

**MEMORANDUM OF UNDERSTANDING  
No. M-022-18**

**BETWEEN THE  
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS  
AND THE CITY OF LAKE ELSINORE  
REGARDING THE LAKE ELSINORE GO HUMAN DEMONSTRATION EVENT**

This Memorandum of Understanding (“MOU” or “Agreement”) is made by and between the **Southern California Association of Governments** (“SCAG”) and the **City of Lake Elsinore** (“CITY”), for the purpose of practicing on the Go Human Demonstration Project (“Project”), to be held October 27, 2018 in CITY, and as more fully described herein. SCAG and CITY are individually referred to herein as “Party” and may be collectively referred to herein as “Parties.”

**RECITALS**

WHEREAS, SCAG is a Joint Powers Agency and a federally designated Metropolitan Planning Organization (MPO) for Southern California. As an MPO, SCAG is primarily responsible for the development of a Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) for the counties of Imperial, Los Angeles, Orange, San Bernardino, Riverside, and Ventura;

WHEREAS, SCAG received grant funds from the South Coast Air Quality Management District’s (SCAQMD) State Health & Safety Code Section 44225 (AB 2766) Mobile Source Air Pollution Reduction Review Committee (MSRC) Discretionary Funds administered by the SCAQMD, to engage in a Regional Active Transportation Partnership Program;

WHEREAS, SCAG has retained KOA Corporation (“Consultant”) to undertake the Project, as outlined in SCAG Contract Number 18-020-C01;

WHEREAS, SCAG seeks to collaborate with CITY for the purpose of completing the Project to be held on October 27, 2018 in CITY;

WHEREAS, CITY agrees to collaborate with SCAG to pursue the Project based upon the terms and conditions set forth below;

WHEREAS, SCAG shall contribute a maximum, not to exceed amount of One Hundred Fifty Thousand Dollars (\$150,000), which includes SCAG staff and Consultant support for the Project using AB2766 MSRC Grant funds;

WHEREAS, as the CITY’s contribution towards the Project, CITY shall provide the services in accordance with the Scope of Work, incorporated herein by reference and attached hereto as Exhibit “A.” SCAG shall not be responsible to pay CITY any funds for the services provided; and

WHEREAS, the purpose of this MOU is to describe the roles and responsibilities of the Parties, and shall supersede and replace any previous agreements between SCAG and CITY related to the Project described herein.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. MOU Contents**

This MOU is comprised of these terms and conditions contained herein and any attached Exhibits, and may be amended only by written agreement between SCAG and CITY. Such terms and conditions are subject to change. The Recitals to this Agreement are also incorporated herein by this reference.

**2. Scope of Work**

- a. SCAG is the sponsor and implementing agency for the specific Go Human Project, and has retained Consultant (SCAG Contract Number 18-020-C01) for the purpose of producing the Project in conjunction with CITY. SCAG retains the right to include other sponsors for the production of the Project. SCAG is solely responsible for compensating SCAG's Consultant for services rendered for the production of the Project and shall provide general oversight of the Project. At all times, Consultant (or SCAG-approved subconsultants of Consultant), acting as the agent of SCAG, bears the responsibility of conducting all necessary tasks to produce the Go Human the Project. Consultant shall work with CITY to facilitate production of the Go Human Project including but not limited to the following: activation of temporary demonstrations on Main Street near City Park. These demonstrations may include, but are not limited to, one or multiple traffic circles, and/or creation of temporary public spaces (e.g., parklets and temporary street furnishings). The Consultant shall work with CITY and SCAG to create a corridor site plan to outline specific locations for these improvements. The Consultant shall work with CITY to determine appropriate materials to demonstrate roadway improvements (e.g., spray chalk, temporary bollards, signage with safety messaging, etc.). The Consultant shall secure rentals as needed for the activation of these improvements and plazas (e.g., umbrellas, easels, tables, and benches), produce custom designed elements to activate spaces and solicit feedback (e.g., moveable furniture, activity centers, movable shades, and a community feedback cart), and is responsible for set-up, breakdown and cleanup of demonstration elements, with assistance from CITY as directed by the SCAG Project Manager. On or before the date of the expiration or termination of this MOU pursuant to Section 3 below, SCAG, at its sole cost and expense, shall have removed all personal property, equipment, improvements, soil and debris brought onto by SCAG, its employees, agents, or Consultant, or any other persons by or through MOU and restore location of the Go Human Event to its original condition as reasonably approved by CITY.
- b. CITY is responsible for fully cooperating with SCAG and Consultant as may be reasonably necessary to produce the Project in accordance with the Scope of Work, as described in Exhibit "A". CITY will give any required decisions as promptly as practicable so as to avoid unreasonable delay. Cooperation by CITY shall include, but not limited to the following: making CITY staff from appropriate CITY departments (transportation, police, fire, building and safety, traffic control, engineering, public works, etc.) available to work closely with SCAG and the Consultant on the overall planning of the Project, securing necessary permits and approvals from relevant CITY departments and/or agencies, determining any public safety requirements, traffic control requirements, developing a street closure and traffic management plan for the event, providing adequate staffing as requested by the SCAG Project Manager to implement the plan, determining the appropriate road diet configuration for the demonstration elements, securing necessary insurance, posting "No Parking" signage along the demonstration route 3-5 days prior to temporary

