

**DIGITAL WAYFINDING KIOSK OPERATING AGREEMENT  
BETWEEN  
DOWNTOWN DETROIT PARTNERSHIP, INC.  
AND  
THE CITY OF DETROIT**

This DIGITAL WAYFINDING KIOSK OPERATING AGREEMENT (“**Agreement**”) is entered into as of the Effective Date, as herein defined, by and between the CITY OF DETROIT, a Michigan municipal corporation acting through its Department of Public Works, located at the Coleman A. Young Municipal Center, 2 Woodward Avenue, Suite 611, Detroit, Michigan 48226 (“**CITY**”), and DOWNTOWN DETROIT PARTNERSHIP, INC., a Michigan nonprofit corporation, located at 1 Campus Martius, Suite 380, Detroit, Michigan 48226 (“**DDP**”). The CITY and DDP may each be referred to herein as a “**Party**” or collectively as the “**Parties**” to this Agreement, as applicable.

**RECITALS**

**WHEREAS**, DDP is a Michigan nonprofit corporation whose mission includes the advancement of civic and commercial engagement in Detroit by developing and managing programs and strategic initiatives to benefit businesses, residents, and visitors throughout the urban core of downtown Detroit. DDP strengthens and supports downtown Detroit through collaborations and partnerships with governmental, business, philanthropic, and community organizations to ensure that its programs and initiatives are inclusive of a diverse array of perspectives; and

**WHEREAS**, the deployment of informational and directional “wayfinding” signage kiosks at strategic points in the public right of way and other public spaces can further DDP’s mission by enabling pedestrians in downtown Detroit to navigate the area, identify local businesses, attractions, and other points of interest, and access important public service announcements and other community messaging; and

**WHEREAS**, DDP has extensive experience with the design, construction, and maintenance of wayfinding kiosks in downtown areas, including the deployment of static kiosks in partnership with the Detroit Downtown Development Authority in anticipation of Super Bowl XL in 2006, all of which DDP continues to maintain;

**WHEREAS**, new interactive digital technology has emerged in recent years that provides dynamic and timely display of wayfinding information and promotion of local businesses and attractions, as well as real-time transit information, events calendars, and public service and community messaging, includes additional benefits such as free and convenient public Wi-Fi access and emergency notification functions, and represents a new generation of wayfinding signage that has been successfully deployed in many municipalities across the United States.

Final 3/2/2021

**WHEREAS**, as a result of over two years of extensive research, DDP has gained a deep understanding of the features, benefits, implementation methods, and leading vendors of interactive wayfinding kiosks, and based on that research, as well as a competitive bidding process, DDP has entered into a contractual relationship with IKE Smart City, LLC (“**IKE**”), a Delaware limited liability company that specializes in the design, construction, installation, operation, maintenance, repair, and upgrading of state-of-the-art digital wayfinding kiosks and that has experience installing and operating such kiosks in numerous downtown areas across the country; and

**WHEREAS**, the CITY maintains jurisdiction over certain streets, roads, sidewalks, parks, and other public rights of way within Detroit and desires to promote the utilization of such spaces and to maximize residents’ and visitors’ wayfinding experience while ensuring the safe and efficient flow of pedestrian and motorist traffic through such spaces; and

**WHEREAS**, the CITY and DDP mutually desire to deploy a network of digital wayfinding kiosks at strategic locations in downtown Detroit as well as throughout its neighborhoods in accordance with the terms and conditions of this Agreement;

**NOW THEREFORE**, in exchange for good and valuable consideration, the value and sufficiency of which is acknowledged, and in consideration of the mutual promises and covenants set forth below, the Parties, intending to be legally bound, hereby agree as follows:

## **ARTICLE I: DEFINITIONS**

**“Applicable Laws”** means all federal, state, and local laws, ordinances, rules, regulations, guidelines, and orders having the binding effect of law, as well as all judicial opinions, decisions, and orders, as may be applicable to the subject activities or circumstances.

**“Approval”** means any grant, authorization, license, permit, or other approval by a federal, state, or local governmental agency or department that is necessary for the installation, construction, or operation of the Digital Wayfinding Kiosks.

**“Calendar Quarter”** means a three month period corresponding to any of the following sets of dates: (1) January 1 through March 31, (2) April 1 through June 30, (3) July 1 through September 30, or (4) October 1 through December 31.

**“Community Messaging”** means content displayed on one or more Digital Wayfinding Kiosks that pertains to, promotes, or otherwise presents information regarding services and resources oriented toward the general public welfare, including public service announcements, information regarding public events and attractions, transit service information, weather forecasts, emergency and public safety alerts, local historical information, and information regarding public services and resources.

**“Council District”** means any of those seven districts within the City of Detroit, as further depicted on **Exhibit A-1** of this Agreement.

**“Digital Wayfinding Kiosk”** means an interactive media kiosk that provides wayfinding and other information through one or more digital displays, as well as free public WiFi service and other features and functionality for the public benefit.

**“Digital Wayfinding Network”** means a collection of one or more Digital Wayfinding Kiosks deployed within the City of Detroit, including the software and other technology that enables such Digital Wayfinding Kiosks to operate in coordination with each other as a single coordinated network.

**“Greater Downtown Area”** means the geographic portion of the City of Detroit consisting of the Central Business District and surrounding neighborhoods, as further depicted on **Exhibit A-2** of this Agreement.

**“IKE Agreement”** means that certain agreement entered into by and between IKE and DDP dated January 17, 2019, as the same may have been or may in the future be modified, amended or assigned.

