

# ORIGINAL

## MEMORANDUM OF UNDERSTANDING #173-M1111 (A Nonfinancial Agreement)

Between

**EL DORADO COUNTY DEPARTMENT OF HUMAN SERVICES**

and

**SACRAMENTO AREA COUNCIL OF GOVERNMENTS**

Regarding

### **LIFELINE TRANSPORTATION STUDY**

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**THIS MEMORANDUM OF UNDERSTANDING (MOU)** is entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as “County”) and the Sacramento Area Council of Governments, a public entity separate and apart from any member city or county, whose principal place of business is 1415 L Street, Suite 300, Sacramento, CA 95814 (hereinafter referred to as “SACOG”) (collectively hereinafter referred to as the “Parties”). This MOU sets forth each agency’s role and responsibilities relative to the provision of CalWORKS and General Assistance beneficiary location data to SACOG for the purpose of performing a Lifeline Transportation Study to assist with public transportation coordination services.

### **RECITALS**

**WHEREAS**, research has demonstrated that persons with low incomes are more likely to be dependent on public transportation and that a lack of available transportation to and from work is a substantial barrier to their ability to find and keep jobs; and

**WHEREAS**, a locally coordinated public transit-human services transportation plan (“Plan”) is a requirement of federal transportation legislation under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for User (“SAFETEA-LU”) of August 2005; and

**WHEREAS**, SACOG, as developer of the legislatively mandated SAFETEA-LU transportation and planning studies for the Sacramento region (“Planning Studies”), has asked El Dorado County Department of Human Services (“DHS”) to provide confidential client information for El Dorado County to help identify transportation services available for low-income persons and gaps in those services; and

**WHEREAS**, County has determined that the assistance of DHS in providing the requested information as set forth below to assist SACOG in the development of the Plan will also assist DHS in providing services to its clients, e.g., by helping to ensure that low-income persons, including DHS clients, have access to the transportation services they need and also by helping DHS staff identify transportation services that are available to DHS clients.

**WHEREAS**, it is the intent of the Parties hereto that such services be in conformity with all applicable Federal, State and local laws.

**NOW THEREFORE**, the Parties hereto mutually agree as follows:

## **ARTICLE I**

### **Scope of Services:**

1. DHS will support SACOG's development of the Plan by providing the following:
  - A. Upon request by SACOG, address information of DHS clients receiving CalWORKS and/or General Assistance benefits from DHS.
  - B. A DHS staff person to serve as the liaison with SACOG.
2. SACOG and all SACOG staff who will receive DHS case information regarding individual aid recipients (including address information) shall ensure that all such information is held in confidence in accordance with Welfare & Institutions Code Sections 10850 et seq. and their implementing regulations and policies (including but not limited to Division 19 of the California Department of Social Services Policies and Procedures Manual), and all other applicable laws, regulations and policies.
3. SACOG and its employees will not discuss specific client information with any outside agencies or with other parties not involved in the development of the Planning studies. Before any such information is released to SACOG or its employees, each employee who will receive case information shall sign a confidentiality agreement that is the same or similar to Exhibit "A", marked "Confidentiality Statement," incorporated herein and made by reference a part hereof. SACOG and employees of SACOG shall access or use the confidential client information provided by DHS solely to develop the Planning studies, and for no other purpose. Any person who accesses or uses this information for other purposes can be charged with a misdemeanor crime.
4. No specific client information may be included in the Planning Studies themselves.
5. SACOG shall provide a copy of the final Plan to DHS at no cost.
6. SACOG shall defend, indemnify, and hold harmless the County, DHS, its officers, officials, employees and agents from any and all claims, demands, liabilities, damages, costs or expenses (including but not limited to attorney fees) in law or equity that may at any time arise or be asserted based in whole or in part upon any act or omission of the SACOG, its officers, agents, or employees, excepting claims, demands, liabilities, damages, costs or expenses resulting from the sole or active negligence of the County, DHS, its officers, employees or agents.

## **ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both Parties hereto and shall automatically renew for successive one-year terms, from year to year thereafter unless terminated according to the terms of this Agreement.

