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VIA ELECTRONIC SUBMITTAL

February 8, 2026

Michael Belush
Planning & Design Officer
City of Miami Beach
1700 Convention Center Drive, 2nd Floor
Miami Beach, Florida 33139

RE: **HPB26-0685** – Certificate of Appropriateness for
Digital Information Kiosks at 3 Locations in the City

Dear Mr. Belush:

This law firm represents IKE Smart City, LLC (the "Applicant"), recipient of a Request for Proposal from the City of Miami Beach (the "City") to install Digital Information Kiosks throughout the City. The three (3) new proposed Digital Information Kiosks (the "Kiosks") are located within the boundaries of two (2) local historic districts, the Flamingo Park Historic District and Espanola Way Historic District. This letter shall serve as the Applicant's letter of intent requesting Certificate of Appropriateness approval of three (3) kiosks to be located within these local historic districts, consistent with the kiosk design originally approved by the Historic Preservation Board ("HPB") on May 14, 2024.

Background and Design Evolution. In 2023, the City Commission approved Request for Proposals no. 2022-0404-KB and an associated agreement to design, manufacture, install, operate and maintain up to thirty (30) Kiosks in the City (the "City Agreement"). Specifically, the City Commission allowed an initial group of fifteen (15) Kiosks and an additional fifteen (15) Kiosks to be approved by the City Commission through amendments to the City Agreement not to exceed a total of thirty (30) Kiosks. All Kiosks are subject to approval from either the

Historic Preservation Board ("HPB") or the Design Review Board ("DRB") depending on location.

Design Evolution. The original application for Kiosks, File No. HPB23-0590, went before the HPB on December 12, 2023, March 12, 2024, and May 14, 2024. The esteemed members of the HPB provided the Applicant with constructive feedback relating to the design of the Kiosks. Following the December 12, 2023 hearing, IKE Smart City partnered with award-winning architect, William Lane to further study the Kiosk design. The goal of this partnership was to generate a one-of-a-kind Kiosk that captured the history, architecture, and personality of the City.

William Lane was inspired by the City's rich history of cutting-edge design and a playfulness inherent to the personality of Miami Beach. With this, he aimed to create a Kiosk design that extended the identity of the City. The new Kiosk design features an altered cabinet with a wave-like edge, creating both a biomorphic aspect and relating to the physical environment (waves, dunes, etc.) of Miami Beach.

Consistent with this framework and design approach, all fifteen (15) Kiosk locations from the initial set have since been approved by the HPB and DRB, including DRB on September 3, 2024, and HPB on October 8, 2024. Many of these Kiosks have already been installed and are in use. See Exhibit A, Kiosk Map.

New Locations. On December 17, 2025, the City Commission approved a substituted location for one of the original fifteen (15) Kiosks, and authorized two (2) Kiosk locations under the additional allowance, thereby necessitating Certificate of Appropriateness approval of three (3) Kiosks. See Exhibit B, 2025 Resolution.

Notably, area stakeholders, including the Washington Avenue Business Improvement District and Española Way Association, formally requested that the City Commission consider and approve these three (3) new Kiosk locations to enhance wayfinding, public engagement, and economic activity. All are situated within pedestrian-focused areas of the City that experience high volumes of foot traffic. One Kiosk is proposed at the intersection of Washington Avenue and 8th Street, another at Washington Avenue and 12th Street, and a third at the intersection of Española Way and Drexel Avenue. These locations are strategically positioned to serve pedestrians within active corridors and established pedestrian-oriented areas. The proposed Kiosks are appropriately scaled and sited to respect the surrounding context and public realm.

The Kiosks are designed to be compatible with the surrounding historic districts, while remaining distinguishable from the surrounding contributing buildings in accordance with the Secretary of the Interior Standards for the Treatment and Rehabilitation of Historic Properties. The Kiosks are purposefully located in areas with high pedestrian traffic and are not blocking entrances of immediately abutting buildings. The design, scale, massing, and arrangement of the Kiosks are consistent with the City's intent and will not negatively impact or detract from the historic character of the surrounding area.

With respect to the proposed Kiosk at Española Way and Drexel Avenue, Española Way is a highly active pedestrian corridor with significant visitor volume and appropriate spacing from other approved Kiosks, which informed the City Commission's recent approval of a location in this segment of the corridor. The proposed placement represents the only viable location for a Kiosk on Española Way due to bus shelter spacing requirements that restrict installation closer to Washington Avenue. The Applicant acknowledges the unique shared pedestrian and vehicular character of this spacious town square-style promenade, which features uniform paving and limited physical delineation between pedestrian areas and travel lanes. The specific location takes advantage of a large no parking area and spaced significantly from the travel lanes. While bollards are proposed as one option to provide appropriate demarcation and protection, the Applicant is open to alternative solutions, such as low planters consistent with the raised tree planters along Española Way, and would agree to a condition of approval to resolve these details during permitting.

Regarding the size of the Kiosk, it is completely within scale of this area. The surrounding three-story buildings and existing adjacent lighting fixtures that are approximately twenty feet (20') tall, along with nearby signage and trees and the canopy for the closest storefront, all of which are taller than the Kiosk, substantially minimize the perceived visual scale of the Kiosk, such that it reads as small, unobtrusive, and subordinate within the streetscape. In addition, the Kiosk's contemporary yet restrained design is compatible with the Mediterranean Revival architectural character of Española Way and blends with the corridor's historic context. Moreover, the Applicant has already agreed through the City Commission to relocate or remove the Kiosk within thirty (30) days' notice, at its sole expense, if required in connection with any future City improvement projects. See Exhibit C, 2023 City Agreement. Lastly, the proposed location has the support of the Española Way Association and nearby tenants.

Certificate of Appropriateness Criteria. The proposed Kiosks are consistent with the Certificate of Appropriateness criteria applicable to new installations within local historic

districts. The scope of the request is limited and focused on the installation of freestanding, pedestrian-oriented information kiosks that enhance wayfinding, public engagement, and accessibility within historically significant corridors, while respecting the scale, character, and defining features of the Flamingo Park and Española Way Historic Districts. See Exhibit D, COA Criteria.

The Kiosks are designed to be compatible with their historic surroundings without replicating or imitating contributing buildings. Their contemporary yet restrained form, modest footprint, and vertical proportions allow the Kiosks to remain visually subordinate to surrounding structures and public spaces, in accordance with the Secretary of the Interior's Standards. The Kiosks are strategically sited in active pedestrian areas, avoid interference with building entrances or primary façades, and integrate into the public realm in a manner that preserves established circulation patterns and spatial relationships.

Overall, the proposed Kiosks balance functionality, design compatibility, and preservation objectives. They introduce a modern public amenity that supports pedestrian activity and economic vitality while maintaining the historic character and visual integrity of the surrounding districts, ensuring continued compatibility with adjacent structures and the broader historic context.

Notice. In accordance with the direction of the City Commission, and in-lieu of the City's narrower mailing notice requirement, the Applicant will send city-wide mailed notice of the Historic Preservation Board hearing more than 30 days before the hearing. The notice will inform residents and businesses of the additional locations and date and time of the hearing. The Applicant will share with the Planning Department a certified letter attesting to the city-wide mailing.

Conclusion. The Kiosks are an important part of the revitalization of the City and improving the pedestrian experience. The proposed Kiosks, which have been expressly requested by area stakeholders, comply with all applicable land development regulations and are designed to be accessible, user-friendly, and resilient. Approval of the Certificate of Appropriateness is consistent with prior approval and will allow for an innovative amenity to the City's streetscape.

Accordingly, we respectfully request your favorable review and recommendation with respect to the proposed Kiosks. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



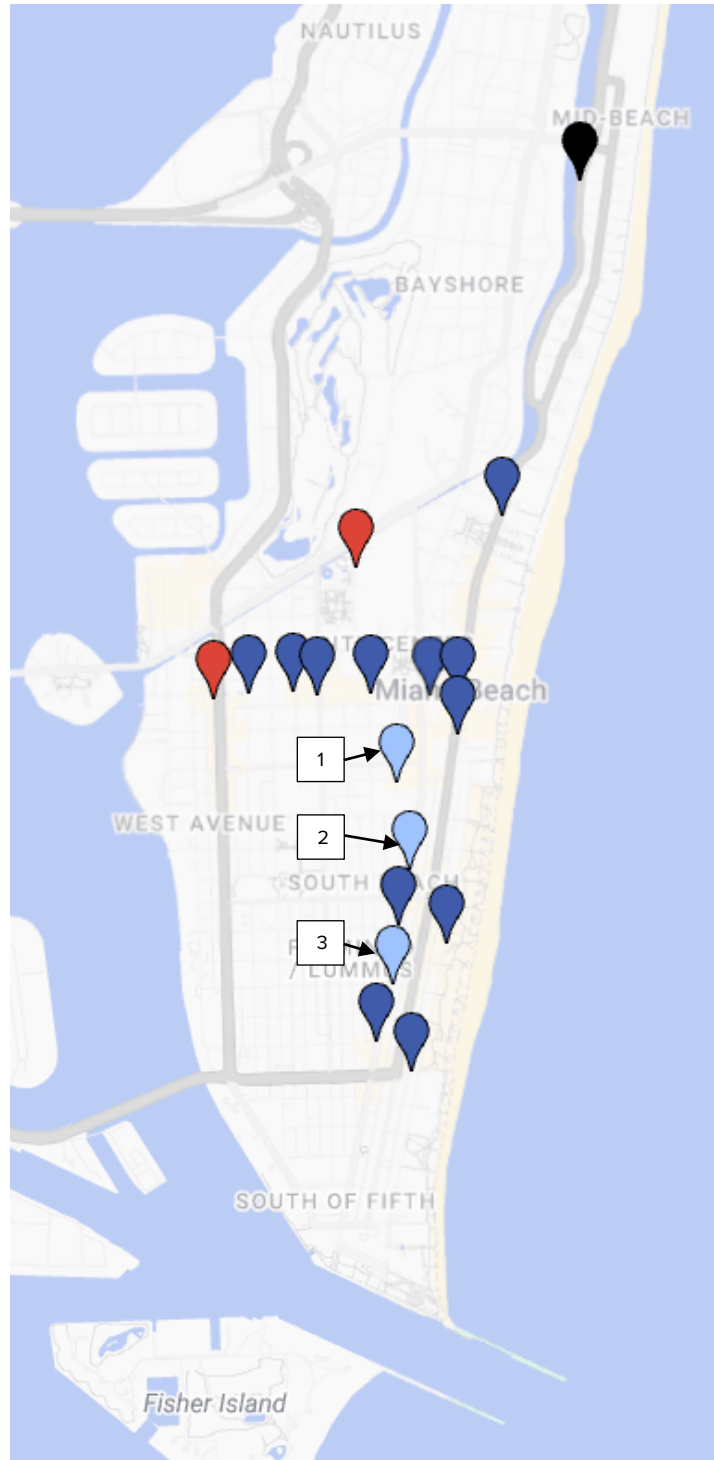
Michael Larkin

Attachments

cc: Eric Carpenter, City of Miami Beach, City Manager
John Norris, City of Miami Beach, Public Works Director
Anna Baerman, Orange Barrel Media + IKE SMART CITY, Senior Development Director
Marissa Crudele, Orange Barrel Media + IKE SMART CITY, Associate Development Director
Matthew Amster, Esq.
Roberto A. Alvarez, Esq.

