

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into between The City of Oklahoma City (“Client”) and CAPA Strategies, LLC, doing business as Climate Adaptation Planning Analytics, an Oregon limited liability company (“CAPA”) this 6TH day of JUNE, 2023. Client and CAPA are each individually referred to herein as “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, Client desires to participate in a 2023 Urban Heat Island Mapping project to conduct a scientific field mapping study, the “Campaign”, within a total of 350 square miles within the City of Oklahoma City (the “Project”);

WHEREAS, CAPA will plan, organize, provide data collection tools, analytics, and prepare the results from this project;

WHEREAS, CAPA’s Summary Report will be a geographically specific, scientific analysis of the impact of air temperatures within Client’s neighborhoods, identifying those areas that suffer from more intense heat due to the built environment; and

WHEREAS, CAPA and Client desire to enter into this MOU to outline their binding agreement and to outline their responsibilities under the Project.

NOW, THEREFORE, in consideration of the covenants and representations made below, and the above recitals, which are incorporated herein by reference and made an essential part of this MOU, the Parties agree as follows:

Section 1. Client’s Obligations and Responsibilities: To ensure a successful Project, Client agrees to fulfill the below logistics and volunteer recruitment responsibilities and tasks.

1. Client will lead local planning and execution of the study by following the program procedures as recommended by CAPA;
2. Client will consult with a Weather Forecast Officer from the National Weather Service, provided by CAPA and the National Oceanic & Atmospheric Administration (NOAA), to determine a tentative date for the data collection campaign;
3. Client will recruit local community members, “participants” or “volunteers”, to engage in data collection, and ensure that each participant (i) attends a virtual or in-person training, (ii) completes a “Knowledge Check” assessment, and (iii) signs a liability release waiver prior to participating in the campaign;

4. Client will arrange and lead a virtual or in-person participant training session, with support from CAPA in the form of a recommended meeting agenda, comprehensive animated training video, and question & answer session;
5. Client will receive shipment of the sensor equipment in advance of the target campaign date (barring any shipping delays by FedEx, equipment will arrive prior to the campaign, usually between 3 and 7 days), distribute and closely track the sensors amongst campaign participants, and send all sensor equipment back to CAPA within two days following the campaign, unless otherwise agreed to by both Parties. Equipment shipment and return will be via FedEx and pre-paid by CAPA;
6. Client will complete a “Route Report” within two (2) days following the campaign, as a detailed account of the campaign, as well as provide all relevant field notes from participants; and
7. Client will participate in follow-up activities, such as a feedback survey and debrief & next-step discussions.

Section 2. CAPA’s Obligations and Responsibilities: To ensure a successful project, CAPA agrees to the following tasks (the “Scope of Work”).

1. Task 1: May to June, 2023 – Prepare for the field Campaign
 - a. Provide to Client a set of program materials that includes participant outreach & training materials, process timelines, tracking resources, etc., and guides Client through the process of planning and completing the field Campaign;
 - b. Hold virtual team meetings with Client to prepare for and complete the heat Campaign;
 - c. Support the participant training session with necessary materials, and attend the session to answer questions.
2. Task 2: June, July, August, or September 2023 (exact date TBD) – Execute the Field Campaign
 - a. Ship all necessary sensor equipment (described in Exhibit A) to Client;
 - b. Offer technical and/or logistical support as needed during the Campaign;
 - c. Provide a self-addressed, pre-paid return label for returning all the equipment to CAPA.
3. Task 3: Eight to twelve weeks following receipt of equipment by CAPA – Process, analyze and deliver the data
 - a. Apply a standard Quality Assurance & Quality Control process to clean and ensure adequate data quality from Field Campaign;
 - b. Integrate necessary satellite data for the purpose of informing land use and land cover variables;

- c. Run computer scripts and models for developing area-wide models of ambient temperatures and heat indices at the three time periods of the Campaign day across the designated study area;
- d. Develop and share heat maps and methods in a summary report along with the processed data through the open data platform, the Open Science Framework (OSF). The processed traverse points will be provided in shapefile format (Geographic Information System), and the area-wide models will be provided in the format of raster geo-TIFs; and
- e. Conduct a follow-up meeting with organizers and any other collaborators to discuss results and explore next steps.

Section 3. Term of Agreement: The term of this agreement is from date of the last signature on this executed agreement through December 31st, 2023. By agreement of the Parties, this MOU may be amended and/or extended for mutually agreeable terms, provided such extensions are in writing and executed by all Parties.

Section 4. Changes to this Agreement: No changes or amendments may be made to this Agreement unless mutually agreed upon by both Parties, made in writing, and executed by both Parties.

Section 5. Notice: All notices, requests, demands and other communication shall be in writing and sent by electronic mail, overnight delivery, registered mail, certified mail, or hand delivery, addressed to the Party's principal place of business herein written. Either Party may inform the other, by notice in writing, to direct future notices, requests, or demands to be sent to a different address. Notices shall be deemed given at the time of delivery. The Authorized Representatives of each Party are the following:

To CAPA: Joey Williams
 PO Box 42223
 Portland, OR 97242-0223

To Client: T.O. Bowman
 The City of Oklahoma City
 Planning Department
 420 W. Main, 9th Floor
 Oklahoma City, OK 73102

Section 6. Audit: CAPA and Client shall retain all books, records, and other documents relevant to this agreement for one (1) year after the end of each year included in this MOU. Client shall

maintain full confidentiality of all said materials, including this MOU, held or maintained by CAPA during said period.

