

ORDINANCE NO. _____

An ordinance granting a revocable license to IKE Smart City, LLC to install, operate and maintain interactive digital City Kiosks upon portions of public rights-of-way within the City of Dallas that are not open to vehicular travel; providing for the terms and conditions of this license; providing for the compensation to be paid to the City of Dallas; providing for payment of the publication fee; and providing an effective date of this license and ordinance.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That a revocable license, hereinafter referred to as “license”, subject to the restrictions and conditions of this ordinance, is hereby granted to IKE Smart City, LLC, a Delaware limited liability company, hereinafter referred to as “**GRANTEE**”, to occupy, maintain and utilize for the purpose set out hereinbelow portions of the public street rights-of-way within the City of Dallas that are not open to vehicular travel for the installation of Personal Property. For purposes of this License, the term “Personal Property” means Personal Property as defined in Section 1.13 of the interactive digital kiosk advertising concession agreement referenced in Section 3 below.

SECTION 2. That this license is granted for a term of twenty (20) years, unless sooner terminated according to other terms and provisions herein contained.

SECTION 3. That **GRANTEE** shall pay to the City of Dallas an advance payment of **TWO MILLION AND NO/100 (\$2,000,000.00) DOLLARS** in consideration of the license herein granted and other rights granted under a comprehensive interactive digital kiosk advertising concession agreement (“the Agreement”) between **GRANTEE** and the City. The terms of this License shall be attached to and made a part of the Agreement. The advance payment shall become due and payable immediately upon the execution of the Agreement. Such consideration shall be in addition to any other consideration required by the Agreement and shall be exclusive of any other taxes or special assessments required by law to be paid by **GRANTEE**. Should **GRANTEE** fail to make the above stated advance payment within thirty (30) days after the effective date of this ordinance, or if **GRANTEE** should fail to make any other payment to the City as required under the Agreement within thirty (30) days after it becomes due, the Director of the Office of Communications & Customer Experience/311 may terminate this license. All sums payable to the City of Dallas hereunder shall be paid

SECTION 3. (continued)

to the Chief Financial Officer of the City of Dallas and deposited in General Fund, Fund 0001, Department BMS, Unit 1991, Revenue Code 8218. In the event **GRANTEE's** advance payment check is dishonored, **GRANTEE** shall pay to the City a processing fee of \$25.00 for each dishonored check. Additionally, all monies owed to the City under this license shall be subject to the assessment of interest at a rate of 10 percent a year from the day after any monies become due until it is paid in full, in accordance with Section 2-1.1 of the Dallas City Code.

SECTION 4. That the licensed public rights-of-way shall be used by **GRANTEE** for the following purpose under the direction of the Director of the Office of Communications & Customer Experience/311 of the City of Dallas:

Installation, use and maintenance of City Kiosks, as defined in **SEC. 51A-7.214** of the Dallas City Code, as amended, and other related Personal Property pursuant to a City-approved kiosk advertising program and agreement within the public rights-of-way of the City of Dallas that are not open to vehicular travel, except that City Kiosks may not be located in the Victory Sign District (including the "TXU" tract) and the West Village Sign District.

SECTION 5. That this license is subject to the provisions set forth in EXHIBIT A, attached hereto and made a part hereof.

SECTION 6. That this license is nonexclusive and is made expressly subject and subordinate to the right of the City to use the public rights-of-way for any public purpose. The Governing Body of the City of Dallas reserves the right to terminate and cancel this license, at will, by Resolution passed by said Governing Body. Upon termination, all rights granted hereunder shall thereupon be considered fully terminated and cancelled and the City of Dallas shall not be held liable by reason thereof. Said Resolution shall be final and shall not be subject to review by the Courts. **GRANTEE** shall have the right of cancellation upon giving the City of Dallas sixty (60) days written notice of its intention to cancel, and in either event upon the termination or cancellation by the City or **GRANTEE**, as the case may be, this license shall become null and void and **GRANTEE** or anyone claiming any rights under this instrument shall remove, to the extent required by the Director of the Office of Communications & Customer Experience/311, any improvements and encroachments

SECTION 6. (continued)

from the public rights-of-way at **GRANTEE's** expense. Failure to do so shall subject **GRANTEE** to the provisions contained in EXHIBIT A, Subsection (a). All work shall be done at the sole cost of **GRANTEE** and to the satisfaction of the Director of the Office of Communications & Customer Experience/311.

