in various locations throughout the San Joaquin Valley seeking input from those providing transportation and those being transported. These hearings revealed that most farmworker transportation was being provided on an informal basis, in violation of either State or Federal law governing the transportation of farmworkers. KCAPTA staff attended many of these hearings and proposed that vanpools be considered as an option, assuming the Department of Labor's concerns could be addressed.

Pilot Vanpool Project and Growth

Caltrans considered KCAPTA's proposal as the only viable option resulting from the public hearing. Follow-up meetings were held to determine how a pilot program might be established and funded. Caltrans subsequently applied for Federal and State funding to finance a pilot project serving farmworkers in Kings County. This project, called the AITS (Agricultural Industries Transportation Services) project, was later expanded to include farmworkers in Tulare and Fresno Counties.

KCAPTA had early success in establishing a pilot vanpool project collaborating with the California Highway Patrol SAFE unit located in Fresno. They provided suggestions and worked closely with KCAPTA in establishing the initial program. Some years later, the Federal and State Departments of Labor expressed interest and supported the project.

In 2001, KCAPTA submitted several letters to the Federal Department of Labor asking for input and clarification on its vanpool program in light of MSPA (Migrant and Seasonal Agricultural Worker Protection Act) which governs many aspects of farm labor transportation. In January 2007, the Federal Department of Labor issued a letter taking a supportive position and now works closely with CalVans in educating farmworkers about the program and its safety record. The program expanded to accommodate more farmworker vanpools in 2002. Demand for farmworker vanpools has continued to grow resulting in over 160 vans today.

Agricultural Workers Transportation Program (AWTP)

The State established and funded the AWTP in 2006 based upon the success of the KCAPTA's farmworker vanpool pilot project. The program funded projects from Napa County to the north and Ventura County to the south. A total of 17 projects were funded, ranging from planning studies to project implementation. Two programs currently remain in operation, KCAPTA as CalVans and San Luis Obispo's Ride-On. Projects by other agencies either never moved forward or were, at their request, integrated into KCAPTA. This was accomplished through various agreements between the agencies and KCAPTA.

Establishment of CalVans

KCAPTA management in 2010 proposed establishing a new transit agency to assume operation of the vanpool project given the large size of its operation and the desire to have representation from areas being served. With a well-established organizational structure and Board of Directors, individual member agencies now have the option of seamlessly joining or discontinuing membership with CalVans while program operations remain stable and reliable.

Funding

From its inception, the vanpool program was to operate on revenue collected from passengers or grant funds provided to get the farmworker project up and running. Under KCAPTA, all funds were separated by transit (conventional buses), general vanpools, and agricultural vanpools. This was to insure the KCAPTA Board that no transit funds were being used to support the program and to insure the State that no grant funds earmarked for agricultural vanpools were being used to support general vanpools.

In addition to passenger revenue, CalVans has been able to generate additional Federal Transit Administration, Section 5307 funds for many of the cities its vanpools travel to or from. This is possible because, as a public transit agency, CalVans is able to report all transportation data into the National Transit Database system. Information in this system is used to apportion Federal funds to cities with public transit systems providing service to the public. Transit statistics reported include the number of passengers, how far they traveled and how long they spent traveling. This information is reported for all transit modes, including vanpools provided by a public transit agency. CalVans presently reports this information for 27 cities that its vanpools travel to or from.

The following shows the growth in Federal funds generated over the past three years:

<u>Agency</u>	<u>FY 12-13</u>	<u>FY 11-12</u>	<u>FY 10-11</u>
Fresno Area Express	\$903,637	\$557,000	0
Visalia City Coach	407,604	0	0
Bakersfield GET	80,138	0	0
Kings Area Rural Transit	868,560	593,046	604,000
Madera Transit	347,424	0	0
Porterville Transit	<u>173,712</u>	<u>395,364</u>	<u>0</u>
Total	\$2,781,075	\$1,545,410	\$604,000

This year's cumulative apportionments are nearly double those in FY 11-12 and over quadruple those in FY 10-11. This growth in funds will continue as the number of vans and cities eligible for vanpool revenue increase.

The compilation of NTD data also addresses multiple needs. It gives member agencies the ability to sort and report passenger information for their county, and also provides data that counties can use for reporting to CARB (California Air Resources Board) on efforts to meet the

greenhouse gas reductions mandated by AB32. The following shows what was reported for FY 11/12 for several counties:

County	Passengers	Miles	Passenger Lane Miles
Fresno	475,371	2,350,598	19,995,972
Tulare	435,893	2,071,857	15,797,548
Kings	307,185	1,643,521	10,854,598
Kern	106,711	487,683	4,773,692
Monterey	117,033	389,749	3,982,283

CalVans vanpools traveled 7.7 million miles and provided 1.6 million trips, resulting in a VMT (vehicle miles traveled) reduction of 63 million miles. Translated into greenhouse gas (GHG) equivalents, that is an annual reduction of 27,000 tons of GHG.

Grant funding targeted for farmworker vanpools ended in June 2011. All operational costs are now derived from vanpool revenue. With its first full year of operation behind it, CalVans has been successful in meeting its \$7.7 million budget from revenue collected from its vanpool users. This user support insures the long-term viability of the program.