Section 7. Equipment Use: Client shall use the rental equipment in a careful and proper manner in compliance with, but not limited to, any and all governmental laws, requirements and safety certifications and instructions and specifications, including any required periodic verification of proper calibration. Client shall indemnify and hold harmless CAPA and its officers and/or agents from and against any and all claims, liabilities, losses, costs, expenses, including attorney fees and court costs, arising from Client's use, operation, possession and rental of the rental equipment from CAPA. Client shall hold in confidence and not sell, transfer, license, loan or otherwise make available in any form to third Parties the software and related documentation provided under any MOU or Agreement. Client shall not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement such software without CAPA's prior written consent. In the event that Client purchases equipment or materials through CAPA, Client hereby accepts and is bound by the terms and conditions provided by the manufacturer thereof.

Section 8. Relationship of the Parties: The Parties to this Agreement are not joint venturers, partners, agents, nor representatives of each other, and such Parties have no legal relationship other than as contracting Parties to this Agreement. Client shall not act or represent or hold itself out as having authority to act as an agent or partner of CAPA or in any way attempt to bind or commit CAPA to any obligations, without the prior written consent of CAPA. Each Party hereto represents and warrants to the other that it has the authority to enter this MOU, and that it is not a Party to any other Agreement which prohibits it from entering into this MOU, or which renders any provision of this MOU ineffective or unenforceable.

Section 9. Limitation of Liability: In no event whatsoever, regardless of cause or circumstances, shall CAPA be liable for any consequential, incidental, indirect or exemplary damages, either real or alleged, including any losses from equipment downtime. Under no circumstances shall Client, or any other person, recover from CAPA for any claims or damages in excess of the rental price or sales price, as the case may be, of the equipment or materials, regardless of the basis for such claims or damages. Product descriptions and specifications in CAPA's catalog or on the website reflect representations made by the manufacturers of the products and do not constitute guarantees, representations or warranties of CAPA. This Section shall survive the termination or expiration of this MOU.

Section 10. Applicable Laws and Courts: In the event any dispute shall arise out of or relating to this MOU and negotiation is unsuccessful, Client and CAPA agree to use good faith efforts to settle the dispute through mediation, costs for which will be assumed equally, prior to resorting to arbitration and/or litigation processes and procedures. This MOU shall be governed by the laws of the State of Oklahoma without reference to any conflict of laws principles thereunder.

Section 11. Payment for services: Client agrees to the following stipulations regarding payment for the services described herein.

1. The price for the campaign is based on the size and number of routes necessary to complete the campaign, in CAPA's sole discretion. The total cost of this campaign is \$7,500 for completing the Scope of Work (SoW) set forth in Section 2 according to the following Payment Schedule.
2. Payment Schedule: Payment will be provided to CAPA in two parts. The first half of the payment, in the amount of \$3,750, shall be invoiced immediately following the signing and execution of this MOU; the second half of the payment, in the amount of \$3,750, shall be invoiced immediately following CAPA's completion of Task 3 in Section 2 as described above.
3. If rental equipment (including any cables and/or accessories) is lost, stolen or damaged (other than as the result of ordinary wear and tear) while in the care and custody of Client, Client shall pay CAPA (i) the replacement cost (as new) of the lost, stolen or damaged equipment or (ii) the cost to repair the damaged equipment. The estimated costs are up to \$200/each if lost or damaged, to be assessed by component damage.
4. Any invoice not paid in full within 30 days of its due date will be subject to a 1.5% per month late payment charge. In addition, Client will be liable for all costs and expenses (including reasonable attorneys' fees and disbursements and court costs) incurred by CAPA in collecting any overdue amounts or otherwise enforcing its rights hereunder.
5. Payments made by any form other than check or zero-cost direct account transfer, such as by credit card, will incur the addition of corresponding fees.
6. Any additional engagements, analysis, and/or revisions of the final deliverables will be billed at an hourly rate of \$200, notwithstanding any oversights by CAPA or minor revisions.

[Signature Page Follows]

IN WITNESS WHEREOF, CAPA and Client have executed this MOU by their authorized representatives.

ADOPTED by the Council and **APPROVED** by the Mayor of The City of Oklahoma City this 6TH day of JUNE, 2023.

ATTEST:

 _____ CITY CLERK		 _____ MAYOR
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REVIEWED for form and legality.



Assistant Municipal Counselor

CAPA STRATEGIES, LLC:

Joey Williams, Manager

Print Name and Title

X 

Signature

X May 22nd, 2023

Date

EXHIBIT A

Description of Equipment

The equipment provided by CAPA Strategies includes identical packets consisting of a sensor, charging cable, wall adapter, car adapter, and bumper magnet. Each sensor consists of a body, containing the microprocessor, local data storage, charging port, and on/off switch; neck, containing data-transfer wires; and head, containing the thermocouple and intake fan. The packets are contained within numbered plastic bags and secured with packaging material during shipping.