SECTION 7. That the license is subject to the following conditions, terms and reservations:

- a) **GRANTEE** shall, prior to installation, submit a scaled drawing showing each proposed City Kiosk location to the Director of the Office of Communications & Customer Experience/311 or designee for review and approval by affected City departments and utilities. The Director of the Office of Communications & Customer Experience/311 or designee will provide **GRANTEE** with a written PROCEED NOTICE for each approved location, including any special conditions required in connection with installation at that location.
- b) **GRANTEE** shall be responsible for obtaining all needed permits and utility approvals in connection with installation of its facilities:
 - (1) **GRANTEE** shall obtain a street cut permit from the Transportation and Public Works Department (TPW) Utility Coordinator at (214) 948-4042 at least three (3) working days prior to activity in the City's right-of-way;
 - (2) **GRANTEE** shall contact 1-800-dig-tess (1-800-344-8377) 48 hours before excavation to determine exact location and depth of conduit systems and to clear City of Dallas (COD) underground traffic signal/streetlights conduits by a minimum of one (1) foot and Atmos Energy facilities by a minimum of two (2) feet;
 - (3) **GRANTEE** must contact Dallas Water Utilities Utility Coordination at (214) 948-4584 at least 15 working days prior to construction to obtain as-built maps and plans of existing water and wastewater mains and to coordinate the applicants proposed construction plans. **GRANTEE** or its contractor must contact Dallas Water Utilities at (214) 670-5111 at least two working days prior to construction to have the existing water and wastewater mains located in the field.
- c) **GRANTEE** shall be responsible for relocating, at its sole cost, any City Kiosk determined to be a public hazard or obstruction by the Director of the Office of Communications & Customer Experience/311 or designee.
- d) **GRANTEE** shall solely be responsible for verifying that the City Kiosk does not encroach on private property or TxDOT or NTTA right-of-way not controlled by the City; and shall be solely responsible for coordination of installation with abutting property owners.
- e) **GRANTEE** shall replace all visible pavement materials removed during installation and during any future maintenance with matching materials; and shall not construct any Kiosk closer than two feet from the back of a street curb or in a location that will render an existing sidewalk in non-compliance with ADA requirements, all in compliance with applicable city standards.

SECTION 7. (continued)

- f) **GRANTEE** shall not install, use or maintain any City Kiosk which: (1) rests or projects, wholly or in part, upon, along or over any portion of a dedicated public street right-of-way in the City of Dallas that is open to vehicular travel; or (2) rests or projects, wholly or in part, upon, along or over any portion of a privately owned property adjacent to the public right-of-way; or (3) because of its installation, use or maintenance creates a hazard to the safety of persons or property; or (4) interferes with public utility installations, public transportation purposes, or other governmental uses; or (5) unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including the loading or unloading of passengers from any legally parked or stopped vehicle, and the ingress into or egress from any residence or place of business; or (6) unduly interferes with the window display of any abutting residence or place of business; or (7) unduly interferes with the use of poles, posts, traffic signs or signals, fire hydrants, mailboxes, crosswalks, or other legal uses permitted at or near the location of said installations.
- g) **GRANTEE** shall comply with all provisions of the "siting" paragraph of the procurement document including but not limited to the restriction of non-placement of any City Kiosk along current or future streetcar alignments or within proximity of a DART bus stop or light rail station.
- h) **GRANTEE** shall comply with all data privacy provisions of the Agreement set forth in Exhibit B attached hereto and made a part hereof.

SECTION 8. That upon receipt of **GRANTEE's** final written acceptance, the Director of Department of Facilities and Real Estate Management, or designee, is hereby authorized to execute a NOTICE OF LICENSE and to file same in the deed records of Dallas, Collin and Denton Counties, Texas. Additionally, the Director of Department of Facilities and Real Estate Management, or designee, is hereby authorized to execute a cancellation of Notice of License upon termination by the City or **GRANTEE** and to file such cancellation of Notice of License in the deed records of Dallas, Collin and Denton Counties, Texas.

SECTION 9. That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

SECTION 10. That this license may not be assigned without prior written approval from the Director of Department of Facilities and Real Estate Management, or designee. Such assignment shall recite that it is subject to the terms, restriction and conditions contained in this ordinance. The assignee shall deliver a copy of the assignment, along with the assignee's written acceptance of the provisions of this ordinance, to the Director of Department of Facilities and Real Estate Management within 10 days of such assignment;

SECTION 10. (continued)

said assignment and written acceptance shall be forwarded to the City Secretary of the City of Dallas. That upon the Director or designee's approval of assignment of this ordinance, the Director of Facilities and Real Estate Management, or designee, is hereby authorized to execute a NOTICE OF ASSIGNMENT OF LICENSE and to file same in the deed records of Dallas County, Texas. Should **GRANTEE** fail to obtain prior written approval for assignment of this license or fail to provide the City of Dallas with the required written acceptance and a copy of the assignment, the Director of Department of Facilities and Real Estate Management, or designee, may terminate this license.

SECTION 11. That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas, Collin and Denton Counties, Texas, which certified copy shall be delivered to the Director of Department of Facilities and Real Estate Management, or designee. Upon receipt of the advance payment pursuant to Section 3 of this ordinance, an acceptable certificate of insurance and the fee for publishing this ordinance which **GRANTEE** shall likewise pay, the Director of Department of Facilities and Real Estate Management, or designee, shall deliver to **GRANTEE** the certified copy of this ordinance. The Director of Department of Facilities and Real Estate Management, or designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

SECTION 12. That this ordinance shall take effect upon the latter of 1) the execution of the digital kiosk advertising concession agreement or 2) immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:
TAMMY L. PALOMINO
City Attorney

JOHN JOHNSON, Director
Department of Facilities and Real Estate
Management

BY _____
Assistant City Attorney

BY _____
Assistant Director

Passed _____.