Agricultural Grower Participation

What started out as funding from individual farmworkers has evolved as CalVans has grown and become accepted by agricultural growers whose workers use and depend upon the system. CalVans gives farmworkers great latitude to travel where they want to seek work and employers the ability to provide safe, accessible transportation to their employees.

Because each vanpool is a public transit vehicle, growers are able to provide their workers with vouchers that cover the worker's cost of riding in the vanpool. Currently, over 900 farmworkers receive vouchers from their employers paying all or part of their daily cost. Growers state they are doing this to insure they have enough workers and to insure workers will remain with them through out the harvest period. A number of growers have taken advantage of the program to move their operation from the Salinas Valley to the Yuma and Imperial areas for the winter season, insuring workers can make the move as well and that new workers can be secured. Currently, 76 vanpools operate in the Yuma/Imperial area, with employers providing vouchers that cover an employee's weekly vanpool costs.

General Public Vanpools

What started with one vanpool for State employees has expanded to over 300 general public vanpools serving State and Federal employees, teachers, students, and others. General public vanpools typically maintain regular destinations and schedules while those of farmworkers vary widely with the seasons.

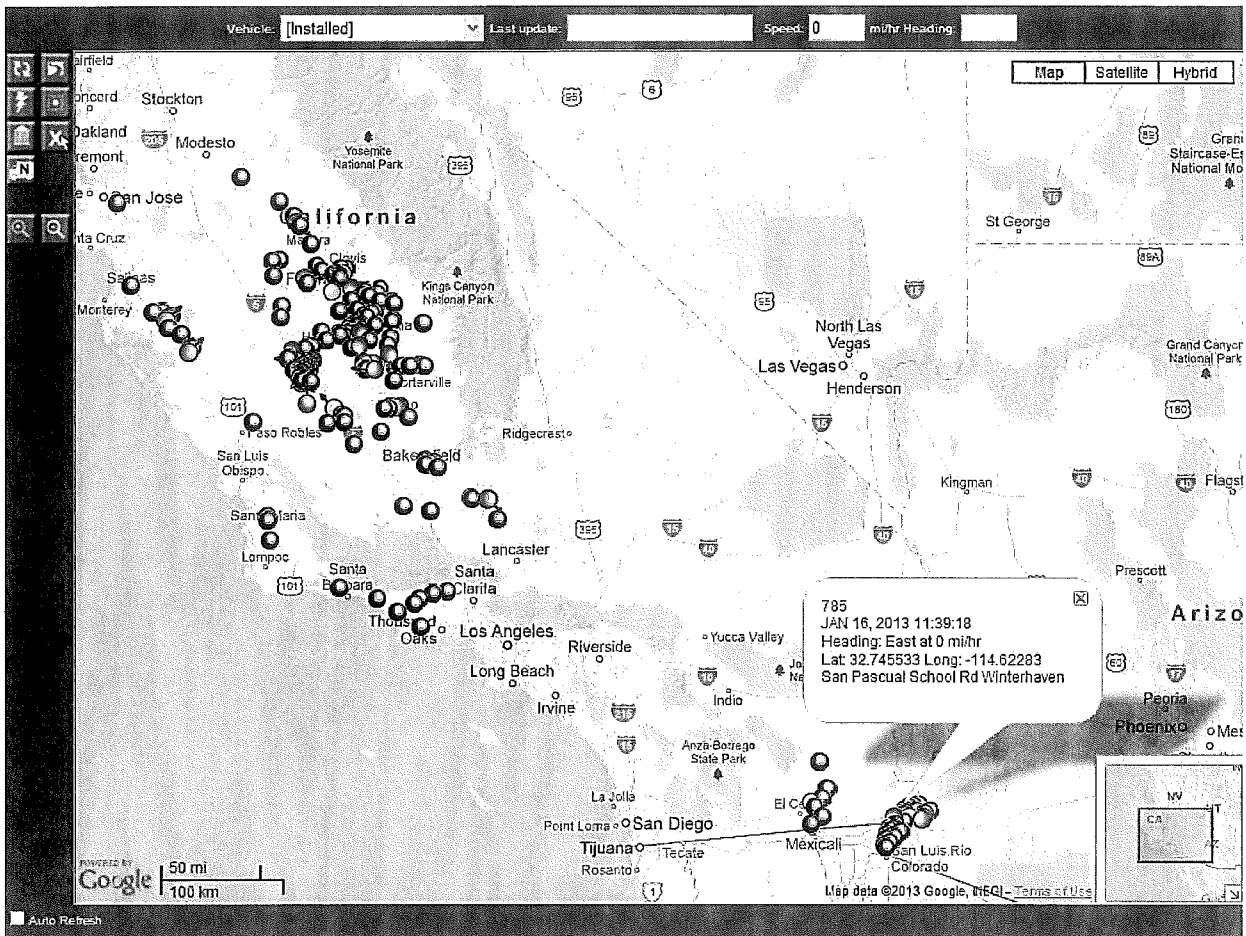
Unlike private vanpool operators, CalVans simply requires a valid license and a clean driving record to start a vanpool. Credit and/or background checks are not required. Vanpool drivers are

also not required give a 30-day notice before terminating their vanpool; billing is stopped when the van is no longer being used.