Exhibit "A"

Map of Proposed Kiosk Locations



Legend:

- **Red:** Previously approved kiosk locations by DRB
- **Blue:** Previously approved kiosk locations by HPB
- **Black:** Previously approved kiosk location by HPB and being relocated per City of Miami Beach Resolution No. 2025-34035
- **Light Blue:** Proposed kiosk locations and applying for HPB approval

Exhibit B

RESOLUTION NO. 2025-34035

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, PURSUANT TO THAT CERTAIN AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND IKE SMART CITY, LLC TO DESIGN, MANUFACTURE, INSTALL, OPERATE, AND MAINTAIN INTERACTIVE DIGITAL MEDIA KIOSKS (RFP NO. 2022-040-KB), A SUBSTITUTE LOCATION FOR ONE IKE KIOSK SCHEDULED TO BE INSTALLED AS PART OF THE INITIAL INSTALLATION OF 15 KIOSKS, AND THE ADDITION (PURSUANT TO SECTION 5(B) OF THE AGREEMENT) OF TWO ADDITIONAL IKE KIOSKS, ALL THREE OF WHICH SHALL BE LOCATED ON THE ESPAÑOLA WAY AND WASHINGTON AVENUE CORRIDORS; SAID INSTALLATIONS TO BE CONSISTENT WITH THE TERMS OF THE AGREEMENT APPROVED PURSUANT TO RESOLUTION NO. 2023-32627, INCLUDING ALL AMENDMENTS THERETO; AND FURTHER AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, IN A FORM ACCEPTABLE TO THE CITY ATTORNEY, AN AMENDMENT AS WELL AS ANY OTHER DOCUMENTS NECESSARY TO EFFECTUATE THE REVISED/ADDITIONAL IKE KIOSK LOCATIONS.

WHEREAS, on June 28, 2023, the Mayor and City Commission adopted Resolution No. 2023-32627, approving the essential business terms of an agreement with IKE Smart City, LLC ("IKE") to design, manufacture, install, operate, and maintain interactive digital media kiosks throughout the City of Miami Beach; and

WHEREAS, on July 28, 2023, the City and IKE executed an Agreement pursuant to the RFP (the "Agreement"); and

WHEREAS, on September 13, 2023, the Mayor and City Commission of the City of Miami Beach adopted Resolution No. 2023-32759, authorizing the City to enter into a Memorandum of Understanding (MOU) with the Florida Department of Transportation (FDOT) for the installation, operation, and maintenance of IKE Kiosks which would be placed on various FDOT rights-of-way pursuant to the Agreement; and further, authorizing the City Manager and City Clerk to execute Amendment No. 1 to the Agreement, to allow IKE to assume the City's responsibilities under the MOU with FDOT, and require IKE to indemnify the City; and

WHEREAS, on December 13, 2023, the Mayor and City Commission adopted Resolution No. 2023-32863, authorizing the City Manager to negotiate and execute Amendment No. 2 to the Agreement between the City and IKE; said amendment (1)

granting the City, for its convenience, the right to require IKE to relocate any IKE Kiosk, with IKE bearing any and all relocation costs; and (2) requiring that mail notices associated with the approval of IKE Kiosk locations by the Design Review Board or Historic Preservation Board be sent citywide at IKE's sole cost; and

WHEREAS, on June 26, 2024, the Mayor and City Commission adopted Resolution No. 2024-33140, authorizing the City Manager to negotiate and execute Amendment No. 3 to the Agreement, in order to make the Agreement consistent with Section 2.2.4.8(e)(3) of the Miami Beach Resiliency Code in the event one or more approvals by the City's land use boards for the kiosks are appealed, and to permit IKE to request a lifting of the stay pending appeal subject to IKE's strict compliance with the requirements and safeguards in Section 2.2.4.8(e)(3) of the Resiliency Code; and

WHEREAS, the Agreement authorized the installation of up to thirty (30) kiosks, subject to location restrictions including a 250-foot distance requirement from existing bus shelters; and

WHEREAS, more specifically, the Agreement provides for an initial installation of fifteen (15) IKE Kiosks, and the City Commission may approve, at its sole discretion, up to fifteen (15) additional IKE Kiosks during the Term, for a total number not to exceed thirty (30) IKE Kiosks during the Term; and

WHEREAS, the Española Way and Washington Avenue areas have emerged as high-priority locations for kiosk deployment due to their pedestrian traffic, cultural significance, and the expressed interest of local stakeholders; and

WHEREAS, the City has received formal requests from both the Española Way Association and Washington Avenue Business Improvement District (BID) urging the City to install additional IKE Kiosks in these respective areas to enhance wayfinding, public engagement, and economic activity; and

WHEREAS, the three proposed IKE Kiosks will be located at Espanola Way and Drexel Avenue; Washington Avenue and 8th Street; and Washington Avenue and 12th Street; and

WHEREAS, the additional IKE Kiosks will be installed at no cost to the City; and


WHEREAS, the City Commission finds that the installation of IKE Kiosks on the Española Way and Washington Avenue corridors is in the public interest and consistent with the goals of the IKE Kiosk program.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve, pursuant to that certain Agreement between the City of the Miami Beach and IKE Smart City, LLC to design, manufacture, install, operate, and

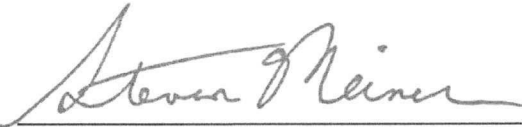
maintain interactive digital media kiosks (RFP No. 2022-040-KB), a substitute location for one IKE Kiosk scheduled to be installed as part of the initial installation of 15 kiosks, and the addition (pursuant to Section 5(b) of the Agreement) of two additional IKE Kiosks at no cost to the City, all three of which shall be located on the Espanola Way and Washington Avenue corridors; said installations to be consistent with the terms of the Agreement approved pursuant to Resolution No. 2023-32627, including all amendments thereto; and further authorize the City Manager to negotiate and execute, in a form acceptable to the City Attorney, an amendment as well as any other documents necessary to effectuate the revised/additional IKE Kiosk locations.

PASSED AND ADOPTED this 17 day of December, 2026.

ATTEST:



Rafael E. Granado, City Clerk




Steven Meiner, Mayor

DEC 22 2025

(Sponsored by Commissioner Alex J. Fernandez)



APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION



City Attorney NK

12/10/2025
Date

Exhibit C

**AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH
AND
IKE SMART CITY, LLC
TO DESIGN, MANUFACTURE, INSTALL, OPERATE AND MAINTAIN INTERACTIVE
DIGITAL MEDIA KIOSKS, PURSUANT TO REQUEST FOR PROPOSALS NO. 2022-0404-KB**

7/28/2023 | 6:03 EDT

THIS AGREEMENT (this "Agreement") is made this ___ day of _____, 2023 (the "Effective Date"), by and between the CITY OF MIAMI BEACH, a Florida municipal corporation (the "City"), and IKE SMART CITY, LLC, a Delaware limited liability company ("Company").

BACKGROUND INFORMATION

- A. Company is engaged in the development, installation, operation and maintenance of interactive directory signs and wayfinding platforms, including IKE Kiosks (as hereinafter defined).
- B. The City desires to enhance the experience for the residents and visitors of the City through the use of IKE Kiosks.
- C. On December 14, 2022, the Mayor and City Commission adopted Resolution No. 2022-32422, authorizing the City administration to negotiate an agreement with Company, as the top-ranked proposer, for the Manufacturing, Installation, Maintenance and Operation of Interactive Digital Media Kiosks pursuant to the RFP, as defined in Section 2 (Definitions).
- D. The City and Company desire to coordinate efforts to discuss the deployment of IKE Kiosks within the City, and if successful, the City desires to grant Company certain rights to design, manufacture, install, operate, and maintain IKE Kiosks at Company's sole cost and expense, and at no cost to the City, in and on the approved Locations (as hereinafter defined) all in accordance with the terms set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Company hereby agree as follows:

- 1. **Incorporation of Background Information.** The foregoing background information is hereby incorporated and made a part of this Agreement.
- 2. **Definitions.**
 - a. "Advertising Freestanding Kiosk" means a freestanding structure designed to sell advertising space.
 - b. "City Directed Content" means any and all content provided to Company by the City for display on IKE Kiosks or created by the Company at the direction of the

City, including any content on which City logos, trademarks or other City marks may appear.

c. "City Events" means any event, produced or approved by the City, that is held within the City.

d. "City Event Period" means that period commencing fourteen (14) days prior to the date on which a City Event starts and ending two (2) days following the date on which the City Event ends.

e. "City's Contract Manager" shall mean the individual appointed by the City Manager who shall be the City's authorized representative to coordinate, direct, and review on behalf of the City, all matters related to the administration of this Agreement (exclusive of those authorizations reserved to the City Manager or the City Commission). For purposes of this Agreement the City's Contract Manager shall be the Assistant Director of the Public Works Department.

f. "City Manager" shall mean the Chief Administrative Officer of the City, who shall serve as the City's representative to whom administrative requests for approvals shall be made and who shall issue authorizations (exclusive of those authorizations reserved to the City Commission). The City Manager may appoint a designee to perform one or more of the City Manager's responsibilities including, without limitation, the City's Contract Manager or an auditor. "Auditor" refers to member(s) of the City's accounting staff, an inspector general retained or appointed by the City, or professionally qualified consultants employed by the City to conduct an audit.

