

**AMENDMENT NO. 1 TO THE AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA
AND
IKE SMART CITY, LLC**

This Amendment No. 1 ("Amendment") to the Agreement for the design, manufacture, installation, operation, and maintenance of interactive digital media kiosks (the "Agreement"), dated July 28, 2023, by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 ("City"), and the IKE Smart City, LLC, a Delaware limited liability company ("IKE"), is entered into this ____ day of _____, 2023 ("Effective Date") and hereby amends the Agreement as follows:

RECITALS

WHEREAS, on July 28, 2023, the City and IKE executed the Agreement; and

WHEREAS, on September 13, 2023, the Mayor and City Commission of the City of Miami Beach authorized the City to enter into a Memorandum of Understanding with the Florida Department of Transportation ("FDOT") for the installation, operation, and maintenance of IKE kiosks on various FDOT rights-of-way ("FDOT Agreement"); and

WHEREAS, on _____ the City and the FDOT executed the FDOT Agreement; and

WHEREAS, IKE has agreed to assume the City's obligations under the FDOT Agreement for a term congruent with the term of the Agreement; and

WHEREAS, the City and IKE desire to amend the terms of this Agreement pursuant to the terms set forth herein.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and IKE hereby agree to amend the Agreement as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Agreement.

2. MODIFICATIONS.

The Agreement is hereby modified (deleted items ~~struck through~~ and inserted items underlined) as follows:

- a. Assumption of City's Obligations. IKE hereby assumes the City's obligations under the FDOT Agreement, and in doing so, shall ensure that all IKE Kiosks installed on FDOT rights-of-way are installed, operated, and maintained pursuant to the requirements in the FDOT Agreement, attached and incorporated as Exhibit "A".

b. Permits. For those IKE Kiosks to be located on FDOT rights-of-way only, IKE, or its representatives or agents, shall apply for and obtain any and all General Use Permits (as defined in Section 14-20.010 of the Florida Administrative Code), and renewals or reissuances thereof. IKE remains responsible for any and all costs and expenses associated with obtaining the General Use Permits.

c. FDOT Agreement. The City shall not modify, amend or terminate the FDOT Agreement in any manner that would increase the obligations or decrease the rights of IKE under the Agreement without the prior written consent of IKE, unless IKE is in default under the Agreement or unless required by any laws (as defined in Section 14.j of the Agreement) or the FDOT, in which case the City shall provide notice to IKE. The City shall provide immediate written notice to IKE in the event the City becomes aware of any default under either the FDOT Agreement or any permits for the installation, operation, or maintenance of the IKE Kiosks issued to the City.

d. Indemnification. Section 16 of the Agreement is hereby amended to include the following as new subparagraph d.:

d. Without limiting the Company's indemnification obligations pursuant to this Section 16 or any other provision of this Agreement, Company shall further indemnify, hold/save harmless, and defend at its own cost and expense, the City, its agencies and instrumentalities such as its elected and appointed officials, agents, and employees (collectively, for the purposes of this paragraph, the "City") from and against any claim, demand or cause of action of whatsoever kind or nature arising out of the maintenance, installation, and/or management of the IKE Kiosks by Company, its agents, employees, and contractor, including but not limited to the maintenance, installation and/or management of the IKE Kiosks on Florida Department of Transportation rights-of-way and as it related to the FDOT Agreement.

3. **COUNTERPARTS**. This Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute one and the same Amendment. The parties shall be entitled to sign and transmit an electronic signature of this Amendment.

4. **RATIFICATION**.

Except as amended herein, all other terms and conditions of the Agreement are ratified and shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

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Exhibit A

FLORIDA DEPARTMENT OF TRANSPORTATION MASTER MAINTENANCE MEMORANDUM OF AGREEMENT FOR WAYFINDING KIOSK DEVICES WITH THE CITY OF MIAMI BEACH