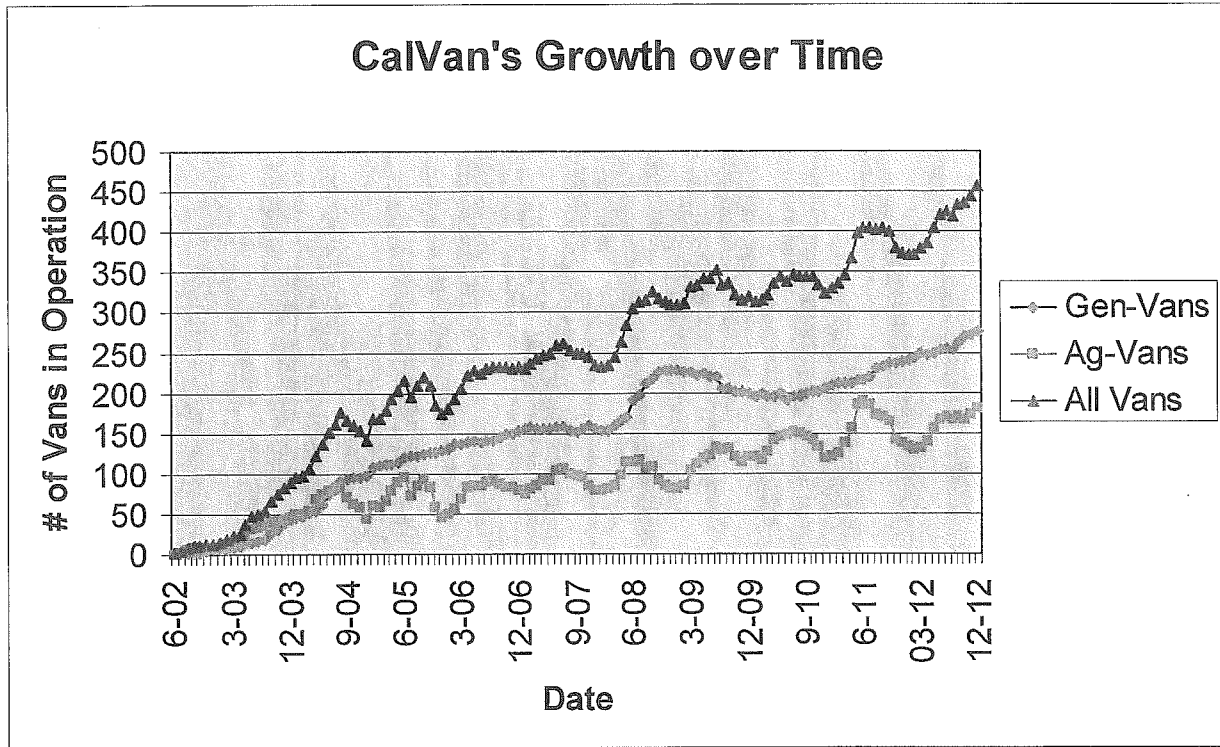
CalVans works closely with each of its member agencies to address local issues. This includes working with Caltrans, CHP, and the Federal Department of Labor.

Technology Improvements

CalVans serves ten member agencies representing seventeen counties. CalVans has established a cloud-based system for tracking drivers and vans within these counties. This system allows full-time monitoring of who is driving a vehicle and where. It also allows for real-time reporting that supports maintenance of the vans and provides the ability to send bills to each driver using the on-board GPS system. The system also incorporates phone and messaging capabilities for communicating with or between each vanpool. The following shows the vehicle location for January 16, 2013:



The following graph illustrated the growth of the overall program over the past 10 years.



Challenges and Future Outlook

CalVans faces the challenge of being one of the few public transit agencies advocating for the use of public vanpools as a means of getting people to and from work. As the agency has grown, inquiries regarding how the program might be enlarged or duplicated frequently come from within and outside of California.

CalVans anticipates continued interest and growth in vanpools. Future growth and sustainability of CalVans will depend on its continued close collaboration with vanpool users, employers, and support of its member agencies and communities throughout California.

For additional information or questions contact:

Ronald Hughes, Executive Director
 1340 North Drive
 Hanford, CA 93230
 (559) 852-2696

www.CalVans.org



PH: 209.723.3153
FAX: 209.723.0322
www.mcagov.org
369 W. 18th Street
Merced, Ca. 95340

February 6, 2013

Ronald Hughes, Executive Director
California Vanpool Authority
1340 North Drive
Hanford, CA 93230

Dear Mr. Hughes,

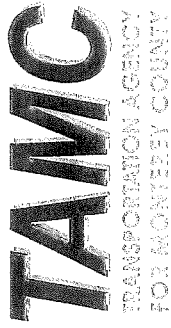
In accordance with the Merced County Association of Governments Board action on January 24, 2013, it is our intention to participate as members in the California Vanpool Authority program through a Joint Powers Agreement.

If our membership is approved by the CalVans Authority Board, MCAG staff will take the JPA Addendum Agreement before the MCAG Governing Board for final approval and appoint a board member to serve as a representative on the CalVans Authority Board.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marjie Kim", is written over the typed name.

Marjie Kim
Interim Executive Director
MCAG



Regional Transportation Planning Agency • Congestion Management Planning • Local Transportation Commission
Monterey County Service Authority for Freeways & Expressways

2012 Transportation Excellence Award

Regional Vanpool Program CalVans

Is hereby recognized for its outstanding contribution to improved transportation in Monterey County. The Regional Vanpool Program started its first vanpool in 2009. It provides sustainable transportation solutions and serves traditionally underserved population groups – including low income and minority populations, rural communities, and agriculture workers. The Regional Vanpool Program has over 73 traditional and agricultural vanpools, each serving between 8-15 riders. Depending on the number of riders, the Vanpool Program is expected to reduce between 143,000 and 287,000 vehicle miles traveled each year. This dedication and commitment to service has earned the Regional Vanpool Program and CalVans this honor on this day, January 23, 2013.