g. "Fiscal Quarter" means the periods between and including (i) January 1st through March 31st, (ii) April 1st through June 30th, (iii) July 1st through September 30th, and (iv) October 1st through December 31st.

h. "Freedom of Information Law" or "FOI Law" means all applicable state and federal statutes, laws, ordinances, rules, regulations, requirements and codes, related to any public request for information, requiring certain proceedings of government agencies to be open or available to the public, or otherwise known as a "Sunshine Law".

i. "Gross Revenues" means the total gross sales receipts earned by the Company in connection with the operation of the IKE Kiosks, as more particularly described in Exhibit A.

j. "IKE Kiosks" means the interactive directory signs and wayfinding kiosks operated by the Company for the purpose of providing a directory of businesses and other points of interest within the City and displaying digital content, and which may provide, without limitation, those services and applications as set forth on Exhibit B (the "Approved Uses"), and include various related Software, hardware and equipment components. The IKE Kiosks are referred to individually as an "IKE Kiosk".

k. "Installed IKE Kiosk" means an IKE Kiosk that has been installed at a Location and has become operational. From the first date in which an IKE Kiosk becomes

operational ("Initial Operational Date") forward, an IKE Kiosk shall be referred to as an "Installed IKE Kiosk".

l. "Installation Work" means all work performed by the Company to install an IKE Kiosk at a Location, including any and all work necessary to bring electrical service or fiber optic cable to that Location.

m. "Intellectual Property Rights" or "IPR" means the Company's patents, registered designs and trademarks, together with applications therefor and copyrights of any kind.

n. "Interactive Mode" means the condition of an IKE Kiosk during any period in which a user is actively engaging the IKE Kiosk.

o. "Kiosk Revenue" means the amount paid by the Company to City as set forth in Exhibit A.

p. "Locations" means those locations on which the IKE Kiosks may be installed by Company, and subject to change as set forth in this Agreement. The Locations are referred to individually as a "Location".

q. "Minimum Annual Guaranty" means the amount payable per IKE Kiosk as set forth in Exhibit A.

r. "Operational Date" means the date on which an IKE Kiosk is installed and capable of carrying advertisements and performing the functions and services set forth in this Agreement.

s. "Passive Mode" means the condition of an IKE Kiosk during any period in which no users are actively engaging the IKE Kiosk.

t. "Proposal Documents" means the City of Miami Beach Request for Proposals (RFP) 2022-0404-KB for the Design, Manufacture, Install, Operate and Maintain Interactive Digital Media Kiosks, together with all amendments thereto, issued by the City in contemplation of this Agreement (the "RFP"), and the Company's proposal in response thereto ("Proposal"), all of which are hereby incorporated and made a part hereof; provided, however, that in the event of an express conflict between the Proposal Documents and this Agreement, the following order of precedent shall prevail: this Agreement; the RFP; and the Proposal.

u. "Required Approvals" means any and all required governmental approvals, permits and entitlements from all governmental authorities having jurisdiction over the IKE Kiosks in connection with the installation and operation of the IKE Kiosks and any other required improvements to the Locations.

v. "Software" means any and all software used in the operation of the IKE Kiosks.

w. "Spot" means a discrete unit of time during Passive Mode when content may be displayed on IKE Kiosk screens.

x. "Term" means the period in which the Company may install and operate the IKE Kiosks, as set forth in Exhibit A.

3. **Design/Permitting Period**. Company shall provide, at its sole cost and expense, any and all design services including, but not limited to, architectural and engineering services, as reasonably required in connection with all the Required Approvals. Company shall submit applications for the Required Approvals for the first IKE Kiosk within six (6) months from the Effective Date and shall submit applications for the Required Approvals for all fifteen (15) IKE Kiosks within one (1) year following the Effective Date. Company shall pursue the Required Approvals in a diligent manner, and the City, in its proprietary capacity, shall cooperate with the Company as may be reasonably required in its efforts to obtain the same.

4. **Non-Exclusive Grant of Rights**. The City has executed an agreement, dated October 22, 2021 (the "Bus Shelter Agreement"), with Outfront Media Group, LLC ("Outfront"). This Agreement, and in particular the possible Locations for the IKE Kiosks, shall be subject to the rights granted by the City to Outfront with respect to the Bus Shelter Zone (as defined in Section 5(b)). Without limiting the foregoing, the rights granted in this Agreement to the Company are non-exclusive; provided, however, that the City agrees not to install, or permit or allow the installation of, any other Advertising Freestanding Kiosk within 250 feet from the closest edge of any Installed IKE Kiosk (the "IKE Kiosk Exclusivity Zone"). The foregoing limited exclusivity is intended to solely limit Advertising Freestanding Kiosk within the IKE Kiosk Exclusivity Zone. For the sake of clarity and without modifying the foregoing limited exclusivity, the City or a City's contractor shall not be prohibited from displaying advertising on any other type of temporary or permanent structure within the IKE Kiosk Exclusivity Zone including, without limitation, water fountain; garbage cans; ashtrays; kiosks related to a rental sharing program for bicycles or other mobility devices; bicycles or any other mobility devices; special events related kiosks, tables, stands, etc.; or property owned or controlled by the City including, without limitation, parking facilities, buildings, Parks, or other similar facilities.

5. **IKE Kiosks/Locations**.

a. An IKE Kiosk. The City, in its proprietary capacity, hereby approves the conceptual plan/design as to the type of IKE Kiosk which is attached as Exhibit B-1 hereto. Any modifications to Exhibit B-1 must be approved, in writing, by the City Manager prior to such changes being implemented. Notwithstanding the foregoing, the City and Company hereby acknowledge and agree that the City's approval as to the type of IKE Kiosk is given by the City solely in its proprietary capacity and not in its regulatory capacity. Notwithstanding such proprietary City approval, Company acknowledges and agrees that the type of IKE Kiosk and its installation at one of the proposed Locations may trigger and require review and approval by one (or more) of the City's land use boards. Accordingly, in such circumstances, Company shall be required, at its sole cost and expense, to obtain any and all required final, non-appealable development approvals and/or orders for such IKE Kiosks, prior to implementation of said IKE Kiosks in those Locations. Within thirty (30) days following the Effective Date, Company shall provide the City with (i) a virtual demonstration of the content management system software for

the IKE Kiosks, (ii) an on-site demonstration of an operational IKE Kiosks located within the City of Miami, and (iii) three (3) paint samples to the City Manager. The City Manager shall have fifteen (15) days following receipt of the aforementioned paint samples in which to notify Company of the paint sample it approves for the color of the IKE Kiosks, subject to Company securing the requisite regulatory approvals for the selection. Upon receipt of the City Manager paint selection, **Exhibit B-1** shall be updated to incorporate the same. If the City fails to respond to Company's attempts to coordinate the virtual demonstration or the on-site demonstration and as a result thereof the demonstrations do not occur within the aforementioned 30-day period, the same shall not be deemed to be a default of this Agreement by Company.

b. Number and Locations for IKE Kiosks.

The City Manager will initially approve fifteen (15) IKE Kiosks, and the City Commission may approve, at the sole discretion of the City Commission, up to fifteen (15) additional IKE Kiosks during the Term, for a total number not to exceed thirty (30) IKE Kiosks during the Term (the "Operational Ceiling"). The Operational Ceiling amount may only exceed thirty (30) if approved by the City Commission. The City and Company shall work together in good faith to discuss the locations within the City for the installation of IKE Kiosks; however, the final proprietary approval of the Locations of the IKE Kiosks shall rest with the City Manager, in the City Manager's sole discretion. Within thirty (30) days from the Effective Date of the Agreement, the City Manager shall approve, in writing, a site plan containing a list of the Locations, which will be incorporated herein and attached hereto as **Exhibit B-2**. Any change in the Locations shall be subject to the prior written approval of the City Manager, in the City Manager's sole and absolute discretion. Notwithstanding the foregoing, the City and Company acknowledge and agree that no IKE Kiosks shall be permitted within 250 feet from the closest edge of any existing or future bus shelter (the "Bus Shelter Zone"), except that IKE Kiosks may be installed along Lincoln Road, including any portions of Lincoln Road that are within a Bus Shelter Zone. In the event that the City and/or the County wish to install a new bus shelter or relocate an existing bus shelter for the sole purpose of serving the transportation needs within the City of Miami Beach ("New Bus Shelter Installation") and the New Bus Shelter Installation causes an existing IKE Kiosk to be in violation of the Bus Shelter Zone, Company, at its sole cost, shall be required to remove the IKE Kiosk in violation of the Bus Shelter Zone within thirty (30) days from the date Company receives written notice from the City of the need to remove such IKE Kiosk. In the event that an FDOT, County, or City-initiated roadway construction project including, without limitation, harmonization, flood mitigation projects, or any other project required to protect the public safety, health or general welfare, which impact an existing Location ("Public Roadway Project"), necessitating the temporary or permanent removal of an IKE Kiosk or any of its related components, Company, at its sole cost, shall be responsible for any required alteration, storage and/or removal of the existing IKE Kiosk, within thirty (30) days from the date Company receives written notice from the City of the need to temporarily or permanently remove such IKE Kiosk. Company shall be responsible for any relocation costs, including disconnecting and restoring the existing Location, in addition to all connection and site work required for the new Location (collectively, "Relocation Costs") related to a request

by Company, as well as a request by the City, to the extent the City's request relates to a New Bus Shelter Installation or Public Roadway Project.

Additionally, the City may require the Company to permanently remove and relocate up to a maximum of three (3) IKE Kiosks for any reason whatsoever ("Removal for Convenience"). In connection with a Removal for Convenience, the City shall reimburse the Company for the reasonable Relocation Costs incurred by the Company to remove and relocate such IKE Kiosk, which reimbursement shall be made within thirty (30) days following the City's receipt of an invoice or invoices for such costs. Notwithstanding anything to the contrary contained herein, in no event shall the City require the Company to permanently remove and relocate more than three (3) IKE Kiosks pursuant to a Removal for Convenience. For the avoidance of doubt, except as may be required in connection with a New Bus Shelter Installation, in no event shall the City require the permanent removal and relocation of an IKE Kiosk for the purpose of increasing the advertising revenue of a competitor of the Company.

In connection with a removal of an IKE Kiosk pursuant to this Section 5.b., that exceeds sixty (60) days in duration, the City shall cooperate with the Company in good faith to find a mutually acceptable alternative Location to relocate the removed IKE Kiosk.