This **AGREEMENT**, entered into on _____, 2023, by and between the State of Florida Department of Transportation, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the City of Miami Beach, a municipal corporation of the State of Florida, hereinafter called the **CITY**, and collectively referred to as the **PARTY/PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over the following **State Roads: Indian Creek Drive, Alton Road, Collins Avenue, 5th Street, Harding Avenue, 71st Street, Normandy Drive, and 63rd Street**; and
- B. Pursuant to that certain IKE Agreement dated July 28, 2023, attached hereto as **Exhibit “A”**, between the **CITY** and IKE Smart City, LLC, a Delaware limited liability company, hereinafter called **IKE**, **IKE** intends to install, operate, and maintain wayfinding kiosks in and around the **CITY**, which wayfinding kiosks are powered by electricity, hereinafter called **KIOSKS**; and
- C. The **CITY**, on behalf of **IKE**, desires to obtain approval from the **DEPARTMENT** to install, operate, and maintain **KIOSKS** on **DEPARTMENT** owned right-of-way (RW) for State Roads which the **DEPARTMENT** has jurisdiction over, collectively referred to as the **PROJECT LIMITS** as described in **Exhibit “B”**, and
- D. The **DEPARTMENT** will consider requests and may, but is not obligated to, grant approval to the **CITY** to install, operate, and maintain **KIOSKS** for the transportation purpose of providing wayfinding devices for pedestrians and bicyclists; and
- E. The **DEPARTMENT** has determined that the **KIOSKS** are not “sign(s)” as that word is used in Section 337.407 of the Florida Statutes and, as a result, the **KIOSKS** are not subject to the prohibition set forth in Section 337.407(1) of the Florida Statutes; and
- F. **DEPARTMENT** approval is authorization to the **CITY** to install, operate, and maintain **KIOSKS** and does not transfer any property rights to the **CITY** or **IKE**; and
- G. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into this agreement designating and setting forth the responsibilities of each **PARTY** with regards to the installation, operations, and maintenance of the **KIOSKS** installed within the **PROJECT LIMITS** and further the **PARTIES** acknowledge this **AGREEMENT** was drafted with equal participation by both **PARTIES**; therefore, no term or condition of this **AGREEMENT** shall be strictly interpreted in favor of or against either **PARTY**; and

- H. The **PARTIES** agree that the execution of this **AGREEMENT** constitutes an assignment of all installation, operations, and maintenance responsibilities pertaining to all **KIOSKS** within the **PROJECT LIMITS** to the **CITY**.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the **PARTIES** covenant and agree as follows:

1. RECITALS

The recitals in this **AGREEMENT** are true and correct and are incorporated herein by reference and made a part hereof.

2. INSTALLATION

- a. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** per the IKE Agreement dated July 28, 2023, between the **CITY** and **IKE** and this **AGREEMENT**. In case of conflict, this **AGREEMENT** prevails.
- b. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** in urban, high pedestrian volume areas along areas of roadways where the speed limit does not exceed 35 miles per hour at the time of installation.
- c. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** to provide a clear, unobstructed pedestrian path that is a minimum of five (5) feet in width.
- d. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** at the maximum practical distance from the face of curb. The **CITY** will provide a minimum of four (4) feet from the face of curb to the **KIOSK** edge closest to the roadway within the **PROJECT LIMITS** and will increase this distance as needed to align the **KIOSKS** with existing features in the immediate vicinity of the **KIOSKS** such as utility poles, trees, etc. so that a pedestrian weaving pattern is not created. The **DEPARTMENT** will consider written requests from the **CITY** for distances less than four (4) feet if aligning the **KIOSK** edge closest to the roadway with existing features in the immediate vicinity of the **KIOSKS** such as utility poles, trees, etc. eliminates a pedestrian weaving pattern; approval or denial of said requests by the **DEPARTMENT** shall be in writing.
- e. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** a minimum distance of 15 (fifteen) feet from any fire hydrant or accessible parking space.
- f. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** to not create any horizontal sight distance issues or other driver, bicyclist, or pedestrian sight obstructions.

- g. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** in accordance with the **DEPARTMENT's** Standard Specifications for Road and Bridge Construction applicable at the time of the installations.
- h. The **CITY** will install utilities for all **KIOSKS** within the **PROJECT LIMITS** without open cutting or trenching the sidewalk and pavement. The **CITY** will remove and replace sidewalks impacted by **KIOSK** installation from sidewalk joint to sidewalk joint.
- i. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** without creating horizontal walking surface gaps greater than a half (1/2) of an inch including gaps between the interface (perimeter) of the **KIOSKS** and the walking surface the **KIOSKS** reside on. If a separate 'pedestal' foundation is used, the interface of the foundation with the walking surface will be either flush or will extend a minimum of six inches above the walking surface to function as a detectable curb delineating the walking surface from the foundation 'pedestal'. In no cases shall the foundation or level landing configuration impinge upon an unobstructed, clear side reach of ten inches from the edge of the level landing to the controls.
- j. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** without creating vertical sidewalk differentials greater than a quarter (1/4) of an inch including differentials between the interface (perimeter) of the **KIOSKS** and the walking surface the **KIOSKS** reside upon.
- k. The **CITY** will install all **KIOSKS** securely to their foundations and will provide a clear opening between the **KIOSKS** and the sidewalks to facilitate cleaning of the sidewalks and preclude the accumulation of litter and debris.
- l. The **CITY** will install all **KIOSKS** with a minimum 30 inch x 48 inch level landing directly in front of the operational controls with the 48 inch dimension centered on the controls. A level landing is considered a 2% maximum surface slope in all directions.
- m. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** with screens that do not exceed 18 square feet in size and only provide messages on the front and back of the **KIOSKS**; **further** the **KIOSKS** themselves shall not be lit.
- n. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** with light sensors allowing the screens to automatically dim brightness during nighttime hours.
- o. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** with physical and cyber hacking security to prevent displays or messages which are not intended and approved by the **CITY** and **IKE**.