Confirmed By

TAMC Chair
Jerry Edelen

Acknowledged By

Executive Director
Debra L. Hale

**MEMORANDUM OF UNDERSTANDING
REGARDING CALPERS' CONTRIBUTIONS
BETWEEN KCAPTA AND CALVANS
AGREEMENT NO. _____**

This Memorandum of Understanding regarding CalPERS' Contributions (hereinafter the "Agreement") by and between the California Vanpool Authority, a joint powers authority ("CalVans"), and the Kings County Area Public Transit Agency, a joint powers authority ("KCAPTA"), is entered into this ___ day of _____, 2013. CalVans and KCAPTA are also hereinafter individually referred to as "Party" and collectively as "Parties."

Recitals

WHEREAS, on December 26, 2011, CalVans separated from KCAPTA forming it's own public entity for the purposes of providing public transportation through vanpool programs and other public services; and

WHEREAS, KCAPTA continues to operate as a joint powers authority providing public transportation within the Kings County service area; and

WHEREAS, this Agreement describes the respective responsibilities of CalVans and KCAPTA regarding the California Public Employees' Retirement System ("CalPERS") contributions and service credit for CalVans' employees effective from separation of the entities on December 26, 2011 until February 28, 2013; and

WHEREAS, KCAPTA has a contract with CalPERS to participate in the CalPERS retirement system; and

WHEREAS, CalVans applied with CalPERS for a contract to participate in the CalPERS retirement system prior to separation in December of 2011, and sent a letter to CalPERS on November 30, 2012, seeking completion of the application; and

WHEREAS, CalVans has not yet received a separate contract with CalPERS for CalVans' employees to continue in the CalPERS system under CalVans; and

WHEREAS, to prevent disruption of services to CalVans' employees pending the determination of CalPERS with regards to contracting for retirement services, KCAPTA has continued to report CalVans' employees, many of whom were KCAPTA employees prior to the separation, under KCAPTA's CalPERS contract; and

WHEREAS, KCAPTA sought approval from CalPERS regarding continuance of CalVans' employees in CalPERS under KCAPTA's contract post separation and was advised by CalPERS' staff to continue to report CalVans' employees under KCAPTA's CalPERS contract while CalVans sought their own contract with CalPERS; and

WHEREAS, effective January 1, 2013, the California Pension Reform Act of 2013 (A.B. 340, A.B. 197, S.B. 987) made various changes to public retirement law including setting retirement formulas, maximum benefits allowable, and maximum employer contributions; and

WHEREAS, the Parties desire to comply with all provisions of the applicable laws and regulations regarding reporting and contributing to retirement under CalPERS.

NOW THEREFORE, the Parties agree as follows:

1. CalPERS Contributions.

a. *KCAPTA's responsibilities.* KCAPTA agrees to allow CalVans to report their employees under KCAPTA's CalPERS contract for continued participation in CalPERS from December 26, 2011 (the date of separation of the Parties), until February 28, 2013. KCAPTA will not allow any additional CalVans' employees hired on or after January 1, 2013, to be reported under KCAPTA's CalPERS contract.

b. *CalVans' responsibilities.* CalVans agrees to provide KCAPTA sufficient funds, as determined by CalVans and/or as required by CalPERS, for CalVans' employees and employer's share of CalPERS' contributions/expenses on a biweekly basis. CalVans is also responsible for all Service Credit earned by CalVans' employees that are reported under KCAPTA's contract and associated financial liabilities from the date of separation on December 26, 2011. CalVans acknowledges and agrees that KCAPTA's actions under this Agreement do not create an actual or implied employment relationship between CalVans' employees and KCAPTA. All reported CalVans' employees remain under the sole and absolute control of CalVans in regards to employee benefits, including retirement benefits, and any claims or liabilities thereunder.

c. *Joint responsibilities.* Should CalPERS, the Internal Revenue Service, the California Franchise Tax Board, or any other entity, agency, board or body with authority over the payments/contributions made pursuant to this Agreement, determine that the means or method or other actions by KCAPTA pursuant to this Agreement were or are invalid, void, unauthorized, or cannot continue, CalVans agrees to defend KCAPTA regarding any such determination and reimburse KCAPTA for any and all costs or expenses, including, but not limited to, penalties, resulting from any determination. Upon such determination or upon a determine by CalPERS not to award CalVans a separate contract to continue in the CalPERS system, KCAPTA agrees to return any collected payments/contributions after the approval of CalPERS to return funds and subject to the limitations of CalPERS. KCAPTA will not advance the return of payments/contributions made by CalVans under this Agreement and will not pay interest on any funds, other than what is allocated by CalPERS for return to CalVans.