6. **Term.** The Term of this Agreement, and the rights and obligations of the parties set forth herein, shall begin on the Effective Date and continue for the period set forth in the attached **Exhibit A.**

7. **Kiosk Revenue.** From and after the Operational Date for each IKE Kiosk and through the end of the Term, the Company shall pay to City the Kiosk Revenue in accordance with the terms set forth in the attached **Exhibit A.** All payments of the Kiosk Revenue shall be mailed to the City's Assistant Director for the Public Works Department, at the address set forth in Section 26 of this Agreement, or at such other address as may be designated by City in writing from time to time.

8. **Project Schedule/Installation Work.** Within sixty (60) days from the Effective Date, Company shall provide to the City a schedule for the fabrication, construction, permitting and installation of the IKE Kiosks. At a minimum, the schedule shall specify (and include specific milestones and timelines for) the permitting phases; fabrication time; commencement and completion of construction; commencement and completion of installation and implementation and set-up date (from Initial Operational Date through complete operational rollout of all the approved Locations and shall reflect the deadlines to apply for Required Approvals and to complete installation work set forth in this Agreement. All Installation Work shall be at Company's sole cost and expense. Company shall perform the Installation Work in a good and workmanlike manner and in compliance with all applicable laws, regulations and rules and the Required Approvals.

9. **Utility Services.**

a. **Services.** it shall be Company's responsibility, at Company's sole cost and expense, to secure electrical and/or telecommunication services for each approved Location. If any utility services or telecommunications services are unavailable or unable

to be obtained by Company for a particular Location, Company shall have an opportunity to find a reasonably suitable substitute Location pursuant to Section 5(b), subject to the City Manager's approval. Additionally, where access is required across private property or property not owned or controlled by the City to bring electrical service and fiber optic cables to a Location, Company, at the Company's sole expense, may negotiate and obtain access rights across such property for the benefit of Company. If the Company is unable to negotiate access rights on terms and conditions reasonably satisfactory to the Company, the parties shall work together to find a reasonably suitable alternative location for the IKE Kiosk at issue pursuant to Section 5(b). Company shall be responsible for any Relocation Costs in accordance with Section 5(b).

b. Cost. The Company shall pay all costs associated with bringing utility services and telecommunications services to each Location, including any and all costs associated with negotiating and obtaining access rights across private property in connection with the same. Additionally, the Company shall pay the costs of all utility services and telecommunication services used or consumed by the Company on each Location directly to the suppliers of such services, including the installation of a separate meter for the usage at each approved Location. Company shall be permitted to utilize smart meters for the IKE Kiosks in Company's discretion.

c. Disruption of Services. Company hereby releases the City from any damages arising from the interruption or unavailability of any utility services to one or more IKE Kiosks.

10. **Maintenance and Examination of Records.**

a. Company shall maintain current, accurate, and complete records of Gross Revenues in accordance with generally accepted accounting principles. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit by the City Manager or City Manager's designee, upon reasonable prior notice, whether verbal or written, and during normal business hours.

b. Company Maintenance Reports. Upon the request of the City's Contract Manager, Company shall submit a quarterly (or at such greater intervals, i.e. annually, as requested by the City) a maintenance report reflecting routine maintenance performed on the IKE Kiosks, including any repairs performed on any of the IKE Kiosks.

c. City Reports. Company shall provide the City Manager or designee with an API access or a dashboard for purposes of obtaining historical usage data from IKE Kiosks, IKE Kiosk application usage, survey information and air quality data.

11. **Inspection and Audit of Financial Records.**

a. Company shall maintain its records of Gross Revenues and other records pertaining to the operation and maintenance of the IKE Kiosks for a period of three (3) years after the expiration or other termination of this Agreement, and such records shall

be open and available to the City Manager or his/her designee, as deemed necessary by them. Company shall maintain all such records at its principal office and will transmit such records electronically to the City within ten (10) days, following receipt of written notice from the City requesting to audit such records. Additionally, at the City Manager's discretion, Company shall relocate the records to the City within twenty (20) days following receipt of written notice from the City.

The City Manager or designee shall be entitled to audit Company's records pertaining to its operations, as often as he deems reasonably necessary throughout the Term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement (regardless of whether such termination results from the natural expiration of the Term or for any other reason). The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five (5%) percent or more in Company's statement of Gross Revenues receipts for any year or years audited, in which case Company shall pay to the City, within thirty (30) days of the audit being deemed final by the City, the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest.

b. Within thirty (30) days from the end of each Term Year (throughout the Term), Company shall submit an annual statement of Gross Revenues, in a form consistent with generally accepted accounting principles. Additionally, such statement shall be accompanied by a report from a Licensed independent CPA firm..

c. It is Company's intent to stay informed of comments and suggestions by the City regarding Company's performance under this Agreement. Within thirty (30) days after the end of each Term Year, if requested by the City Manager, Company shall meet with the City Manager or City Manager's designee to review Company's performance under this Agreement for the previous Term Year. At the meeting, Company and City may discuss quality, operational, maintenance and any other issues regarding Company's performance under this Agreement.

12. **Taxes, Assessments.**

a. Company agrees and shall pay before delinquency all taxes and assessments of any kind levied or assessed upon a Location or the Locations, and/or on Company by reason of this Agreement, or by reason of Company's business and/or operations within a Location. The Company will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax by appropriate proceedings diligently conducted in good faith. Company may refrain from paying a tax to the extent it is contesting the imposition of same in a manner that is in accordance with law. However, if, as a result of such contest, additional delinquency charges become due, Company shall be responsible for such delinquency charges, in addition to payment of the contested tax, if so ordered.

b. Company shall also be solely responsible (at its sole cost and expense) for obtaining and maintaining current any applicable licenses or permits, as required for the operations contemplated in this Agreement including, without limitation, any business tax receipts required by law for the Approved Uses for each Location (if required).

c. Procedure If Ad Valorem Taxes Assessed. If ad valorem taxes are assessed against a Location or the Locations (or any portion thereof) by reason of Company's business and/or operations thereon, Company shall be solely responsible for prompt and timely payment of same.

13. Employees and Independent Contractors.

Company's Employees.

a. Company shall select, train and employ such number of employees or contractors as is necessary or appropriate for Company to satisfy its responsibilities hereunder. Company shall be the sole authority to hire, terminate and discipline any and all personnel employed by Company.

b. Company shall designate a competent full-time employee to oversee the day-to-day operations, and who shall act as the contract administrator for this Agreement and serve as Company's primary point-person with the City. This individual shall have the requisite amount of experience in operating, managing, and maintaining the IKE Kiosks and operations contemplated herein. The employee shall be accessible to the City Manager or City Manager's designee at all reasonable times during normal business hours to discuss the management, operation and maintenance of the IKE Kiosks, and within a reasonable time frame during non-business hours in the event of emergency. Consistent failure by the employee to be accessible shall be reported to Company's principal(s), and if not rectified, shall be grounds for replacement of the employee.

c. Company's employees and/or contractors shall wear identification badges during all hours when such employee or contractor is visiting a Location within the scope of such employment or such contractor relationship. All employees and/or contractors shall comport themselves in a professional and courteous manner. The Company and any persons hired or otherwise retained by Company to perform work at a Location shall never have been convicted of a felony.

14. Maintenance, Repair and Operation

a. The Company accepts the use of any and all Locations provided in this Agreement "AS IS," "WHERE IS," and "WITH ALL FAULTS," existing as of the Effective Date.

b. Maintenance/Repair.

1. Company, at its sole cost and expense, shall be solely responsible for the day to day operation, maintenance and repair of all Locations and any equipment thereon including, without limitation, the IKE Kiosks. Company shall maintain the Locations and any equipment thereon including, without limitation, the IKE Kiosks in a good working order and condition and shall keep all IKE Kiosks free of graffiti and like new condition. Many small/light maintenance items may be done on-site by Company and/or its subcontractors to eliminate or minimize

unit downtime, while moderate to heavy maintenance may require equipment to be removed from circulation and serviced at Company's repair center.

2. The Company shall employ standard operating procedures with respect to the IKE Kiosks that includes (i) one (1) visit to each IKE Kiosk per weekday and one (1) visit to each IKE Kiosk during weekends to inspect the IKE Kiosks, perform minor repairs and cleaning, perform system testing that cannot otherwise be done remotely, and otherwise ensure the IKE Kiosks are maintained in a clean and functional manner and to remove any vandalism thereon and (ii) electronic monitoring twenty-four (24) hours per day, seven (7) days per week to provide software updates, address any outages or software breaches, and otherwise troubleshoot any problems impacting the functionality of the IKE Kiosk software.

3. In addition to the foregoing, during City Events, the Company shall perform enhanced monitoring of the IKE Kiosks to ensure functionality and shall clean each IKE Kiosk two (2) times per day. Additionally, the Company shall have a regional technical supervisor and a director of operations for the Company present in the City during the City Event Period to provide twenty-four (24) hour per day, seven (7) day per week service to the IKE Kiosks. The City, upon request, will be provided the direct contact information for the Company's regional technical supervisor and a director of operations who will be present in the City during a City Event.

4. All damage of any kind to a Location and any equipment thereon including, without limitation, the IKE Kiosks, shall be the sole obligation of Company, and shall be repaired, restored or replaced promptly by Company, at its sole cost and expense, to the reasonable satisfaction of the City Manager or City Manager's designee. In the event that an IKE Kiosk is damaged for any reason, Company shall, at a minimum, commence repairs within twenty four (24) hours, and, in any event, complete repairs within three (3) days from the date Company first becomes aware of the need for the repair or (if irreparable), or if stolen, replace the damaged or stolen IKE Kiosk so that same is fully operational, no later than seven (7) days from the date Company first becomes aware of the damage or theft. All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work (or equipment) and shall be done in good and workmanlike manner.

5. In the event Company fails to remove the graffiti from the IKE Kiosk or equipment at the Location, or make the necessary repairs no later than three (3) days from the date Company first becomes aware of the existence of the graffiti or need for the repair, or fails to replace the IKE Kiosk within seven (7) days from the date Company first becomes aware of the need for replacement, the City may, without an obligation to do so, take necessary actions to remove the graffiti or make the necessary repair, or remove the IKE Kiosk, as applicable. Company shall be obligated to reimburse the City for actions taken under this provision. Notwithstanding the foregoing, depending upon the extent/content of the graffiti/damage, the City may request immediate covering of the IKE Kiosk and require the removal or repair work to be completed within 24 hours. Should

Company fail to correct the damages in the event of incident within the specified time frames, the City may repair and/or remove the IKE Kiosk and charge Company all costs associated with the non-performance. The City shall not be liable for any damages related to the foregoing self-help remedies.