- p. The **CITY** will install all **KIOSKS** within the **PROJECT LIMITS** with remote monitoring and control capability so any compromise in security can be shut down immediately.

3. **OPERATIONS AND MAINTENANCE**

- a. The **CITY** will operate and maintain all **KIOSKS**, as long as the **KIOSKS** remain in place, to ensure safety, aesthetics, and function.
- b. The **CITY** will operate and maintain all **KIOSKS** within the **PROJECT LIMITS** in accordance with the terms of the IKE Agreement dated July 28, 2023, between the **CITY** and **IKE** and this **AGREEMENT**. In case of conflict, this **AGREEMENT** prevails.
- c. The **CITY** will allow the **DEPARTMENT** to have input on and utilize the **CITY's** Directed Content for **KIOSKS** installed within the **PROJECT LIMITS** per the terms of the IKE Agreement dated July 28, 2023, between the **CITY** and **IKE**.
- d. The **CITY** will operate and maintain all **KIOSKS** to ensure screens automatically dim brightness during nighttime hours.
- e. The **CITY** will operate and maintain all **KIOSKS** within the **PROJECT LIMITS** to ensure messages do not display chasing, flashing, or moving lighting.
- f. The **CITY** will operate all **KIOSKS** within the **PROJECT LIMITS** to provide message content that is of broad community interest and significance, approved by the **CITY**, and consistent with the IKE Agreement dated July 28, 2023, between the **CITY** and **IKE**. Message content will comply with the message content-related provisions of the **DEPARTMENT'S** "Sponsorship Program Policy" (dated February 6, 2014) or any future message content policy that replaces it. The **CITY** will respond to and resolve all issues, comments, and questions relating to message content, regardless of source, to the satisfaction of the **DEPARTMENT**.
- g. The **CITY** will operate and maintain all **KIOSKS** within the **PROJECT LIMITS** to ensure they are secure from physical and cyber hacking resulting in displays or messages which are not intended and can be monitored and controlled remotely to immediately shut down any compromise in security. The **CITY** will immediately shut down any displays or messages not intended and approved by the **CITY** and **IKE**.
- h. The **CITY** will operate and maintain all **KIOSKS** within the **PROJECT LIMITS** to ensure all horizontal walking surface gaps in the immediate vicinity of installed **KIOSKS** are not greater than a half (1/2) of an inch including gaps between the interfaces (perimeters) of the **KIOSKS** and the walking surface the **KIOSKS** reside on.

- i. The **CITY** will operate and maintain all **KIOSKS** within the **PROJECT LIMITS** to ensure all walking surface vertical differentials are not greater than a quarter (1/4) of an inch in depth including vertical differentials between the interfaces (perimeters) of the **KIOSKS** and walking surface the **KIOSKS** reside on.
- j. The **CITY** will remove and dispose of litter within a 10- foot radius around each **KIOSK** within the **PROJECT LIMITS** during the daily visits to each **KIOSK** in accordance with paragraph 13.a of the IKE Agreement dated July 28, 2023, between the **CITY** and **IKE**.
- k. The **CITY** will submit Lane Closure Requests to the **DEPARTMENT** when maintenance activities require the closure of a traffic lane in the **DEPARTMENT's** right-of-way. Lane closure requests shall be submitted through the District Six Lane Closure Information System, to the **DEPARTMENT's** area Permit Manager in accordance with the District Six Lane Closure Policy, as may be amended from time to time.
- l. The **CITY** will provide the **DEPARTMENT** a report every January with the total yearly (12-month period) usage for each of the **KIOSKS**. The report shall include the number of impressions gathered at each **KIOSK** installed within the **PROJECT LIMITS**, the number of hours the **KIOSK** is not operational, the number and duration of public service messages, and the total number of incidents/accidents recorded/reported that involves the **KIOSK**.
- m. The **CITY** will maintain a service log of all operations and maintenance activities within the **PROJECT LIMITS** that sets forth the date of the activity, the **KIOSK** that was maintained, and the work that was performed.
- n. The **CITY** is responsible for obtaining copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, as may be amended from time to time.