2. Term. This Agreement is effective from the date of CalVans' separation from KCAPTA on December 26, 2011 through February 28, 2013, upon which date KCAPTA will cease to report and collect CalPERS contributions from any non-KCAPTA employee. This Agreement may be terminated prior to February 28, 2013, by the mutual written agreement of the Parties. Additionally, this Agreement may be terminated prior to February 28, 2013, upon receipt of either Party of notification that CalVans has been awarded its own contract with CalPERS or that

KCAPTA's services are no longer permissible by CalPERS, the Internal Revenue Service, the California Franchise Tax Board, or other governing entity, agency, board or body.

3. **Notices.** All notices pursuant to this Agreement shall be in writing and shall be effective upon receipt. All notices and communications between the Parties to this Agreement shall be either personally delivered, sent by first-class mail return receipt requested, or sent by overnight express delivery service, postage or other charges fully prepaid, as follows:

KCAPTA
1340 North Drive
Hanford, CA 93230
Attn: Angie Dow

CALVANS
P.O. Box 209
Hanford, CA 93232
Attn: Ron Hughes

4. **Jurisdiction/Venue/Waiver of Removal.** This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in California. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Kings County, California. The Parties hereby expressly waives any right to remove any action to a county other than Kings County as permitted pursuant to Section 394 of the California Code of Civil Procedure.

5. **Indemnification.** Neither KCAPTA nor any officer, agent, or employee thereof is responsible for any injury, damage, or liability occurring by reason of any act or omission under this Agreement. It is understood and agreed that CalVans shall fully indemnify, defend and hold harmless KCAPTA, its governing board, officers, agents, and employees from and against any and all claims, suits or actions, demands, judgments, losses, payments in compromise and/or settlement, defense costs, or liability of any kind or nature arising out of, or in any manner connected with this Agreement, excepting only liability arising out of the sole negligence of KCAPTA.

6. **Attorney Fees.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief which such party may be entitled.

7. **Records.** CalVans shall establish and maintain accounting records for all CalPERS' payments/contributions per CalVans' employee. CalVans shall also maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement. CalVans' accounting system shall conform to generally accepted accounting principles (GAAP) and uniform standards that may be established by the State of California. KCAPTA shall have access to any books, records, and documents of CalVans that are pertinent to this Agreement for audits, examinations, and/or transactions, and copies thereof shall be furnished upon requested. CalVans shall make such materials available at their office at all reasonable times for three (3) years from the date of the final CalPERS payment/contribution under this Agreement.

8. **Modification.** This Agreement represents the entire understanding of KCAPTA and CalVans as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by KCAPTA and CalVans.

9. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws or is held to be invalid, void or unenforceable by a court of competent jurisdiction, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect and shall not be affected thereby.

10. **Captions.** The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

11. **Authority.** Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the Party to which its signature represents.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

**KINGS COUNTY AREA PUBLIC
TRANSIT AGENCY**

CALIFORNIA VANPOOL AUTHORITY

Joe Neves
Chairman

Approved as to Form:

County Counsel

CalVans Counsel

Hughes, Ron

From: Jimenez, Reuben [Reuben_Jimenez@CalPERS.ca.gov]
Sent: Thursday, February 07, 2013 9:32 AM
To: Hughes, Ron
Subject: California Van Pool Authority
Attachments: CL IRS 200-013-12.pdf

Dear Mr. Hughes:

Thank you for the telephone conversation we had on February 6, 2013 regarding the status of your retirement contract request. In our conversation yesterday, you wanted me to provide you with a summary highlight of our conversation.

We are currently reviewing your retirement contract request to determine if you are eligible to participate in our retirement benefit plan. As I mentioned, the California Public Employees' Retirement System (CalPERS) is a governmental pension plan under the authority of the Internal Revenue Code 414. This section establishes some of the criteria that an entity must meet in order to qualify to contract for CalPERS governmental plans, such as our retirement plan. I have attached a recent CalPERS circular letter for your information regarding the IRC. In assessing your request to the governmental plan eligibility factors, your request could be accepted or rejected.

You wanted me to give you a time line if your application is accepted. Once the initial eligibility criteria is met, including the IRS parameters, the next step would be to go to the second phase of our retirement contract process. In the second phase of our contract process, we will send you the new agency packet. The packet will help you select the different benefit options available to you as an employer. Once you have selected the options you wish to pursue, we will request for a valuation determination to assess the employer costs associated with the options you have selected. After all option costs have been finalized, we would coordinate with you an initial resolution of intention to present to your board and respective membership. If all parties agree to the initial resolution of intention, you would then finalize your final resolution via a second board meeting supported by a vote of your membership. Once the final resolution is received and acknowledged by CalPERS, we would begin to integrate your resolution/ contract into our system. This general process can take up to six months or more to complete depending on the expediency of your employer steps. Any member contributions during this time period is at the discretion of the employer until we have fully integrated all your documents into our system.

As I further mentioned in our telephone conversation, if your initial retirement contract request is rejected, we will provide you with a denial letter. The denial letter will give you the opportunity to appeal the decision. You mentioned you wanted to have your legal staff participate in the appeal process and you can certainly engage your legal staff in this process.

I will continue to keep your request a priority and will strive to provide you with a final decision by the end of February, given there are no unforeseen circumstances.