6. It shall be Company's sole obligation to ensure that any renovations, repairs and/or improvements made by Company to the Locations comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.

7. Company agrees, also at its sole cost and expense, to pay for all garbage disposal generated by its operations.

c. Performance by City in an Emergency. If the City Manager, in the City Manager's sole discretion, deems that the City needs to act immediately in order to protect the public health, safety, and general welfare of its citizenry, the City reserves the right to take any and all necessary actions including, without limitation, interrupting, curtailing or suspending the provision of any utility service, securing the area surrounding the IKE Kiosk, or temporarily removing an IKE Kiosk or parts thereof (collectively "Emergency Actions"). Prior to undertaking the removal of an IKE Kiosk under this subsection, the City shall provide IKE Kiosk with a minimum of twenty-four hours' notice in which to perform the removal of an IKE Kiosk, and only if Company fails to remove the IKE Kiosk, will the City be entitled to use self-help measure. Company hereby waives all claims against the City for compensation for loss or damage sustained in connection with said Emergency Actions.

d. Orderly Operation. Company shall conduct a neat and orderly operation at all times and shall be solely responsible for the necessary housekeeping services to properly maintain the Locations and any IKE Kiosk thereon.

e. No Dangerous Materials.

1. The Company agrees not to use or permit the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida, on or within any of the Locations, or on any City property and/or right of way.

2. Company shall indemnify, defend and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Company of any "hazardous substance" or "petroleum products" on, under, in or upon the Locations as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder; provided, however, Company shall have no liability in the event

of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this subsection (e) shall survive the termination or earlier expiration of this Agreement.

f. Security.

1. Under no circumstances shall the City be responsible for any stolen or damaged equipment, nor shall City be responsible for any stolen or damaged personal property of Company's employees, contractors, agents, patrons, guests, invitees, and/or other third parties.

2. Notwithstanding the preceding paragraph, Company shall not be obligated to provide security services (whether manned or automated) to patrons using the IKE Kiosks, as the IKE Kiosk services are contemplated as an unattended self-service and automated service. Except with respect to the camera housed in the approved IKE Kiosk type, Company shall not employ any recorded video surveillance without the prior written approval of the City Manager.

g. Inspection. The Company agrees that any Location (including, without limitation, any equipment and IKE Kiosk thereon) may be inspected at any time by the City Manager or City Manager's designee, or by any other municipal, County, State officer, or officers of any other agency(ies) having responsibility and/or jurisdiction for inspections of such operations. The Company hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference with the operation as a result of inspection by any public agency(ies) or officials, (including, without limitation, by reason of any such public agency or official in enforcing any laws, ordinances, or regulations as a result thereof). Any such interference shall not relieve the Company from any obligation hereunder.

h. Hours of Operation. All Locations and operations thereon shall be open every day of the year, weather or events of force majeure permitting, and shall be open to the public 24 hours per day, 365 days per year. **No IKE Kiosk shall be inoperable for more than fifteen (15) consecutive calendar days.**

i. No Improper Use. The Company will not use, nor suffer or permit any person to use in any manner whatsoever, any Locations or IKE Kiosks thereon, for any illegal, improper, immoral or offensive purpose, or for any other purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. Company will protect, indemnify, defend and hold harmless the City, its officials, employees, contractors, and agents from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of the Company, or any of its officials, directors, agents, contractors, or servants regarding Company's operations at the Locations. In the event of any violation by Company, or if the City or its authorized representative shall deem any conduct on the part of Company to be objectionable or improper, the City shall have the right to suspend Company's operation should the Company fail to correct any such violation, conduct, or practice to the satisfaction of the City Manager or City Manager's designee within two (2) business

days, following written notice of the nature and extent of such violation, conduct, or practice. Such suspension shall continue until the violation is cured to the satisfaction of the City Manager or City Manager's designee.

j. Compliance with Laws. The Company shall comply with all federal, state, County and municipal ordinances, statutes, orders, rules and regulations (collectively, "laws") including, but not limited to, all applicable environmental laws and any laws applicable to the use of the IKE Kiosks and the display of content thereon.

k. City Content.

1. As and when requested by the City, Company shall meet with City to discuss the development of City Directed Content for the IKE Kiosks. City Directed Content shall appear on the IKE Kiosks during the Interactive Mode and Passive Mode in the frequencies and amounts as set forth on Exhibit A. Provided, however, during periods when advertising time on the IKE Kiosks is in high demand ("Peak Sales Periods", or individually, each a "Peak Sales Period"), the Company may desire to sell to advertisers the Passive Mode time otherwise allocated to the City pursuant to Exhibit A. In such event, Company shall request the City's consent, which consent, if provided at all, shall be at the sole discretion of the City's Contract Manager, for the Company to sell to advertisers the Passive Mode time otherwise allocated to the City during a Peak Sales Period. The Company's request shall be made in writing and shall include the start and end dates of the Peak Sales Period at issue. The City shall respond to such request within seven (7) business days following the date of the Company's request. If the City fails to respond within such 7-business day period, the City shall be deemed to have consented to the Company's request, and accordingly, the City shall have no right to display City Directed Content on the IKE Kiosks, which are the subject of the request, during the Peak Sales Period at issue.

2. City Content. City shall work with the Company in good faith to create City Directed Content for the IKE Kiosks. City shall promptly provide information requested by, and answer any and all questions from, the Company regarding the development of any City Directed Content. City shall promptly respond to any requests for approval of City Directed Content and shall communicate any objections to such content clearly and in writing. Notwithstanding the foregoing, the absence of an objection shall not be interpreted as an approval to disseminate the City Directed Content. The City Directed Content shall require the prior written approval of the City's Contract Manager before being disseminated.

3. Advertising Content/Standards.

i. While the City understands the need to maximize advertising revenue, the City is also interested in maintaining a pleasant and aesthetic image and ensure the quality-of-life of its residents. The City Manager may request removal of any advertisement displayed or placed on an IKE Kiosk that is otherwise prohibited by this subpart 3.

ii. Company is solely responsible for all design, development, production, redesign, removal, and installation of advertising.

iii. Company shall provide, install, and maintain high quality, professionally designed commercial advertising displays on the IKE Kiosks. Company shall adhere to generally accepted principles of advertising in relation to good taste and truth in advertising. No advertising which is considered objectionable and offensive in its content or method of presentation shall be displayed. Whenever a question arises as to the propriety of an advertisement, prior to its installation, Company is required to submit the advertisement work to the City's Contract Manager for review and approval.

iv. Company shall comply with the City's Advertising Guidelines, which guidelines are set forth in this subpart. Company shall neither accept for display, install, display nor maintain any advertisement that falls within one or more of the following categories;

a. Has a strobing effect or visually replicates a traffic sign in colors and words, including but not limited to a red sign with the words "Stop", or a yellow sign with the words "LOOK", with the intent of falsely presenting themselves as emergency or official governmental signs. The City understands that words like "look" and "stop" may be used casually in advertisements, but should not be incorporated as the main call out message, paired with full color backgrounds of traditional traffic or safety colors (red, yellow, orange).;

b. false or misleading;

c. material that is immoral, lascivious, or obscene as defined in Section 847.001, Florida Statutes;

d. no advertising shall be for businesses engaged in any activity that requires the exclusion of minors pursuant to Chapter 847, Florida Statutes;

e. promotes unlawful or illegal goods, services or activities;

f. tobacco or tobacco related products including electronic cigarettes;

g. firearms;

h. sexual services, programs or products;

i. political candidates or political issues, campaigns; and

j. competitive products included in any citywide exclusive sponsorship agreement with non-alcoholic pouring rights providers, as notified in writing to Company at least 90 days prior to the date on which the sponsorship begins; provided, however, Company shall not be obligated to comply with this restriction with respect to more than (A) one (1) citywide exclusive pouring rights sponsor for non-alcoholic beverages categories other than energy drinks, and one (1) citywide exclusive pouring rights sponsor for non-alcoholic energy drinks at any given time during the Term and (B) two (2) citywide exclusive sponsorship agreements with non-alcoholic pouring rights providers per Term Year of the Term. As of the Effective Date of this Agreement the City has executed an exclusive pouring rights agreement with PepsiCo for all non-alcoholic beverage

categories, including but not limited to soda, water, juice, iced tea, isotonic, and an exclusive pouring rights agreement with Red Bull for the non-alcoholic energy drink beverage category, as such, advertising of any competing products is prohibited; and

- k. Advertisement relating to medical marijuana; and
- l. any such additional category of advertising that may be added by the Mayor and City Commission, as notified in writing to Company.

4. Advertising of alcoholic beverages, as defined by Section 561.01, Florida Statutes, shall be permitted with the following restrictions:

i. No advertising for alcoholic beverages shall be within 250 feet of any type of public or private school, including pre-schools, elementary schools, middle schools, high schools, colleges, and universities;

ii. No advertising for alcoholic beverages shall be within 250 feet of houses of worship, including churches, synagogues, temples, and mosques;

iii. No advertising for alcoholic beverages shall be within 250 feet of Hospitals or addiction treatment centers;

iv. No ad shall be allowed that promotes over consumption or boisterous/party behaviors. Additionally, all alcohol advertisements must be followed with an advertisement that speaks to safe consumption of alcohol, example "Drink Responsibly Miami Beach";

v. All advertising for alcoholic beverages must include the disclaimer below as mandated by the Alcoholic Beverage Labeling Act ("ABLA") of 1988. Government warning disclaimer must be equal to at least 10% of the size of the ad: "GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems."

5. Advertising Removal. Any prohibited material, in violation of this section, or unacceptable material, as determined by the City Manager, in the City Manager's sole discretion, which is displayed or placed, shall be removed immediately upon written notice to Company to remove said advertising, which notice may be sent via e-mail at: realestate@orangebarrelmedia.com, from the City Manager or City's Contract Manager. In the event Company fails to remove the advertising within 24 hours of receipt of the City's written notice, the City may take necessary actions to remove the advertisement. Company is obligated to reimburse the City for actions taken under this provision. The City is not liable for any damages in connection therewith.