4. INSTALLATION, OPERATIONS, AND MAINTENANCE DEFICIENCIES

- a. If at any time and for any reason it shall come to the attention of the **DEPARTMENT** that the **CITY's** contractual obligations as established herein are not being complied with pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, delivered to the Office of the **CITY MANAGER**, to notify the **CITY** of the deficiencies. If the deficiencies are safety related or displayed messages related, the **CITY** shall immediately correct the cited deficiencies. The **CITY** shall correct cited deficiencies which are not safety related or displayed messages related in accordance with paragraph 13.a of the IKE Agreement dated July 28, 2023, between the **CITY** and **IKE**.

- b. The **CITY** will provide the **DEPARTMENT** with an assessment of the cause of said deficiencies and provide written remedial measures that will be taken to prevent reoccurrence. If said deficiencies are not corrected to the satisfaction of the **DEPARTMENT**, the **DEPARTMENT** may, at its option, correct any deficiencies or non-compliance and/or remove the **KIOSKS** at the **DEPARTMENT**'s sole discretion and seek the costs of correcting the deficiencies or KIOSK removal from the **CITY**.

5. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by email or certified U.S. mail, return receipt requested, postage prepaid, addressed to the **PARTY** to receive such notices as follows:

To the DEPARTMENT: Florida Department of Transportation
1000 Northwest 111 Avenue, Room 6205
Miami, Florida 33172-5800
Attn: District Maintenance Engineer
Email: renato.marrero@dot.state.fl.us

To the CITY: City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139
Attention: CITY Manager

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

Notices sent by email will be deemed to have been received by the end of one (1) business day after being sent unless a reply of actual receipt is provided. Notices sent by certified U.S. mail shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided.

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE KIOSKS

- a. The **CITY** will remove, relocate, or adjust at any time in the future **KIOSKS** and restore the area of the removed, relocated, or adjusted **KIOSKS** within the **PROJECT LIMITS** to a standard concrete sidewalk, in accordance with the **DEPARTMENT**'s guidelines, standards, specifications, and procedures, at the **CITY**'s expense, for the construction, repair, improvement, maintenance, safe and efficient operation, alteration, or relocation of all, or any part of a state road, at the **DEPARTMENT**'s sole discretion and satisfaction.

- b. The **DEPARTMENT** will notify the **CITY** a minimum of 60 calendar days prior to any **DEPARTMENT**-directed relocation, removal, or adjustment to allow the **CITY** time to coordinate the relocation, removal, or adjustment. If the **KIOSKS** are not relocated, removed, or adjusted in a timely manner as determined by the **DEPARTMENT**, then the **DEPARTMENT** will remove the **KIOSKS** at the **CITY**'s expense.
- c. The **CITY**'s operations and maintenance responsibilities will survive any relocation or adjustment, as long as the **KIOSKS** remain within the **PROJECT LIMITS**.

7. **AUTHORIZATION TO INSTALL, OPERATE, AND MAINTAIN**

- a. The **CITY** will submit draft **KIOSK** installation plans and details and schedules for each proposed location within the **PROJECT LIMITS** to the **DEPARTMENT**. The **DEPARTMENT** will review the draft **KIOSK** installation plans and details and schedules for compliance with the requirements of this **AGREEMENT** and review upcoming **DEPARTMENT** projects. The **DEPARTMENT** and **CITY** will discuss any comments, questions, and concerns within thirty (30) calendar days and meet on- site if requested by either the **DEPARTMENT** or **CITY**.
- b. After the on-site meeting, if requested, and resolution of any comments, questions, and concerns, the **CITY** will submit a General Use Permit application for each proposed **KIOSK** location or relocation to the **DEPARTMENT**. The General Use Permit application must include installation plans and details signed and sealed by a Professional Engineer registered in the State of Florida and installation schedules showing the requirements of this **AGREEMENT** are satisfied.
- c. The **DEPARTMENT** will review the General Use Permit application, and if all requirements of this **AGREEMENT** are satisfied, approve the General Use Permit application for a term of four (4) years.
- d. The **CITY** will install the **KIOSK** within 180 calendar days of **DEPARTMENT** approval of the General Use Permit.
- e. At the end of the four (4) year term, the **CITY** may submit another General Use Permit application for any proposed **KIOSK** locations to the **DEPARTMENT**. The **DEPARTMENT** will review the General Use Permit application, and if all requirements of this **AGREEMENT** have been satisfied and if the **KIOSK** continues to serve the transportation purpose of providing a wayfinding device for pedestrians and bicyclists as indicated by increasing or consistent impressions gathered at the **KIOSK**, approve the General Use Permit application for a term of four (4) years. In the event that impressions decrease at a **KIOSK**, the **CITY** and **DEPARTMENT** will work in good faith to determine if the **KIOSK** should be