realignment, working with the Consultant to secure donation of materials as requested by the SCAG Project Manager, securing temporary infrastructure improvements as requested by the SCAG Project Manager, and confirming that the temporary facilities comply with CITY regulations.

### **3. Term**

The Term of this Agreement shall begin on the Effective Date of the Agreement and continue until November 30, 2018, hereinafter referred to as the “Completion Date,” unless terminated earlier as provided herein. Time is of the essence in the performance of services under this MOU.

### **4. Project Management**

- a. All work under this MOU shall be coordinated with SCAG, SCAG’s Consultant, and CITY through the Project Managers.
- b. For purposes of this MOU, SCAG designates the following Project Managers:

**Min Zhou**

KOA Corporation (SCAG Consultant)  
Director of Orange County Operations | Deputy CEO  
(714) 573-0317  
mzhou@koacorp.com

**Deanna Dupuy**

Southern California Association of Governments  
Assistant Planner  
(213) 236-1884  
dupuy@scag.ca.gov

SCAG reserves the right to change this designation upon written notice to CITY.

- c. For purposes of this MOU, CITY designates the following individual as its Project Manager:

**Johnathan O. Skinner, MPA, CPRP**

City of Lake Elsinore  
Director of Community Services  
(951) 674-3124 x266  
jskinner@lake-elsinore.org

CITY reserves the right to change this designation upon written notice to SCAG.

### **5. Independent Contractor**

- a. It is understood that in the production of the Project, SCAG and Consultant shall be an independent contractor, and is not an agent or employee of CITY. It is also understood that CITY is an independent contractor, and is not an agent or employee of SCAG or Consultant. The Parties and Consultant shall retain the right to exercise full control over the employment, direction,

compensation of its employees. SCAG shall be solely responsible for, and shall indemnify, defend and hold harmless CITY from all matters relating to the payment of Consultant for services rendered for production of the Project.

- b. Except as may otherwise be authorized in writing, the Parties or Consultant shall have no authority, express or implied, to act on behalf of or bind the other Party in any capacity whatsoever as agents or otherwise.

## **6. Ownership of Work**

SCAG shall keep all reports, plans, drawings, specifications, memoranda and other documents prepared by Consultant in furtherance of the Project on file and available for audit by CITY for at least four (4) years after completion or earlier termination of this MOU.

## **7. MOU Changes**

- a. No alteration or deviation of the terms of this MOU shall be valid unless made in writing and properly executed by both Parties.
- b. Either Party may request, at any time, amendments to this MOU and will notify the other Party regarding such changes. Upon agreement between the Parties as to the required changes, an amendment to this MOU shall be prepared regarding the same. If the parties are unable to reach an agreement regarding the changes requested by SCAG, the Parties may terminate this MOU in accordance with the provisions set forth in Section 14(a) of this MOU.

## **8. Notices**

Any notice or notices required or permitted to be given pursuant to this MOU may be personally served on the other Party by the Party giving such notice, or may be served by certified mail, return receipt requested, to the following addresses:

To SCAG:                   **Basil Panas**  
Chief Financial Officer  
Southern California Association of Governments  
900 Wilshire Blvd, Ste. 1700  
Los Angeles, CA 90017  
Phone: (213) 236-1817  
Panas@scag.ca.gov

To CITY:                   **Susan M. Domen, MMC**  
City Clerk  
130 S. Main Street  
Lake Elsinore, CA 92530  
(951) 674-3124 x262  
sdomen@lake-elsinore.org

## **9. Insurance**

SCAG and Consultant shall, at its own expense, procure and maintain policies of insurance of the types and amounts below, for the duration of the MOU. The policies shall state they afford primary coverage. The minimum required insurance coverage required by CITY is set for below.

a. Minimum Scope of Insurance – Coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (Occurrence form CG0001), or its equivalent.
- (2) Insurance Services Office form number CA0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto) or its equivalent.
- (3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (4) Professional Liability (Errors and Omissions) insurance appropriate to the Consultant's profession.

b. Minimum Limits of Insurance – SCAG, Consultant, and the CITY shall maintain limits no less than:

- (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (2) Automobile Liability: Including contractual liability insuring owned, non-owned, hired and all vehicles by SCAG and Consultant with a combined single limit of not less than \$1,000,000 applicable to bodily injury, or death, and loss of or damage to property in any one occurrence.
- (3) Workers' Compensation Liability: Including Occupational Diseases in accordance with California Law and Employers' Liability Insurance with a limit of not less than \$1,000,000 each accident.
- (4) Professional Liability Insurance: With limits of not less than \$1,000,000 per occurrence. In addition, it shall be required that the professional liability insurance policy remain in effect for six (6) months after the Completion Date of this Agreement.

c. Other Insurance Provisions – Both SCAG and the CITY should comply with the other insurance provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) CITY, its officials and employees are to be covered as additional insureds, as respects to liability arising out of the activities performed by or on behalf of SCAG or Consultant, products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officials and employees.