Best Regards,

Reuben Jimenez

<< File: CL IRS 200-013-12.pdf >>

Reuben A. Jimenez
Assistant Division Chief
California Public Employees Retirement System (CalPERS)
Lincoln Plaza North
400 Q Street
Sacramento, CA 94229-2714
(916) 795-9159
Reuben_jimenez@calpers.ca.gov



California Public Employees' Retirement System
P.O. Box 942709
Sacramento, CA 94229-2709
(888) CalPERS (or 888-225-7377)
TTY: (877) 249-7442
www.calpers.ca.gov

Reference No.:
Circular Letter No.: 200-013-12
Distribution: IV, V, VI, X, XII, XVI
Special:

Circular Letter

April 20, 2012

TO: ALL CALPERS EMPLOYERS

**SUBJECT: INTERNAL REVENUE SERVICE ADVANCE NOTICE OF PROPOSED
RULEMAKING REGARDING DEFINITION OF A GOVERNMENTAL PLAN**

The purpose of this Circular Letter is to inform you that the Internal Revenue Service (IRS) and the Treasury Department recently issued an advance notice of proposed rulemaking (the Notice) regarding the definition of a "governmental plan" for purposes of section 414(d) of the Internal Revenue Code (IRC). A copy of the Notice, "[Determination of Governmental Plan Status](#)" is available on the IRS website.

This Circular Letter is intended to provide a brief summary of the Notice, its potential impacts on CalPERS, and the next steps in the rulemaking process. This Circular Letter is not intended to be an analysis of the anticipated proposed regulations contained in the Notice or a definitive statement of the impact on CalPERS, its existing defined benefit plans, or its members and employers, nor should it be relied upon as such.

Background

IRC section 414(d) generally defines the term "governmental plan" as a plan established and maintained for its employees by the government of the United States, the government of any State or political subdivision thereof, or by any of their agencies or instrumentalities. A pension plan that qualifies as a "governmental plan" under IRC section 414(d) is generally treated differently than a private sector pension plan under federal tax laws. For example, in some instances, the federal tax rules are tailored to reflect the unique circumstances of governmental plans, while in other instances, a governmental plan may be exempt altogether from certain federal rules applicable to private sector plans. To retain the benefits afforded governmental plans, such plans must comply with certain requirements under federal tax law, including the requirements of section 414(d).

The IRS and the Treasury Department have initiated this rulemaking process because of the current lack of comprehensive section 414(d) guidance, which they believe has made it difficult for government employers and their employees to have certainty regarding their status under section 414(d). The IRS has also indicated that it sees the Notice as a means to initiate a dialogue with the governmental plan community. Although it is difficult to anticipate what the final rules will look like, any regulations adopted by the IRS are

likely to provide greater clarity on whether the IRS would view an entity as “an agency or instrumentality of the State or a political subdivision of a State” that is eligible to participate in a governmental plan.

CalPERS is a governmental pension plan within the meaning of IRC section 414(d). Therefore, CalPERS will be subject to any regulations that the IRS adopts interpreting IRC section 414(d). Ultimately, what this means is that CalPERS will have to prohibit the participation of any entity in the CalPERS plan that is not “an agency or instrumentality of the State or a political subdivision of a State” as defined in the final regulations. It is not clear what impact this will have on employers currently participating in the CalPERS plan and the extent to which the final regulations will provide transition relief.

The Notice

The Notice includes an appendix setting forth a draft of anticipated proposed regulations. These draft regulations create a facts and circumstances test for determining whether an entity is an “agency or instrumentality of the state or political subdivision of a State.” They also include numerous examples to demonstrate how the facts and circumstances test might be applied. Below is a brief summary of the main and other factors that make up the facts and circumstances test in the Notice. It is important to note that these factors, and the weight that each factor plays in determining whether an entity is eligible to participate in a governmental plan, may change before the IRS adopts final regulations.

As proposed in the Notice, main factors for determining whether an entity is an agency of instrumentality of a State or political subdivision of a State include whether:

- The entity’s governing board or body is controlled by a State or political subdivision thereof;
- The members of the governing board or body are publicly nominated and elected;
- A State (or political subdivision thereof) has fiscal responsibility for the general debts and other liabilities of the entity (including funding responsibility for the employee benefits under the entity’s plan);
- The entity’s employees are treated in the same manner as employees of the State (or political subdivision thereof) for purposes other than providing employee benefits (for example, the entity’s employees are granted civil service protection); and
- In the case of an entity that is not a political subdivision, the entity is delegated, pursuant to a statute of a State or political subdivision, the authority to exercise sovereign powers of the State or political subdivision (such as, the power of taxation, the power of eminent domain, and the police power).

Other factors include whether:

- The entity’s operations are controlled by a State (or political subdivision thereof);
- The entity is directly funded through tax revenues or other public sources. However, this factor is not satisfied if an entity that is not otherwise an agency or instrumentality is paid from public funds under a contract to provide a

governmental service or is funded through grants by the State or Federal government;

- The entity is created by a State government or political subdivision of a State pursuant to a specific enabling statute that prescribes the purposes, powers, and manners in which the entity is to be established and operated. However, a nonprofit corporation that is incorporated under a State's general corporation law is not created under a specific enabling statute;
- The entity is treated as a governmental entity for Federal employment tax or income tax purposes (such as, the authority to issue tax-exempt bonds under section 103(a)) or under other Federal laws;
- The entity is determined to be an agency or instrumentality of a State (or political subdivision thereof) for purposes of State laws. For example, the entity is subject to open meetings laws or the requirement to maintain public records that apply only to governmental entities, or the State attorney general represents the entity in court under a state statute that only permits representation of State entities;
- The entity is determined to be an agency or instrumentality of a State (or political subdivision thereof) by a State or Federal court;
- A State (or political subdivision thereof) has the ownership interest in the entity and no private interests are involved; and
- The entity serves a governmental purpose.