removed, be relocated, or remain. The **CITY** may continue to submit for General Use Permits until the date this **AGREEMENT** ends.

- f. **DEPARTMENT** authorized **KIOSK** locations will be incorporated into this **AGREEMENT** by a supplemental agreement between the **PARTIES**, in the form attached hereto as **Exhibit “D”**, to be executed by the authorized signatories of this **AGREEMENT**, or their designees.

8. TERM

- a. The effective date of this **AGREEMENT** will commence upon execution by the **PARTIES**.
- b. The term of this **AGREEMENT** consists of an initial term and two possible renewal terms.
- c. The initial term of this **AGREEMENT** will commence upon the effective date and continue for ten (10) years.
- d. At the end of the initial term, the first possible renewal term will commence and continue for five (5) years. The **DEPARTMENT** will notify the **CITY** in writing at least one hundred twenty (120) calendar days prior to the expiration of the initial term if the **DEPARTMENT** does not wish to renew this **AGREEMENT**. Within that one hundred twenty (120) calendar day period, the **CITY** and the **DEPARTMENT** will work in good faith to remedy any concerns causing the **DEPARTMENT** to consider non-renewal. In the event that such considerations are not remedied, the **DEPARTMENT** may elect in its sole discretion to not renew the **AGREEMENT**.
- e. If applicable, at the end of the first renewal term, the second possible renewal term will commence and continue for five (5) years. The **DEPARTMENT** will notify the **CITY** in writing at least one hundred twenty (120) calendar days prior to the expiration of the initial term if the **DEPARTMENT** does not wish to renew. Within that one hundred twenty (120) calendar day period, the **CITY** and the **DEPARTMENT** will work in good faith to remedy any concerns that are causing the **DEPARTMENT** to consider non-renewal. In the event that such considerations are not remedied, the **DEPARTMENT** may elect in its sole discretion to not renew the **AGREEMENT**.
- f. No additional General Use Permits shall be approved when this **AGREEMENT** ends. General Use Permits approved prior to the end of this **AGREEMENT** will survive until the term of each General Use Permit ends. Prior to the end of each General Use Permit, the **CITY** will, at its sole cost and expense, remove the **KIOSK** and restore the area to a standard concrete sidewalk, in accordance with the **DEPARTMENT’S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**.

9. **TERMINATION**

- a. The **DEPARTMENT** may terminate this **AGREEMENT** upon sixty (60) calendar days written advance notice if the **CITY** fails to perform its duties under this **AGREEMENT** or fails to respond to and correct the reasons for the termination stated in the notice.
- b. Both **PARTIES** may mutually agree to terminate this **AGREEMENT**. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.
- c. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** may unilaterally cancel this **AGREEMENT** if the **CITY** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **CITY** pertinent to this **AGREEMENT** unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), of the Florida Statutes.
- d. Prior to the effective date of termination of the **AGREEMENT** pursuant to this Section, the **CITY** will, at its sole cost and expense, remove all **KIOSKS** and restore the area to a standard concrete sidewalk, in accordance with the **DEPARTMENT'S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**. Notwithstanding the foregoing, General Use Permits approved prior to the end of this **AGREEMENT** will survive until the term of each General Use Permit ends.

10. **GENERAL TERMS**

- a. E-Verify

The **CITY** will:

- i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
- ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract 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. **(Executive Order Number 2011-02)**

The **CITY** will insert the E-Verify clause into any contract entered into by the **CITY** with vendors or contractors hired by the **CITY** for purposes of performing its duties under this **AGREEMENT**.