- (2) For any claims related to this Project, SCAG and Consultant's insurance coverage shall be primary insurance as respects CITY, its officials and employees. Any insurance or self-insurance maintained by CITY shall be excess of SCAG and Consultant's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officials and employees.
- (4) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) Workers' Compensation and Employer's Liability policies shall contain the inclusion of SCAG, its members, subsidiaries, officials and employees and shall provide a waiver of subrogation.
- d. Deductibles and Self-Insured Retentions – Any deductibles or self-insured retentions in amounts over \$10,000 must be declared to and approved by SCAG.
- e. Acceptability of Insurers – Insurance is to be placed with California admitted insurers with a current A.M. Best's rating of no less than A and be admitted, unless otherwise approved by SCAG and CITY.
- f. Verification of Coverage – Consultant shall furnish SCAG and CITY with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by SCAG and CITY before work commences. Upon request of SCAG or CITY at any time, Consultant shall provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

## **10. Indemnity**

- a. Except for the negligence or willful misconduct of the CITY and any of its officers, agents, employees, assigns, and successors in interest, SCAG undertakes and agrees to defend, indemnify, and hold harmless the CITY and any of its directors, officers, agents, employees, assigns, and successors in interest from and against any and all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including the SCAG's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner out of, pertaining to, or incident to any alleged acts, errors or omissions of SCAG, its officials, officers, employees, or agents in connection with the performance of the Project or this MOU, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.
- b. Except for the negligence or willful misconduct of SCAG and any of its directors, officers, agents, employees, assigns, and successors in interest, CITY undertakes and agrees to defend, indemnify, and hold harmless SCAG and any of its directors, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including the CITY's employees and

agents, or damage or destruction of any property of either party hereto or of third parties, arising rising in any manner out of, pertaining to, or incident to any alleged acts, errors or omissions of CITY, its officials, officers, employees, or agents in connection with the performance of the Project or this MOU, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.

## **11. Compliance with Laws**

The Parties shall comply with all Federal, State, County and CITY laws, ordinances, rules and regulations applicable to the production of the Project.

## **12. Disputes**

Except as otherwise provided in this MOU, if a dispute arises between the Parties to this MOU, the Parties hereto agree to use the following procedure to resolve such dispute, prior to pursuing other legal remedies:

- a) A meeting shall be held promptly between the Parties that will be attended by individuals with decision-making authority (to the extent reasonably possible), who will attempt in good faith to negotiate a resolution of the dispute.
- b) If the parties are unsuccessful in resolving the dispute under (a) above, they may:
  - (1) agree to submit the matter to mediation, binding judicial reference, or a private adjudicator (if all Parties so agree); or
  - (2) initiate litigation following advance written notice to the other Party of not less than thirty (30) days.
- c) If any party should bring a legal action against the other to enforce the terms of this MOU, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, as determined by a court of competent jurisdiction in said proceeding.

## **13. Noncompliance**

In addition to such other remedies as provided by law, in the event of noncompliance with any grant condition or specific requirement of this MOU, this MOU may be terminated.

## **14. Termination of MOU**

- a. Termination for Convenience. Either Party may terminate this MOU at any time by giving written notice to the other party of such termination at least ten (10) calendar days before the effective date of such termination. In such event, all finished or unfinished documents and other materials as described in the MOU that belong to SCAG shall be returned to SCAG. Further, SCAG shall be responsible for any actual costs incurred by the Consultant as a result of such termination notice.
- b. Termination for Cause. If through any cause, CITY shall fail to timely and adequately fulfill its obligations under this MOU, or if CITY violates any of the covenants, agreements, or stipulations of this MOU, SCAG shall thereupon have the right to terminate the MOU by giving not less than

ten (10) calendar days written notice to CITY of the intent to terminate and specifying the effective date thereof. SCAG shall provide a reasonable opportunity for CITY to cure prior to termination. In no event shall such opportunity to cure extend beyond the term of the MOU. In the event that SCAG invokes this termination clause, all finished or unfinished documents and other materials as described in the MOU that belong to SCAG shall be returned to SCAG at its option.