15. **Property Ownership.** The City acknowledges that the IKE Kiosks, the Software, including any enhancements thereto regardless which party generated the enhancements, the IPR and any intellectual property rights in and to any of the content created by the Company and displayed thereon, with the exception of the City Directed Content, shall belong to the Company and no part thereof shall become or be deemed the property of the City. Company represents and warrants that it has the right, power and authority to use the IKE Kiosks, the Software, including any enhancements thereto, the IPR and any intellectual property rights in and to the content to be displayed on the IKE Kiosks, with the exception of the City Directed Content. Company agrees, at its sole cost and expense, to take all actions necessary to maintain ownership of its logos, trademarks and other marks during the Term. Company further represents and warrants that it has the right, power and authority to use its logos, trademarks and other marks of the Company. Company shall promptly notify the City of any infringement or unauthorized use of the IKE Kiosks, the Software, any IPR or any content created for the IKE Kiosks, including City Directed Content, of which it becomes aware and will cooperate fully to take all actions necessary to terminate such infringing or unauthorized use. Additionally, Company acknowledges that the City Directed Content, all logos, trademarks and other marks of the City, or any portion thereof, belong to City and no part thereof shall become or be deemed to be the property of the Company, regardless of whether the same are incorporated into City Directed Content ("City's Property"). City agrees, at its sole cost and expense, take all actions necessary to maintain ownership of its logos, trademarks and other marks during the Term. City represents and warrants that it has the right, power and authority to use the logos, trademarks and other marks of the City in any City Directed Content.

16. **Insurance and Indemnification.**

a. The Company shall maintain and require that their subcontractors maintain the below required insurance in effect for the duration of the Agreement. The maintenance of proper insurance coverage is a material element of the Agreement and failure to maintain or renew coverage may be treated as a material breach of the Agreement, which could result in termination of the Agreement. Following the expiration of the tenth (10th) Term Year, the City may elect to re-evaluate the coverage limits set forth in this Section 16 and request an increase in the coverage limits if deemed reasonably necessary based upon the economic conditions existing at the time of such request.

1. Workers' Compensation Insurance for all employees of Company, as required by Florida Statute Chapter 440, and Employer Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. Should Company be exempt from this Statute, Company and each employee shall hold the City harmless from any injury incurred during performance of the Agreement. If Company is exempt, Company shall also submit (i) a written statement detailing the number of employees and that they are not required to carry Workers' Compensation insurance and do not anticipate hiring any additional employees during the term of this Agreement or (ii) a copy of a Certificate of Exemption.

2. Commercial General Liability Insurance on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general

aggregate limit applies, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.

3. Automobile Liability Insurance covering any automobile, if Company has no owned automobiles, then coverage for hired and non-owned automobiles, with limit no less than \$2,000,000 combined per accident for bodily injury and property damage.

4. Professional Liability (Errors & Omissions) Insurance with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

5. Installation Floater Insurance against damage or destruction of the materials or equipment in transit to, or stored on or off the Locations, which is to be used in connection with the services. *(City of Miami Beach shall be Named as a Loss Payee on this policy, as its interest may appear. This policy shall remain in force until all of the IKE Kiosks have been installed and are operational)*

6. Umbrella Liability Insurance in an amount no less than \$5,000,000 per occurrence. The umbrella coverage must be as broad as the primary General Liability coverage.

Additional Insured - City of Miami Beach must be included by endorsement as an additional insured with respect to all liability policies (except Professional Liability and Workers' Compensation) arising out of work or operations performed on behalf of the Company including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed in the form of an endorsement to the Company's insurance.

Notice of Cancellation - Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services.

Waiver of Subrogation - Company agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation on the coverages required. However, this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers - Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA). Carriers may also be considered if they are licensed and authorized to do insurance business in the State of Florida.

Verification of Coverage - Company shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Company's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

CERTIFICATE HOLDER MUST READ:

CITY OF MIAMI BEACH
c/o EXIGIS Insurance Compliance Services
P.O. Box 4668 – ECM #35050
New York, NY 10163-4668

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at:

Certificates-miamibeach@riskworks.com

Compliance with the foregoing requirements shall not relieve the Company of its liability and obligation under this section or under any other section of this Agreement.

b. In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Company shall indemnify, hold harmless and defend the City, its officials, directors, members, employees, contractors, agents, and servants from and against any and all actions (whether at law or inequity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from: (1) wholly or in part from the negligent acts, errors, omissions or other misconduct of Company, its officers, director, members, employees, agents, contractors, subcontractors, or any other person or entity acting under Company's control or supervision; (2) Company's breach of the terms of this Agreement or its representations and warranties herein; (3) Company's operation of the IKE Kiosks; (4) Company's use of the Locations; or (5) Company's, or any of its officers, agents, employees or contractors actual or alleged failure to obtain any and all necessary licenses, permission, copyrights, and authorization associated with the work or services to be performed under this Agreement or any advertisements displayed on the IKE Kiosks. To that extent, Company shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals.

c. In addition, in consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Company shall indemnify, hold harmless and defend the City, its officials, directors, employees, contractors, agents, and servants from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of Company, its officials, directors, employees, contractors, agents, and servants not included in the paragraph in the subsection above and for which the City, its officials, directors, employees, contractors, agents, and servants are alleged to be liable.

17. **Representations and Warranties of the Parties.** The City and the Company represent and warrant to the other the following:

a. **Requisite Authority.** City and Company each has the requisite power and authority to enter into this Agreement, to grant the rights herein granted with respect to the Locations subject to City approval as may be required, to perform its obligations hereunder and to consummate the transactions contemplated hereby; and no further action on the part of the City or Company is necessary to authorize the execution and delivery by it, and the performance of its obligations under this Agreement. Neither the City nor Company is aware of any action, waiver or consent by any governmental entity that is necessary to make this Agreement a valid instrument binding upon the City and Company in accordance with its terms.

b. **Execution and Delivery.** The authorized representative of each of the parties has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid and binding obligation of each party, enforceable in accordance with its terms.

c. **No Violation; Absence of Defaults.** Neither the execution and delivery, by the City or Company of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any agreement or other instrument to which the City or Company is a party, or result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such agreement or other instrument, or (ii) violate any law, administrative regulation or rule or court order, judgment or decree applicable to the City or Company by which the City or Company is bound.

18. **Default and Remedies; Bond; Surrender.**

a. Subsections 1 through 5 shall constitute events of default under this Agreement. An event of default by Company shall entitle the City to exercise any and all remedies described as City's remedies under this Agreement, including but not limited to those set forth in Subsection 6.

1. **Bankruptcy.** If either the City or Company shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

2. Default in Payment.

In the event Company fails to submit any payment within five (5) days of its due date, there shall be a late charge of five percent (5%) of the payment amount due, in addition to, and not in lieu of, the interest at the rate of eighteen percent (18%) per annum or the highest rate allowable by law, whichever is less. If any payment and accumulated penalties are not received within fifteen (15) days following receipt of written notice from the City of such failure, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract; and may begin procedures to collect the Performance Bond required in Section (b) herein.

3. Non-Monetary Default. In the event that Company or the City fails to reasonably perform or observe the non-monetary covenants, terms or provisions under this Agreement (excluding Subsection 18(a)(4)), and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Company cures any default pursuant to this subsection, it shall promptly provide the City Manager with written notice of same.

4. Continuous Operation. The failure of any IKE Kiosk to be operational for a period of time exceeding fifteen (15) continuous calendar days, after written notice from the City, shall constitute a default under this Agreement. No additional cure period shall apply to a default under this Subsection 18(a)(3). Notwithstanding the foregoing, Company shall not be in default under this Section 18(a)(3) in connection with any downtime resulting from the City's action, a utility company's action or a force majeure event.

5. Florida Public Records Law. The failure of Company to comply with the requirements of Section 20, if such failure continues for more than thirty (30) days after Company's receipt of written notice thereof from the City.

6. City's Remedies for Company's Default. If any of the events of default, as set forth in this Section, shall occur, the City may, after expiration of the cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such defaults and to compensate City for damages resulting from such defaults, including but not limited to the right to give to Company a notice of termination of this Agreement. If such notice is given, the term of this Agreement shall terminate upon the date specified in such notice from City to Company. On the date so specified, Company shall then quit and surrender the Location(s) to City pursuant to the provisions of Subsection 18(c). Upon the termination of this Agreement, all rights and interest of Company in and to the Location(s) and to this Agreement, and every part thereof,

shall cease and terminate and the City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Company under this Agreement, including but not limited to, the Performance Bond in Section 18(b) herein.

In addition to the rights set forth above, the City shall have the rights to pursue any and all of the following:

a. the right to injunction or other similar relief available to it under Florida law against Company; and or

b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Company's default.

7. If an event of default by the City shall occur, the Company may, after expiration of the cure periods, as provided above, terminate this Agreement upon written notice to the City. Said termination shall become effective upon receipt of a written notice of termination by the City, but in no event shall Company specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, Company shall quit and surrender the Location(s) to City pursuant to the provisions of Subsection 18(c).

b. Performance Bond or Alternate Security. Upon execution of the Agreement, Company shall furnish to the City Manager or his designee a Performance Bond in the penal sum stated below for the payment of which Company shall bind itself for the faithful performance of the terms and conditions of this Agreement. A Performance Bond, in the amount of One Hundred Thousand (\$100,000.00) Dollars, shall be provided by the Company in faithful observance of this Agreement. A cash deposit, irrevocable letter of credit, or certificate of deposit may also suffice, as determined by the City Manager or his designee, in his sole and reasonable discretion. The form of the Performance Bond or alternate security shall be approved by the City's Chief Financial Officer. In the event that a Certificate of Deposit is approved, it shall be a One Hundred Thousand (\$100,000.00) Dollar one-year Certificate of Deposit in favor of the City, which shall be automatically renewed, the original of which shall be held by the City's Chief Financial Officer. Company shall be so required to maintain said Performance Bond or alternate security in full force and effect throughout the Term of this Agreement. Company shall have an affirmative duty to notify the City Manager or his designee, in writing, in the event said Performance Bond or alternate security lapses or otherwise expires. All interest that accrues in connection with any financial instrument or sum of money referenced above shall be the property of Company, except in an event of default, in which case the City shall be entitled to all interest that accrues after the date of default.

c. Surrender.