Next Steps

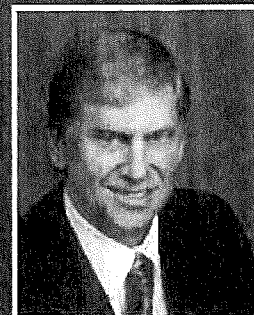
CalPERS expects that the Notice is the first step in what will likely be a lengthy rulemaking process. To help shape the development of the impending proposed regulations before they are finalized, **the IRS is accepting written comments from the public until June 18, 2012.** Oral comments from the public may also be made at a public hearing in Washington, D.C. on July 9, 2012. The IRS is also scheduling Town Hall meetings to gather public feedback. CalPERS recently participated in a Town Hall meeting held on March 15, 2012.

Because of the ongoing dialogue in this rulemaking process, it is possible that the facts and circumstances test contained in the Notice may be revised and that the factors and their relative importance may change. Therefore, it is not clear at this point what the impact will be if and when final regulations are issued by the IRS. CalPERS will continue to engage in the public comment process and to evaluate the potential impact on CalPERS of any proposed regulations as the rulemaking process moves forward.

CalPERS recommends that all contracting agencies consult with independent legal counsel if they have questions about whether they satisfy the definition of an "agency or instrumentality of a State or a political subdivision of a State," as set forth in the Notice.

ANN BOYNTON, Deputy Executive Officer
Benefit Programs Policy and Planning

John D. Wahlin
Partner



John D. Wahlin is a partner in the Employee Benefits practice group of Best Best & Krieger LLP.

Mr. Wahlin advises clients on all aspects of employee benefits. Mr. Wahlin has extensive experience representing employers on matters such as qualified retirement plans, non-qualified plans of deferred compensation, health and other employee benefit plans. Mr. Wahlin also has extensive experience in advising public agencies with respect to the unique requirements applicable to public pension, health and other public employee benefit plans. His practice also concentrates on business and tax planning, including distribution and asset protection planning for pension and personal assets.

Mr. Wahlin has taught courses relating to deferred compensation and employee benefits for University of California Riverside Extension. He is also a frequent speaker at seminars for employers' groups, the Riverside County Bar and BB&K sponsored programs.

Mr. Wahlin received his undergraduate degree, *Phi Beta Kappa*, from Augustana College in Illinois. He received his J.D. *with honors* from the University of Wisconsin Law School in 1971, where he was on the Board of Editors for the *Wisconsin Law Review*. He is a member of the American Bar Association, Tax Section, committees for Employee Benefits and Tax Practice Management. He is also a member of the California Bar Association, Tax Section.

Riverside

3390 University Avenue
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Riverside, CA 92501

P: (951) 826-8313
John.Wahlin@bbklaw.com

Education
University of Wisconsin, J.D.
(1971)
Augustana College, B.A.

Admissions
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John D. Wahlin
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john.wahlin@bbklaw.com

February 7, 2013

VIA E-MAIL ZSMITH@VISALIALAW.COM

D. Zackary Smith
1102 N. Chinowth St.
Visalia, CA 93291-4113

Re: California Vanpool Authority

Dear Mr. Smith:

ABOUT OUR REPRESENTATION

Best Best & Krieger LLP is pleased to have the opportunity of assisting California Vanpool Authority to resolve several matters related to its contracting with CalPERS to provide retirement benefits to its employees. This letter constitutes our agreement setting the terms of our representation.

CONFIDENTIALITY AND ABSENCE OF CONFLICTS

An attorney-client relationship requires mutual trust between the client and the attorney. It is understood that communications exclusively between counsel and the client are confidential and protected by the attorney-client privilege.

To also assure mutuality of trust, we have maintained a conflict of interest index. The California Rules of Professional Conduct defines whether a past or present relationship with any party prevents us from representing the Authority. Similarly, your client's name will be included in our list of clients to ensure we comply with the Rules of Professional Conduct.

We have checked the following names against our client index: *California Vanpool Authority, Association of Monterey Bay Area Governments, Fresno Council of Government, Kern Council of Governments, Kings County Association of Governments, Madera County Transportation Commission, Napa County Transportation & Planning Agency, Sacramento Area Council of Governments, Santa Barbara County Association of Governments, Tulare County Association of Governments and Ventura County Transportation Commission.* Based on that check, we find we can represent the Authority. Please review the list to see if any other persons or entities should be included. If you do not tell us to the contrary, we will assume that this list is complete and accurate. We request that you update this list for us if there are any changes in the future.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

D. Zackary Smith
February 7, 2013
Page 2

AUTHORITY'S OBLIGATIONS ABOUT FEES AND BILLINGS

The public agency billing rates for attorneys and paralegals for this engagement are as follows: Partners \$325, Associates \$274 and Paralegals \$185. Our billing policies are described in the attached memorandum. This memorandum should be considered part of our agreement with the Authority as it binds both of us. For that reason, it should be read carefully.