- c. If through any cause, SCAG shall fail to timely and adequately fulfill its obligations under this MOU, or if SCAG violates any of the covenants, agreements, or stipulations of this MOU, CITY shall thereupon have the right to terminate the MOU by giving not less than ten (10) calendar days written notice to SCAG of the intent to terminate and specifying the effective date thereof. CITY shall provide a reasonable opportunity for SCAG to cure prior to termination. In no event shall such opportunity to cure extend beyond the term of the MOU. In the event that CITY invokes this termination clause, all finished or unfinished documents and other materials as described in the MOU that belong to CITY shall be returned to CITY at its option.

## **15. Non-Assignment**

- a. Neither Party shall assign this MOU, or any part thereof, without the written consent of each Party to this MOU. Any assignment without such written consent shall be void and unenforceable.
- b. The covenants and agreement of this MOU shall inure to the benefit of, and shall be binding upon each of the Parties and their respective successors and assignees.

## **16. Release of Information**

CITY shall not release any information to a third party or otherwise publish or utilize any information obtained or produced by it as a result of or in connection with the performance of services under this Agreement without the prior written authorization of SCAG, except as required by law and with prior written notice to SCAG.

## **17. Severability**

If any provision of this MOU is held to be illegal, invalid, or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the legality, validity, and enforceability of the remaining provisions shall not be affected thereby.

## **18. Survival**

The following sections survive expiration or termination of this MOU:

Section 6 (Ownership of Work)  
Section 10 (Indemnity)  
Section 12 (Disputes)  
Section 16 (Release of Information)

## **19. Jurisdiction and Venue**

This MOU shall be deemed an agreement under the laws of the State of California and for all purposes



shall be interpreted in accordance with such laws. Both Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Riverside County, California.

## **20. Waiver**

No delay or failure by either Party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof of such Party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A Waiver to be valid shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

## **21. Standard of Care**

The Parties shall perform the work required for the production of the Project under this MOU in accordance with generally accepted industry standards, practices, and principles applicable to such work.

## **22. Force Majeure**

Neither SCAG, Consultant nor CITY shall be liable or deemed to be in default for any delay or failure in performance under this MOU or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, or any other similar cause beyond the reasonable control of SCAG, Consultant or CITY.

## **23. Execution of MOU or Amendment**

This MOU, or any amendment related thereto (Amendment), may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. The signature page of this MOU or any Amendment may be executed by way of a manual or authorized digital signature. Delivery of an executed counterpart of a signature page to this MOU or an Amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this MOU or any Amendment.

## **24. Effective Date**

This MOU shall be effective upon execution by both Parties.

## **25. Entire MOU**

This MOU represents and contains the entire agreement of the Parties with respect to the matters set forth herein. This MOU supersedes any and all prior negotiations, discussions and, if any, previous agreements between the Parties.

**SIGNATURE PAGE TO  
MEMORANDUM OF UNDERSTANDING M-022-18**

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized representatives as of the dates indicated below:

**SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (“SCAG”)**

By: \_\_\_\_\_  
Basil Panas  
Chief Financial Officer  
Date \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Joann Africa  
Chief Counsel/Director of Legal Services  
Date \_\_\_\_\_

**City of Lake Elsinore (“CITY”)**

Attest: \_\_\_\_\_  
Susan M. Domen, MMC  
City Clerk  
Date \_\_\_\_\_

By: \_\_\_\_\_  
Grant Yates  
City Manager  
Date \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Barbara Leibold  
City Attorney  
Date \_\_\_\_\_

**Exhibit A – Scope of Work  
Responsibilities of the City of Lake Elsinore Regarding  
Go Human Lake Elsinore Demonstration Event  
to be held on October 27, 2018**

**CITY, shall provide the following services:**

**DEMONSTRATION ELEMENTS**

The CITY shall be responsible for the following tasks related to the demonstration elements for the Go Human Lake Elsinore Demonstration Project:

- Secure and provide to SCAG prior to the project all necessary insurance to comply with SCAG’s minimum requirements identified under Section 9. Insurance, in the MOU;
- Secure necessary permits and approvals from relevant Lake Elsinore departments and/or agencies and provide executed copies of the permits to SCAG for its files;
- Provide support for traffic control requirements, and support the development of a street closure and traffic management plan for the event, and provide adequate staffing to implement the plan,
- Assist in securing the needed volunteers for the Consultant to execute demonstration elements in Lake Elsinore, if needed;
- Confirm the appropriate street configuration for the project;
- Execute elements of the outreach and marketing plan in coordination with SCAG’s printing resources, as directed by the SCAG Project Manager;
- Provide public outreach on city-specific initiatives and plans;
- Actively participate in four (4) advisory committee meetings before the event;
- Post “No Parking” signage along the demonstration route 3-5 days prior to the event;
- Provide street sweeping prior to and after the event.