1. Within thirty (30) days following the conclusion of the Term, (or from the date of earlier termination of this Agreement), Company, at its sole cost and expense, shall remove the IKE Kiosks from the Locations (as well as any other permanent or fixed improvements) and restore the Locations as close as reasonably practical to their original conditions, subject to reasonable wear and tear. Company shall do such work as is reasonably necessary to promptly and

diligently cap-off and otherwise return all utility access points that were created, installed, or modified at the Locations by Company in connection with its performance under this Agreement to their original condition, subject to reasonable wear and tear. Company shall ensure that all such utility access points are left in a safe and secure condition, and that any necessary permits or approvals are obtained for any such work. Company shall further indemnify and hold harmless the City from any claims, damages, or expenses arising out of or related to Company's failure to comply with this Section 18(c).

2. Company's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of any Locations after termination or expiration of this Agreement shall constitute trespass by the Company, and may be prosecuted as such. In addition, should Company fail to remove all of the equipment from the Locations, including any permanent or fixed improvements, and remediate the Locations to the condition it was prior to the Effective Date, reasonable wear and tear excepted, within thirty (30) days after the conclusion of the Term (or the date of earlier termination of this Agreement), Company shall pay to the City One Thousand (\$1,000.00) Dollars per day per Location as liquidated damages for such trespass and holding over

3. Substitute Performance. In the event that Company fails to properly perform the removal of any IKE Kiosk and restoration of the Locations to their original condition in accordance with the terms of this Agreement, then the City shall have the right to undertake any actions and/or purchase, as the City Manager deems appropriate, any such supplies, materials, services, etc., necessary to remove the IKE Kiosks and restore the Locations to the condition required by this Section 18 and to charge Company for all actual costs thereby incurred by the City. Company shall be responsible for paying all of said costs within ten (10) days following receipt of the invoice.

19. Assignment. Except as otherwise provided herein, neither this Agreement nor any rights or obligations hereunder may be assigned by Company without the prior consent of the City Manager, which consent shall not be unreasonably withheld or delayed. Company shall notify the City of any proposed assignment in writing, at least ninety (90) days prior to the proposed effective date of such assignment and the City shall respond within ninety (90) days. Failure to respond within the ninety (90) day period shall not be interpreted as an approval of the assignment by the City. In the event that the assignment is approved by the City, the assignee shall agree to be bound by all of the covenants of this Agreement required of Company. Notwithstanding anything contained in this Agreement to the contrary, the consent of City shall not be required in connection with the Company's entering into any equipment financing or equipment leasing with respect to, or the granting of a security interest in and to, the IKE Kiosks; provided, however, that Company shall not be authorized to encumber the City's interest/property, including the Location, which is City-owned property.

20. Florida Public Records Law.

a. Company shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

b. The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

c. Pursuant to Section 119.0701 of the Florida Statutes, if the Company meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Company shall:

1. Keep and maintain public records required by the City to perform the service;

2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Company does not transfer the records to the City;

4. Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Company or keep and maintain public records required by the City to perform the service. If the Company transfers all public records to the City upon completion of the Agreement, the Company shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Company keeps and maintains public records upon completion of the Agreement, the Company shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

d. Request For Records; Noncompliance.

1. A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Company of the request, and the Company must provide the records to the City or allow the records to be inspected or copied within a reasonable time

2. Company's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.

3. If Company fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

e. Civil Action.

1. If a civil action is filed against a Company to compel production of public records relating to the City's contract for services, the court shall assess and award against the Company the reasonable costs of enforcement, including reasonable attorneys' fees, if:

a. The court determines that the Company unlawfully refused to comply with the public records request within a reasonable time; and

b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Company has not complied with the request, to the City and to the Company.

2. A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Company at the Company's address listed on its contract with the City or to the Company's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

3. If Company complies with a public records request within 8 business days after the notice is sent, Company will not liable for the reasonable costs of enforcement.

f. Section 119.0701, Florida Statutes, Required Statement. **IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR AS TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411**

21. Confidentiality and Sunshine Laws.

a. The parties understand that City is a governmental entity required to comply with the Florida Public Records law under Chapter 119 of the Florida Statutes (the "Act") when responding to records requests made under the Act. Pursuant to Section 119.0715, Florida Statutes, trade secret information, as defined in Section 812.081,

Florida Statutes, and Section 688.002, Florida Statutes are confidential and exempt from Section 119.07(1), Florida Statutes and s. 24(a), Art. 1 of the Florida Constitution. It is the responsibility of Company to conspicuously mark materials that constitute trade secrets under Florida law prior to the submission of such materials to the City. If City receives a request for information which the Company has marked as being a trade secret, the City will notify Company of its receipt of the request and may request that Company execute an Affidavit of Trade Secret Certification in the form attached to this Agreement as Exhibit "C", setting forth the basis for the exemption. If the requester of the public record objects to the exemption, the City will promptly provide Company with notice of the objection, so as to provide Company the opportunity to file an action with a court of competent jurisdiction within thirty (30) calendar days, seeking an order barring public disclosure of the document. If Company fails to file a lawsuit within such time period, the City shall produce the public records requested in accordance with Florida law. If the requester of a public record, which is in the possession of Company, objects to the trade secret exemption set forth in the Trade Secret Affidavit and files a lawsuit against the City seeking to compel the City to produce the record that is in the possession of Company, the City will promptly provide Company with written notice of the lawsuit, so as to provide Company the opportunity to intervene in the lawsuit and defend the City. Company agrees to indemnify, defend and hold harmless the City with respect to all expenses, including any court costs and attorney's fees, which may be incurred by the City in connection with any administrative or court proceeding, including any appellate action, arising out of any public records request relating to any information asserted to be a trade secret by Company. Nothing in this Agreement shall require the City to institute or participate in any litigation relating to an open records request for information that the Company considers to be a trade secret. Notwithstanding any other provision contained in this Agreement, this Agreement, including its terms, and any other records that the City keeps in connection with this Agreement, as part of its transaction of official business including, without limitation, payment records, and financial statements shall not be considered a trade secret.

Notwithstanding any other provision of this Agreement, the provisions of this Section 21 shall survive the termination of this Agreement

22. **Force Majeure.**

a. A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of the Company or the City's obligations under the Agreement, and (ii) is beyond the reasonable control of such party unable to perform the obligation, and (iii) is not due to an intentional act, error, omission, or negligence of such party, and (iv) could not have reasonably been foreseen and prepared for by such party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, pandemics, terrorism, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, or failure to secure any of the required permits pursuant to the Agreement.

b. If the City or Company's performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall

immediately, upon learning of the occurrence of the event or of the commencement of any such delay, but in any case within fifteen (15) business days thereof, provide notice: (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.

c. No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.

d. Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event, causing the suspension of performance, shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.

e. Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend the City's payment obligations under the Agreement, and may take such action without regard to the notice requirements herein. Additionally, in the event that an event of Force Majeure delays a party's performance under the Agreement for a time period greater than one (1) year, either party may terminate the Agreement on a given date, by giving written notice to the other of such termination, following which the parties shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement, except for those obligations intended to survive the expiration or termination of the Agreement. In no event will any condition of Force Majeure extend this Agreement beyond its stated term.

f. Waiver of Loss from Hazards. Company hereby expressly waives all claims against the City for loss or damage sustained by Company resulting from any Force Majeure contemplated in this Section, and Company hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City, from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

23. **E-Verify.**

a. To the extent that Company provides labor, supplies, or services under this Agreement, Company shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Company shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, Company shall expressly require any subcontractor performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract Term. If Company enters into a contract with an approved subcontractor, the subcontractor must provide the Company with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Company shall maintain a copy of such affidavit for the duration of the contract or such other extended period as may be required under this Agreement.

b. **TERMINATION RIGHTS.**

1. If the City has a good faith belief that Company has knowingly violated Section 448.09(1), Florida Statutes, which prohibits any person from knowingly employing, hiring, recruiting, or referring an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States, the City shall terminate this Agreement with Company for cause, and the City shall thereafter have or owe no further obligation or liability to Company.

2. If the City has a good faith belief that a subcontractor has knowingly violated the foregoing Subsection (a), but the Company otherwise complied with such subsection, the City will promptly notify the Company and order the Company to immediately terminate the contract with the subcontractor. Company's failure to terminate a subcontractor shall be an event of default under this Agreement, entitling City to terminate this Agreement for cause.

3. A contract terminated under the foregoing Subsection (b)(1) or (b)(2) is not in breach of contract and may not be considered as such.

4. The City or Company or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (b)(1) or (b)(2) no later than 20 calendar days after the date on which the contract was terminated.

5. If the City terminates the Agreement with Company under the foregoing Subsection (b)(1), Company may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.

6. Company is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 23.

24. **Inspector General Audit Rights.**

a. Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

b. The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Company, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.

c. Upon ten (10) days written notice to the Company, the Company shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Company its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

d. The Inspector General shall have the right to inspect and copy all documents and records in the Company's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

e. The Company shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:

1. If this Agreement is completely or partially terminated, the Company shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

2. The Company shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.

f. The provisions in this section shall apply to the Company, its officers, agents, employees, subcontractors and suppliers. The Company shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Company in connection with the performance of this Agreement.

g. Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Company or third parties.

25. **Casualty.** Company shall have the responsibility, at its own cost and expense, of maintaining property insurance to cover the IKE Kiosks under this Agreement. Notwithstanding the foregoing, if during the Term all or more than fifty percent (50%) of the IKE Kiosks are damaged by a casualty, the Company shall have the option to terminate this Agreement in its entirety by written notice given to the City promptly after the occurrence of the casualty. All insurance proceeds or other compensation for any such casualty shall belong to the Company.

26. **Notice.** All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by (a) personal delivery, (b) certified mail, return receipt requested, or (c) nationally recognized overnight courier service to the address set forth below or as otherwise designated in writing by the parties. All notices delivered pursuant to the terms of this section shall be deemed delivered on receipt or refusal of receipt.

If to the City: City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

With copy to: City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139
Attn: Assistant Director of the Public Works Department

If to the Company: IKE SMART CITY, LLC
250 N. Hartford Avenue
Columbus, Ohio 43222
Attn: Chief Financial Officer

With a copy to: Underhill & Hodge, LLC
8000 Walton Parkway, #260
New Albany, OH 43054
Attn: Lesley Armour, Esq.