## **ARTICLE III**

**Compensation for Services:** There shall be no remuneration associated with this MOU.

## **ARTICLE IV**

**Confidentiality and Information Security Provisions:** Contractor shall comply with applicable laws and regulations, including but not limited to The Code of Federal Regulations, Title CFR45, parts 160-164, regarding the confidentiality and security of Personally Identifiable Information (PII).

Personally identifiable information means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including but not limited to, his or her name, signature, social security number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, or any other financial information.

### **A. Permitted Uses and Disclosures of PII by Contractor.**

- (1) **Permitted Uses and Disclosures.** Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the PII that it creates, receives, maintains, or transmits and prevent the use or disclosure of PII other than as provided for in this MOU. Except as otherwise provided in this MOU, Contractor, may use or disclose PII to perform functions, activities or services identified in this MOU provided that such use or disclosure would not violate Federal or State laws or regulations.
- (2) **Specific Uses and Disclosures provisions.** Except as otherwise indicated in the MOU, Contractor shall:
  - (a) Use and disclose PII for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, provided that such use and disclosures are permitted by law; and
  - (b) Take all reasonable steps to destroy, or arrange for the destruction of a client's records within its custody or control containing personal information, which is no longer to be retained by Contractor by (1) shredding, (2) erasing or (3) otherwise modifying the personal information in those records to make it unreadable or indecipherable through any means.

### **B. Responsibilities of Contractor.**

- (1) Contractor agrees to safeguards:

- (a) To prevent use or disclosure of PII other than as provided for by this MOU. Contractor shall provide County with information concerning such safeguards as County may reasonably request from time to time; and
  - (b) Contractor shall restrict logical and physical access to confidential, personal (e.g., PII) or sensitive data to authorized users only; and
  - (c) Contractor shall implement appropriate authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-86 and SANS Institute Password Protection Policy.
- (2) Contractor shall implement the following security controls on each server, workstation, or portable (e.g. laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
- (a) Network based firewall and/or personal firewall; and
  - (b) Continuously updated anti-virus software; and
  - (c) Patch-management process including installation of all operating system/software vendor security patches.
- (3) Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PII by Contractor or its subcontractors in violation of the requirements of this MOU.
- (4) Agents and Subcontractors of Contractor. To ensure that any agent, including a subcontractor to which Contractor provides PII received from County, or created or received by Contractor, for the purposes of this MOU shall comply with the same restrictions and conditions that apply through this MOU to Contractor with respect to such information.
- (5) Notification of Electronic Breach or Improper Disclosure. During the term of this MOU, Contractor shall notify County immediately upon discovery of any breach of PII and/or data, where the information and/or data are reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to County Privacy Officer, within two business days of discovery, at (530) 621-5852. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Contractor shall investigate such breach and provide a written report of the investigation to County Privacy Officer, postmarked within thirty (30) working days of the discovery of the breach.

## **ARTICLE V**

**HIPAA Compliance:** All data, together with any knowledge otherwise acquired by Contractor during the performance of services provided pursuant to this MOU, shall be treated by Contractor and Contractor's staff as confidential information. Contractor shall not allow access to, disclose or use, directly or indirectly, at any time any such confidential information. If Contractor receives any individually identifiable health information ("Protected Health Information" or "PHI"), Contractor shall maintain the security and confidentiality of such PHI as required by applicable laws and regulations, including the Health Insurance Portability and

Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder.

**ARTICLE VI**

**Access to Records:** Contractor shall, upon request and within the time frame requested, provide access to the Federal, State, County, the Controller General of the United States, or any of their duly authorized Federal, State or local representatives to any books, documents, papers, and records of Contractor which are directly pertinent to this specific MOU for the purpose of making an audit, examination, excerpts, and transcriptions.

**ARTICLE VII**

**Compliance with All Federal, State and Local Laws and Regulations:** Contractor shall comply with all Federal, State and local laws including, but not limited to, the Americans with Disabilities Act (ADA) of 1990 (42USC12101 et. seq.) and California Government Code Sections 11135-11139.5, and all regulations, requirements, and directives pertinent to its operations. Contractor shall abide by manuals, directives and other guidance issued by the State of California. All appropriate manuals and updates shall be available for review or reference by Contractor from County's Department of Human Services.