- b. This writing embodies the entire **AGREEMENT** and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- c. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- d. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable is severable and will not affect the validity of the remaining portions of the **AGREEMENT**.
- e. The venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** lies exclusively in a state court of proper jurisdiction in Leon County, Florida.
- f. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this **AGREEMENT**.
- g. The section headings contained in this **AGREEMENT** are for reference purposes only and do not affect the meaning or interpretation hereof.
- h. No term or provision of this **AGREEMENT** shall be interpreted for or against either **PARTY** because the **PARTY** or its legal representative drafted the provision.
- i. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT's** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.
- j. This **AGREEMENT** shall not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer employee relationship between the **DEPARTMENT**, the **CITY**, and **IKE**.

11. INDEMNIFICATION

- a. Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **CITY** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees (including regulatory and

appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **CITY's** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by the **CITY**, its officers, agents, employees or representatives in any way pertaining to this **AGREEMENT**, whether direct or indirect, except that neither the **CITY** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the negligence of the **DEPARTMENT**.

- b. The **CITY's** obligation to indemnify, defend and pay for the defense of the **DEPARTMENT**, or at the **DEPARTMENT's** option, to participate and associate with the **DEPARTMENT** in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **CITY's** receipt of the **DEPARTMENT's** notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the **DEPARTMENT** sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. The **DEPARTMENT's** failure to notify the **CITY** of a claim shall not release the **CITY** of the above duty to defend and indemnify the **DEPARTMENT**.
- c. The **CITY** shall pay all costs and reasonable attorney's fees related to this obligation and its enforcement by the **DEPARTMENT**. The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT**.
- d. The **CITY's** evaluation of liability or its inability to evaluate liability shall not excuse the **CITY's** duty to defend and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the **DEPARTMENT** was solely negligent shall excuse performance of this provision by the **CITY**.

12. COUNTERPARTS AND ELECTRONIC SIGNATURES

This **AGREEMENT** may be executed in counterparts, each of which shall be an original as against either **PARTY** whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument. An executed facsimile or electronic scanned copy of this **AGREEMENT** shall have the same force and effect as an original. The **PARTIES** shall be entitled to sign and transmit an electronic signature on this **AGREEMENT** (whether by facsimile, PDF or other email transmission), which signature shall be binding on the **PARTY** whose name is contained therein. Any **PARTY** providing an electronic signature agrees to promptly execute and deliver to the other **PARTIES** an original signed **AGREEMENT** upon request.

IN WITNESS WHEREOF, the **PARTIES** hereto have caused these presents to be executed the day and year first above written.

CITY OF MIAMI BEACH:

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:**

BY: _____
City Manager/Mayor

BY: _____
District Director of
Transportation Operations

ATTEST: _____ (SEAL)
City Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
City Attorney

BY: _____
District Chief Counsel

EXHIBIT “A”
IKE AGREEMENT
DATED JULY 28, 2023
BETWEEN THE CITY OF MIAMI BEACH AND IKE SMART CITY, LLC

To be herein incorporated.

EXHIBIT “B”
PROJECT LIMITS

Below are the limits of the **KIOSKS** to be installed, operated, and maintained by the **CITY** under this **AGREEMENT**.

State Road:

Indian Creek Drive
Alton Road
Collins Avenue
5th Street
Harding Avenue
71st Street
Normandy Drive
63rd Street

County: **Miami-Dade**

EXHIBIT “C”

Intentionally omitted.

EXHIBIT “D”

**SUPPLEMENTAL AGREEMENT TO
FLORIDA DEPARTMENT OF TRANSPORTATION
MASTER MAINTENANCE MEMORANDUM OF AGREEMENT
FOR WAYFINDING KIOSK DEVICES**

**WITH THE
CITY OF MIAMI**

This Supplemental Agreement, dated the ____ day of _____, 2023, is entered into between the Florida Department of Transportation (“**DEPARTMENT**”) and the City of Miami Beach (“**CITY**”).

In accordance with the provisions of the Master Maintenance Memorandum Agreement (“**MMOA**”) for the **KIOSKS** between the **PARTIES**, dated the ____ day of _____, 2023, the **PARTIES** enter into this Supplemental Agreement for purposes of incorporating the following **KIOSKS**, pursuant to FDOT Permit No(s)._____, within the State right of way described in such Permit, copy attached hereto and incorporated herein by reference.

By their signature below, the **PARTIES** hereby acknowledge that FDOT Permit No. _____ for **KIOSKS** on SR____, within the limits described in said Permit, is hereby incorporated into the **MMOA**, and the **CITY** shall comply with all installation, operations, and maintenance obligations thereunder and the **PARTIES** further agree to abide by all provisions thereunder.

CITY OF MIAMI BEACH:

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:**

By:_____

By:_____

Name:_____

Title: _____

Name:_____

Title: _____