

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE ESSENTIAL BUSINESS TERMS OF THE AGREEMENT WITH IKE SMART CITY, LLC (IKE), AS MORE PARTICULARLY SET FORTH IN THE CITY COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2022-040-KB TO DESIGN, MANUFACTURE, INSTALL, OPERATE AND MAINTAIN INTERACTIVE DIGITAL MEDIA KIOSKS; AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AN AGREEMENT WITH IKE CONSISTENT WITH THE APPROVED TERMS.

WHEREAS, on August 25, 2021, the Administration received an unsolicited proposal from IKE Smart City, LLC (“IKE”), pursuant to Section 255.065, Florida Statutes, to Design, Manufacture, Install, Operate and Maintain Interactive Digital Media Kiosks at certain sites throughout the City; and

WHEREAS, on January 20, 2022, the Mayor and City Commission approved Resolution 2022-31989, accepting the unsolicited proposal pursuant to Section 255.065, Florida Statutes and authorizing the Administration to issue Request for Proposals (RFP) No. 2022-040-KB, seeking proposals from other interested parties for the same project purpose as the unsolicited proposal; and

WHEREAS, on December 14, 2022, via Resolution 2022-32422, the Mayor and City Commission authorized the Administration to enter into negotiations with IKE, the top-ranked proposer, and if unsuccessful, to negotiate with Smart City Media, the second-ranked proposer, with the final negotiated agreement being subject to the prior approval of the Mayor and City Commission; and

WHEREAS, as directed by the City Commission, staff has negotiated an agreement with IKE, the material terms of which are contained in the Term Sheet, attached to the City Commission Memorandum accompanying this Resolution as Attachment A; however, the most significant terms are highlighted below:

Locations. The initial installation will include 15 kiosks, currently being considered for installation at the proposed locations, identified in Attachment B to the City Commission Memorandum accompanying this Resolution, subject to the City Manager’s final approval. The City Manager may approve, at her sole discretion, up to an additional 15 kiosks during the term, for an operational ceiling not to exceed 30 locations.

Term. The Agreement shall have an initial term of ten (10) years, commencing upon the earlier of (1) the installation of the 15th kiosks or (2) one (1) year from the Effective Date of the Agreement. The Agreement will renew automatically for an additional ten (10) years, subject to IKE meeting certain renewal Criteria, as outlined in the term sheet attached to the City Commission Memorandum accompanying this Resolution. A Term Year is defined as each successive twelve (12) month period of the Term, with the first Term Year commencing on the operational date of the first installed IKE kiosk.

Termination For Convenience Of The City. Commencing at the expiration of 16 years from the Agreement’s Effective Date, the City may also, through its City Manager, and for its convenience and without cause, terminate the Agreement. Termination shall become effective within thirty (30) days following receipt by IKE of such notice.

Kiosk Revenue.

a. Non-Refundable Prepayment (Escrow). Within five (5) calendar days from the Effective Date, IKE will provide the City with a \$1,000,000.00 non-refundable advance payment (“Non-Refundable Prepayment”), to be placed in a City segregated account, for the City to use as a credit towards future Kiosk Revenue payments owed to the City. Future payments owed to the City will be deducted from the Non-Refundable Prepayment is exhausted.

b. Minimum Annual Guaranty Payment (MG). IKE will pay the City a Minimum Guaranty payment of \$20,000.00 annually (paid quarterly) per kiosk during the first Term Year (“MG”), commencing as of the date each kiosk becomes operational. Each Term Year thereafter, the MG payment will increase by two percent (2%) over the annual MG amount payable in the immediately preceding Term Year.

c. Revenue Share (PG). Annually, IKE shall pay to the City 40% of gross revenues earned by IKE for each Term Year with respect to the operation of all the kiosks (“PG”), less the total amount of MG payments the City received for the respective Term Year.

d. Reconciliation Statement. At the end of each Term Year, IKE will provide the City with a reconciliation. If the PG amount for the Term Year is more than the MG payments received by the City during the given Term Year, then IKE will pay the City the amount in excess of the total amount of MG payments received for the Term Year. If the annual PG amount was less than the total MG payments received by the City during the given term year, then IKE will not have to remit any additional sums to the City for that respective Term Year.

Advertising Restrictions. The Agreement contains the following prohibitions on advertisements.

- a. strobing effect or visuals that replicate 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”;
- 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;
- j. competitive products included in the current Citywide exclusive sponsorship agreements with Red Bull and Pepsi; provided, however, IKE shall not be obligated to comply with this restriction with respect to (A) more than (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 or (B) two (2) Citywide exclusive sponsorship agreements with non-alcoholic pouring rights providers per term year;
- 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 IKE.

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

- a. 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;
- b. No advertising for alcoholic beverages shall be within 250 feet of houses of worship, including churches, synagogues, temples, and mosques;
- c. No advertising for alcoholic beverages shall be within 250 feet of Hospitals or addiction treatment centers;
- d. No ad shall be allowed that promotes overconsumption or boisterous/party behaviors. Additionally, all alcohol advertisements must be followed with an advertisement that speaks to the safe consumption of alcohol, for example, "Drink Responsibly Miami Beach"; and
- e. All advertising for alcoholic beverages must include the disclaimer below as mandated by the Alcoholic Beverage Labeling Act ("ABLA") of 1988.

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 IKE to remove said advertising.

Performance Bond or Alternate Security. A Performance Bond, in the amount of One Hundred Thousand (\$100,000.00) Dollars, shall be provided by IKE in faithful observance of the Agreement.

City Advertising Rights. City-directed content will occupy at least sixty-six percent (66%) of the screen area on each of the kiosks during the interactive mode. During Passive Mode, at least one (1) spot out of every eight (8) spots shown on a kiosk screen will contain City-directed content. All spots shall be of equal duration. City-directed content may also be displayed during any unsold spots, as available.

Additionally, IKE will provide the City with \$550,000.00 in free advertising time annually on its network of kiosks and large-format signs installed across the continental United States; and

WHEREAS, the Administration recommends that the Mayor and City Commission approve the essential negotiated business terms for the Agreement with IKE, a copy of which are attached to the City Commission Memorandum accompanying this Resolution as Attachment A, pursuant to Request For Proposals (RFP) No. 2022-040-KB, to Design, Manufacture, Install, Maintain, and Operate Interactive Digital Media Kiosks; and further authorize the City Manager and City Clerk to execute an agreement with IKE consistent with the approved terms.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve the essential business terms for the Agreement with IKE Smart City, LLC ("IKE"), pursuant to Request For Proposals (RFP) No. 2022-040-KB, to Design, Manufacture, Install, Maintain, and Operate Interactive Digital Media Kiosks; and further authorize the City Manager and City Clerk to execute an agreement with IKE consistent with the approved terms.

PASSED and ADOPTED this 28th day of June, 2023.

ATTEST:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date 6-28-23