Contractor shall further comply with all applicable laws relating to wages and hours of employment and occupational safety and to fire, safety and health and sanitation regulations. Such laws shall include, but not be limited to, the Copeland "Anti-Kickback" Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act and amendments, the Clean Water Act and amendments, and the Federal Water Pollution Control Act.

Contractor further warrants that it has all necessary licenses, permits, notices, approvals, certificates, waivers and exemptions necessary for the provision of services hereunder and required by the laws and regulations of the United States, the State of California, the County of El Dorado and all other appropriate governmental agencies and shall maintain these throughout the term of the MOU.

**ARTICLE VIII**

**Contractor to County:** It is understood that the services provided under this MOU shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this MOU, Contractor shall not provide information in any manner to any Party outside of this MOU that would conflict with Contractor's responsibilities to County during term hereof.

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**ARTICLE IX**

**Assignment and Delegation:** Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

**ARTICLE X**

**Independent Contractor/Liability:** Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this MOU. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this MOU during the course and scope of their employment.

Contractor shall be responsible for performing the work under this MOU in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

**ARTICLE XI**

**Fiscal Considerations:** Notwithstanding any other provision of this MOU to the contrary, County shall give notice of cancellation of this MOU in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this MOU. Upon the effective date of such notice, this MOU shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors, during the course of a given year for financial reasons, reduce or order a reduction in the budget for any County department for which services were contracted to the performed, pursuant to this paragraph in the sole discretion of County, this MOU may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

**ARTICLE XII**

**Changes to MOU:** This MOU may be amended by mutual consent of the Parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the Parties hereto.

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## **ARTICLE XIII**

### **Default, Termination and Cancellation:**

- A. **Default:** Upon the occurrence of any default of the provisions of this MOU, a Party shall give written notice of said default to the Party in default (notice). If the Party in default does not cure the default with ten (10) days of the date of notice (time to cure), then such Party shall be in default. The time to cure may be extended at the discretion of the Party giving notice. Any extension of time to cure must be in writing, prepared by the Party in default for signature by the Party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires. Notice given under this section shall specify the alleged default and the applicable MOU provision and shall demand that the Party in default perform the provisions of this MOU within the applicable period of time. No such notice shall be deemed a termination of this MOU unless the Party giving notice so elects in this notice, or the Party giving notice so elects in a subsequent written notice after the time to cure has expired.
- B. **Bankruptcy:** This MOU, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** Either Party may terminate this MOU in the event the other Party ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this MOU.
- D. **Termination or Cancellation Without Cause:** Either Party may terminate this MOU in whole or in part seven (7) calendar days upon written notice to County for any reason. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, El Dorado reserves the right to take over and complete the work by contract or by any other means.

## **ARTICLE XIV**

**Notice to Parties:** All notices to be given by the Parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notice to County shall be in duplicate and addressed as follows:

COUNTY OF EL DORADO  
DEPARTMENT OF HUMAN SERVICES  
3057 BRIW ROAD  
PLACERVILLE, CA 95667  
ATTN: DEANN OSBORN, STAFF SERVICES ANALYST II

or to such other location as County directs with a copy to

COUNTY OF EL DORADO  
CHIEF ADMINISTRATIVE OFFICE  
PROCUREMENT AND CONTRACTS DIVISION  
330 FAIR LANE  
PLACERVILLE, CA 95667  
ATTN: THERESA DALY, PURCHASING AGENT

Notices to Contractor shall be addressed as follows:

SACRAMENTO AREA COUNCIL OF GOVERNMENTS  
1415 L STREET, SUITE 300  
SACRAMENTO, CA 95814  
ATTN: MIKE MCKEEVER, EXECUTIVE DIRECTOR

or to such other location as Contractor directs.

#### **ARTICLE XV**

**Interest of Public Official:** No official or employee of El Dorado County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this MOU shall participate in or attempt to influence any decision relating to this MOU which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of El Dorado County have any interest, direct or indirect, in this MOU or the proceeds thereof.