HOW THIS AGREEMENT MAY BE TERMINATED

The Authority, of course, has the right to end our services at any time. If so, the Authority will be responsible for the payment of fees and costs accrued but not yet paid, plus reasonable fees and costs in transferring the case to the Authority or its new counsel. By the same token, we reserve the right to terminate our services upon written notice, order of the court, or in accordance with our attached memorandum. This could happen if the Authority fails to pay our fees and costs as agreed, fails to cooperate with us in this matter, or if we determine we cannot continue to represent the Authority for ethical or practical concerns.

On a personal note, we are pleased to be given the opportunity to represent the Authority on this matter. We look forward to a long and valued relationship with you and the Authority, and appreciate your confidence in selecting us for this matter. If you have any questions at any time about our services or billings, please do not hesitate to call me or Isabel.

If this letter meets with the Authority's approval, please have it signed and dated, and return the original to us. Unless the signed original is returned to us, we will not represent Authority in any capacity, and we will assume that you have made other arrangements for legal representation.

Sincerely,

John D. Wahlin
of BEST BEST & KRIEGER LLP

Enclosures

Agreed and accepted this _____ day of _____, 2013.

CALIFORNIA VANPOOL AUTHORITY

By: _____
Its: _____

BEST BEST & KRIEGER LLP'S BILLING POLICIES

Our century of experience has shown that the attorney-client relationship works best when there is mutual understanding about fees, expenses, billing and payment terms. Therefore, this statement is intended to explain our billing policies and procedures. Clients are encouraged to discuss with us any questions they have about these policies and procedures. Clients may direct specific questions about a bill to the attorney with whom the client works or to Judy Ismael of our Accounting Department. Any specific billing arrangements different from those set forth below will be confirmed in a separate written agreement between the client and the firm.

FEES FOR PROFESSIONAL SERVICES

Unless a flat fee is set forth in our engagement letter with a client, our fees for the legal work we will undertake will be based in substantial part on time spent by personnel in our office on that client's behalf. In special circumstances which will be discussed with the client and agreed upon in writing, fees will be based upon the novelty or difficulty of the matter, or the time or other special limitations imposed by the client.

Hourly rates are set to reflect the skill and experience of the attorney or other legal personnel rendering services on the client's behalf. Time is accrued on an incremental basis for such matters as telephone calls (minimum .3 hour) and letters (minimum .5 hour), and on an actual basis for all other work. Unless alternative rates are set forth in our engagement letter, our attorneys are currently billed at rates from \$225 to \$625 per hour, and our administrative assistants, research assistants, paralegals and law clerks are billed at rates from \$110 to \$260 per hour. These hourly rates are reviewed annually to accommodate rising firm costs and to reflect changes in attorney status as lawyers attain new levels of legal experience. Any increases resulting from such reviews will be instituted automatically and will apply to each affected client, after advance notice.

FEES FOR OTHER SERVICES, COSTS AND EXPENSES

We attempt to serve all our clients with the most effective support systems available. Therefore, in addition to fees for professional legal services, we also charge separately for some other services and expenses to the extent of their use by individual clients. These charges include but are not limited to, mileage at the current IRS approved rate per mile, extraordinary telephone and document delivery charges, copying charges, computerized research, court filing fees and other court-related expenditures including court reporter and transcription fees. No separate charge is made for secretarial or word processing services; those costs are included within the above hourly rates.

We may need to advance costs and incur expenses on your behalf on an ongoing basis. These items are separate and apart from attorneys' fees and, as they are out-of-pocket charges, we need to have sufficient funds on hand from you to pay them when due. We will advise the client from time to time when we expect items of significant cost to be incurred, and it is required that the client send us advances to cover those costs before they are due.

MONTHLY INVOICES AND PAYMENT

Best Best & Krieger LLP provides our clients with monthly invoices for legal services performed and expenses incurred. Invoices are due and payable upon receipt.

Each monthly invoice reflects both professional and other fees for services rendered through the end of the prior month, as well as expenses incurred on the client's behalf that have been processed by the end of the prior month. Processing of some expenses is delayed until the next month and billed thereafter.

Our fees are not contingent upon any aspect of the matter and are due upon receipt. All billings are due and payable within ten days of presentation unless the full amount is covered by the balance of an advance held in our trust account. If a bill is not paid within 30 days, a late charge of one percent per month on the unpaid invoice shall be added to the balance owed, commencing with the next statement and continuing until paid.

It is our policy to treat every question about a bill promptly and fairly. It is also our policy that if a client does not pay an invoice within 60 days of mailing, we assume the client is, for whatever reason, refusing to pay. We will then advise the client by letter that the client may pay the invoice within 14 days or the firm will take appropriate steps to withdraw as attorney of record. If the delay is caused by a problem in the invoice, we must rely upon the client to raise that with us during the 14-day period. This same policy applies to fee arrangements which require the client to replenish fee deposits or make deposits for anticipated costs.

From time to time clients have questions about the format of the bill or description of work performed. If you have any such questions, please ask them when you receive the bill so we may address them on a current basis.

CHANGES IN FEE ARRANGEMENTS AND BUDGETS

It may be necessary under certain circumstances for a client to provide an advance payment for fees after the commencement of our engagement and depending upon the scope of the work. Any such changes in fee arrangements will be discussed with the client and mutually agreed in writing. Because of the uncertainties involved, any estimates of anticipated fees that we provide at the request of a client for budgeting purposes, or otherwise, can only be an approximation of potential fees.

BEST BEST & KRIEGER LLP