27. **Limitation Of Liability.** The City desires to enter into this Agreement placing the operation and management of the Locations in the hands of a private management entity only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of One Hundred Thousand (\$100,000.00) Dollars. Company hereby expresses its willingness to enter into this Agreement with a One Hundred Thousand (\$100,000.00) Dollars limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of One Hundred Thousand (\$100,000.00) Dollars, the receipt of which is hereby acknowledged, the City shall not be liable to Company for damages to Company in an amount in excess of One Hundred Thousand (\$100,000.00) Dollars, for any action for breach of contract arising out of the performance or on-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

28. **No Discrimination.** In connection with the performance of the Services, the Company shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Company shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment (including independent contractors), housing, public accommodations, public services, and in connection with its membership or policies because of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, hair texture and/or hairstyle, domestic partner status, labor organization membership, familial situation, or political affiliation.

29. **Governing Law/Venue.** This Agreement shall be governed by and construed by the laws of the State of Florida, and exclusive jurisdiction over any legal action arising out of or in connection with this Agreement shall be brought only in a court of competent jurisdiction located in Miami-Dade County, Florida.

30. **Counterparts and Electronic Signatures.** This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered with reasonable promptness thereafter.

31. **Drafting.** This Agreement has been negotiated between the parties and, for construction purposes, shall not be deemed the drafting of any one party.

32. **Complete Agreement.** This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and Agreements of whatsoever nature or kind existing between the parties with respect to Company's operations, as contemplated herein.

33. **Amendments; Invalidity.** This Agreement may not be modified except by an instrument in writing executed by the parties. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement or any portion thereof shall not affect the remaining portions thereof or any part hereof and this Agreement shall be amended to substitute a valid provision which reflects the intent of the parties as was set forth in the invalid provision.

34. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

35. **Not a Lease or License.** It is expressly understood and agreed that no part, parcel, building, facility, equipment or space is leased or licensed to the Company; that the Company's right to operate shall continue only so long as this Agreement remains in effect.

36. **Signage.** City shall be responsible to provide, at its sole cost and expense, and as (or if) it deems necessary in its sole and reasonable judgment and discretion, any traffic, regulatory or public safety signs, whether related directly or indirectly to the operation of the IKE Kiosks.

37. The City Manager shall have authority provide any approvals on behalf of the City under this Agreement, unless the authority is specifically granted to the "Mayor and City Commission".

38. **Liens.** In the event any notice of claim of lien shall be asserted against the interest of the City on account of or arising from any work done by or for Company, or any person claiming by, through or under Company, or for improvements or work, the cost of which is the responsibility of Company, Company agrees to have such notice or claim of lien cancelled and discharged within thirty (30) days after notice to Company by City. In the event Company fails to do so, the City may terminate this Agreement for cause without liability to the City.

39. **No Third Party Beneficiary.** Nothing in this Agreement shall confer upon any person or entity, including, but not limited to subcontractors, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

40. **Exhibits.** All exhibits referred to in this Agreement are incorporated in this Agreement by reference and will be deemed part of this Agreement for all purposes as if set forth at length herein.

41. **No Joint Venture, Partnership, Agency.** This Agreement will not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer employee relationship between City and the Company.

42. **No Waiver.** The failure of any party to exercise any right hereunder, or to insist upon strict compliance by the other party, shall not constitute a waiver of either party's right to demand strict compliance with the terms and conditions of this Agreement

43. **Survival.** The provisions of this Agreement which, by their reasonable terms, are intended to survive termination of this Agreement shall survive termination. In the event that this Agreement is terminated or expires by its terms, such expiration or termination shall not affect any liability or other obligation which shall have accrued prior to such termination.

44. **Section Headings.** The section headings herein are inserted only for convenience and reference and shall in no way define, limit, or prescribe the scope or intent of any provisions of this Agreement.

45. **Usage of Terms.** When the context in which words are used herein indicates that such is the intent, words in the singular number shall include the plural and vice versa. All pronouns and any variations thereof shall be deemed to refer to all genders.

46. **Attorneys' Fees and Costs.** In the event of any claim, controversy or dispute regarding this Agreement, its interpretation or the performance or enforcement of the parties' rights, duties, remedies and obligations hereunder, each party shall bear their own costs and fees.

47. **JURY TRIAL WAIVER.** CITY AND COMPANY HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY AND COMPANY MAY HERINAFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE LOCATION.

[the remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

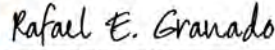
City:

CITY OF MIAMI BEACH,
a Florida municipal corporation

By: 
Print: Alina T. Hudak, City Manager

ATTEST:

DocuSigned by:

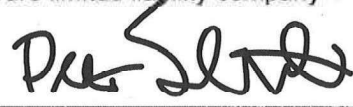


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Rafael E. Granado, City Clerk

Date: 7/28/2023 | 6:03 EDT

COMPANY:

IKE SMART CITY, LLC,
a Delaware limited liability company

By: 
Pete Scantland, Chief Executive Officer

Date: 7/10/23


APPROVED AS TO
FORM & LANGUAGE
BY EXECUTION
 City Attorney
Date 07/10/23

Exhibit D

Pursuant to Section 2.13.7.d of the City Resiliency Code, a decision on an application for a Certificate of Appropriateness shall be based upon the following:

- I. Evaluation of Compatibility. Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable, compliance with the following criteria pursuant to section 2.13.7(d)(ii)(1) of the Code.
 - a. The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time.
Not Applicable.
 - b. The Secretary of Interior's Standards for Reconstruction as may be amended from time to time.
Not Applicable.
 - c. Other guidelines/policies/plans adopted or approved by resolution or ordinance by the city commission.
The proposed Kiosks are consistent with prior City Commission approvals and adopted policies supporting pedestrian-oriented uses within active public corridors.
- II. Compatibility with Surrounding Properties. In determining whether a particular application is compatible with surrounding properties the historic preservation board must consider the following criteria pursuant to section 2.13.7(d)(ii)(2) of the Code.
 - a. Exterior architectural features.
The Kiosks feature a restrained, contemporary design that is visually compatible with surrounding historic structures while remaining subordinate and distinguishable.
 - b. General design, scale, massing and arrangement.
The modest scale and vertical proportions of the Kiosks ensure they do not visually dominate the surrounding streetscape or adjacent contributing buildings.

- c. Texture and material and color.
The materials and finishes are neutral and durable, allowing the Kiosks to integrate into the surrounding public realm without introducing visually disruptive elements.
 - d. The relationship of a, b, c, above, to other structures and features of the district.
The Kiosks are sited and designed to complement existing streetscape features, lighting, and building patterns within the historic district.
 - e. The purpose for which the district was created.
The Kiosks support the pedestrian-oriented and civic character of the historic districts by enhancing wayfinding, public engagement, and visitor orientation.
 - f. The relationship of the size, design and siting of any new or reconstructed structure to the landscape of the district.
The Kiosks are appropriately located within established pedestrian zones and maintain clear circulation paths without altering the districts' spatial organization.
 - g. A historic resources report, containing all available data and historic documentation regarding the building, site or feature.
Not Applicable.
 - h. The original architectural design or any subsequent modifications that have acquired significance.
Not Applicable.
- III. Architectural review criteria. The examination of architectural drawings for consistency with the criteria pursuant to section 2.13.7(d)(ii)(3) of the Code and stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure, public interior space and physical attributes of the project in relation to the site, adjacent structures and properties, and surrounding community.

- a. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting screening devices.

The Kiosks are strategically located to avoid conflicts with building entrances, utilities, and pedestrian circulation while integrating with existing streetscape elements.

- b. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, any applicable overlays, for a particular application or project.

The compact footprint and height of the Kiosks are appropriate for their public right-of-way locations and consistent with surrounding conditions.

- c. The color, design, surface finishes and selection of landscape materials and architectural elements of the exterior of all buildings and structures and primary public interior areas for developments requiring a building permit in areas of the city identified in section 2.13.1(c).

The Kiosk design employs subdued colors and finishes that are compatible with the surrounding historic contexts and public-space materials.

- d. The proposed structure, and/or additions to an existing structure is appropriate to and compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties, or the purposes for which the district was created.

The Kiosks are compatible with adjacent historic buildings and enhance the public realm without detracting from the character of the surrounding area.

- e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

The Kiosk placements maintain efficient pedestrian circulation and do not interfere with existing site functionality or sightlines.

- f. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided and that driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with vehicular traffic flow on these roads and pedestrian movement onto and within the site, as well as permit both pedestrians and vehicles a safe ingress and egress to the site.

The Kiosks are located to preserve clear pedestrian paths and do not impede vehicular movement, access, or visibility.

- g. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties and consistent with a City master plan, where applicable.

The Kiosk screens are designed and calibrated to minimize glare and reflective impacts on adjacent properties and the public right-of-way, while maintaining compatibility with existing ambient lighting conditions in the surrounding area.

- h. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.

Where applicable to the Kiosk installation, any minor paving adjustments associated with placement or anchoring will be restored to match existing materials and patterns, ensuring continuity with the surrounding public realm and site design.

- i. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.

The scale and placement of the Kiosks do not necessitate additional buffering and avoid adverse impacts to adjacent properties or pedestrian areas.

- j. Any proposed new structure shall have an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

The orientation and massing of the Kiosks are sensitive to surrounding conditions and maintain important pedestrian views and spatial relationships.

- k. All buildings shall have, to the greatest extent possible, space in that part of the ground floor fronting a sidewalk, street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the proposed building fronting a sidewalk, street or streets shall be residential or commercial spaces, or shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of a parking structure from the surrounding area and is integrated with the overall appearance of the project.

Not Applicable.

- l. All buildings shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

Not Applicable.

- m. Any addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

Not Applicable.

- n. All portions of a project fronting a street or sidewalk shall incorporate an amount of transparency at the first level necessary to achieve pedestrian compatibility.

While not a building, the Kiosks are pedestrian-oriented elements facing the sidewalk and public realm, consistent with the intent of this criterion.

- o. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.

Not Applicable.

- p. In addition to the foregoing criteria, the requirements of chapter 104, of the General Ordinances, shall apply to the historic preservation board's review of any proposal to place, construct, modify or maintain a wireless communication facility or other over the air radio transmission or radio reception facility in the public rights-of-way.

Not Applicable.

- q. The structure and site comply with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

The Kiosks comply with applicable sea level rise and resiliency criteria and do not introduce habitable space or critical infrastructure at risk of flooding.