#### **ARTICLE XVI**

**Interest of Contractor:** Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this MOU; or, 2) any other entities connected with or directly affected by the services to be performed by this MOU.

Contractor further covenants that in the performance of this MOU no person having any such interest shall be employed by Contractor.

#### **ARTICLE XVII**

**Taxpayer Identified Number (Form W-9):** All independent Contractors or Corporations providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

#### **ARTICLE XVIII**

**Insurance:** Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.



- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by Contractor in the performance of the MOU.
- D. In the event Contractor is a licensed professional, and is performing professional services under this MOU, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance shall be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this MOU. In the event said insurance coverage expires at any time or times during the term of this MOU, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the MOU, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this MOU upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer shall not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
  - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this MOU are concerned. This provision shall apply to all liability policies except workers' compensation and professional liability insurance policies.
- I. Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this MOU.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this MOU for not less than three (3) years following completion of performance of this MOU.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for the protection of County.

**ARTICLE XIX**

**Administrator:** The County Officer or employee with responsibility for administering this MOU is DeAnn Osborn, Department of Human Services Staff Services Analyst II or successor.

**ARTICLE XX**

**Authorized Signatures:** The Parties to this MOU represent that the undersigned individuals executing this MOU on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said Parties to the obligations set forth herein.

**ARTICLE XXI**

**Partial Invalidity:** If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidate in any way.


**ARTICLE XXII**

**Venue:** Any dispute resolution action rising out of this MOU, including, but not limited to litigation, mediation or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws, of the State of California. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

**ARTICLE XXIII**

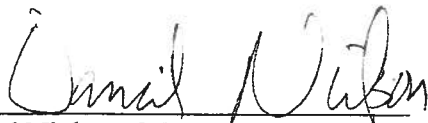
**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire MOU between the Parties and they incorporate or supersede all prior written or oral agreements or understandings.

**REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:**

By:   
DeAnn Osborn  
Staff Services Analyst II  
Department of Human Services

Dated: January 31, 2011

**REQUESTING DEPARTMENT HEAD CONCURRENCE:**

By:   
Daniel Nielson, M.P.A.  
Director  
Department of Human Services

Dated: 1-31-2011

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding #173-M1111 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: \_\_\_\_\_  
Chairman  
Board of Supervisors  
"County"

Dated: \_\_\_\_\_

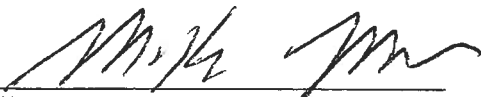
ATTEST:  
Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

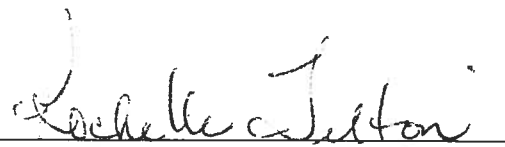
Dated: \_\_\_\_\_

-- CONTRACTOR --

SACRAMENTO AREA COUNCIL OF GOVERNMENTS  
A Public Entity Separate and Apart From Any Member City or County

By:   
Mike McKeever  
Executive Director  
"Contractor"

Dated: 2-9-11

By:   
Corporate Secretary  
Clerk of the Board

Dated: 2-8-11

DAO

#173-M1111

# EXHIBIT A

## CONFIDENTIALITY STATEMENT

As an employee of the Sacramento Area Council of Governments (SACOG), I understand that I am not permitted to access or utilize confidential client information provided by the County of El Dorado for purposes other than developing the Lifeline Transportation Study (hereafter referred to as the Study). I understand that should I access this information for other purposes, I can be charged with a misdemeanor crime. I understand that I am not to discuss confidential client information with any outside agencies, or with other parties not involved in the development of the Study. Furthermore, I understand that specific client information, including street addresses, may be used to develop the Study, but may not be included in the Study itself.

**BY SIGNING THIS FORM, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTOOD THE CONFIDENTIALITY POLICY, AND I AGREE TO ADHERE TO ALL THE TERMS AND CONDITIONS AS STATED ABOVE.**

*Mike McKeever*

Signature

2-9-11

Date

*Mike McKeever*

Print Name Here