**“Kiosk Technology”** means all technology, including all materials, equipment, and other hardware, as well as all operating systems, programs, applications, and other software, contained in a Digital Wayfinding Kiosk that is necessary or appropriate for its operation.

**“Net Kiosk Revenues”** means total revenue earned by IKE in a Fiscal Quarter from the Operational Digital Wayfinding Kiosks less the amount of the following out-of-pocket costs and expenses incurred by IKE with respect to the Digital Wayfinding Kiosks: (1) utility service, including electric and data services, as incurred, (2) IKE’s insurance premiums, as incurred, (3) repairs, maintenance, cleaning, and warranty costs, as incurred, (4) depreciation of the Digital Wayfinding Kiosks, and (5) sales and management expenses equal to seven percent of the total revenue earned by IKE from the Digital Wayfinding Kiosks.

**“Operational Kiosk”** means a Digital Wayfinding Kiosk for which all of the features and functionality identified in this Agreement are fully operational. A Digital Wayfinding Kiosk that is described in this Agreement as “fully operational” must be an Operational Kiosk.

**“Passive Mode”** means the condition of a Digital Wayfinding Kiosk during any period in which no Users are actively engaging the Digital Wayfinding Kiosk and full-screen advertisements may be displayed.

**“Personally Identifiable Information”** means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, including but not limited to a person's name, address, electronic mail address, telephone number, driver license or state personal identification card number, or social security number.

**“Privacy Policy”** means the privacy policy set forth in **Exhibit C**, as the same may be revised from time-to-time.

**“Revenue Share Payment”** means the portion of Net Kiosk Revenues to be paid by IKE to DDP under the terms of the IKE Agreement, and as represented in this Agreement.

“**User**” means an individual who utilizes any feature or function of a Digital Wayfinding Kiosk.

“**Wayfinding Information**” means locational and directional information displayed on a Digital Wayfinding Kiosk that identifies and locates, through maps, drawings, or listings, specific destinations of interest, such as nearby businesses, events, attractions, as well as parks, transit stops, other and public amenities and destinations of particular interest.

“**Vendor**” means any individual or entity, including but not limited to IKE, that is engaged by DDP, whether as a contractor, subcontractor, partner, consultant, or through any other business arrangement, to perform any activities for or on behalf of DDP under this Agreement.

## ARTICLE II: PURPOSE

**2.01: Purpose.** The purpose of this Agreement is to set forth the terms and conditions under which the Parties will activate the pedestrian right of way and other public spaces located in the Greater Downtown Area and other designated neighborhoods across Detroit through the installation, operation, and maintenance of a Digital Wayfinding Network that will provide the features and functionality described in Section 3.02, below. The Digital Wayfinding Kiosks comprising this network will be sited at various locations in the Greater Downtown Area and surrounding neighborhoods so as to maximize their activation of the public right of way and other public spaces without compromising the safe and efficient flow of pedestrian and vehicular traffic. This Digital Wayfinding Network will utilize the display of advertising and other paid content to ensure that it is financially self-sufficient and is able to generate revenues to be shared between the Parties.

## ARTICLE III: DIGITAL WAYFINDING KIOSKS

**3.01: Kiosks.** Each Digital Wayfinding Kiosk must be supplied by IKE and be similar in design and specification as depicted in **Exhibit B** of this Agreement and otherwise contain the functionality and features described in Section 3.02, below. DDP will be solely responsible for engaging IKE for the procurement of all Digital Wayfinding Kiosks under terms and conditions to be agreed upon between DDP and IKE, all of which must be in accordance with this Agreement. Subject to Section 15.04 of this Agreement, DDP agrees to refrain from engaging any entity other than IKE or its successors or assigns for the procurement of Digital Wayfinding Kiosks in Detroit without the prior written approval from the CITY.

**3.02: Features and Functionality.** Each Digital Wayfinding Kiosk must offer the following features, which must be in compliance with the following functionality requirements in order to be considered fully operational and constitute an Operational Kiosk:

- A. Wi-Fi.** Each Digital Wayfinding Kiosk must be equipped with Wi-Fi internet capability, so as to provide public internet access within reasonable proximity of its location. The WiFi internet service must be publicly available 24 hours per day,

seven days per week at sufficient speeds to reasonably support expected usage levels, and must be free of charge to Users.

- B. Emergency Calls.** Each Digital Wayfinding Kiosk must be equipped with an emergency call button or similar feature to enable Users to immediately provide notification of an emergency situation. The CITY and DDP shall cooperate to integrate such notifications into the CITY's existing emergency response communications infrastructure for the purpose of enabling each Digital Wayfinding Kiosk to automatically communicate its specific location to emergency responders upon activation of the emergency call feature.
- C. Wayfinding Information.** Each Digital Wayfinding Kiosk must be equipped with one or more Wayfinding Information applications accessible for use by Users. DDP must review and update all such information on a regular basis to ensure its quality, clarity, and accuracy. The Wayfinding Information must be accessible for use on a continuous basis 24 hours per day, seven days per week.
- D. Community Messaging.** Each Digital Wayfinding Kiosk must be operated to display Community Messaging content. Each Digital Wayfinding Kiosk must display at least one community message in each 8-slot cycle of advertising and community messaging, such that the total time during which community messaging is displayed on any Digital Wayfinding Kiosk must constitute not less than 12.5 percent of the total time during which the Digital Wayfinding Kiosk is in Passive Mode. During the Planning Phase, the Parties will jointly develop a standard process by which the CITY will provide to DDP, or DDP may otherwise obtain, Community Messaging content on an ongoing basis.

**3.03: Optional Features and Functionality.** Each Digital Wayfinding Kiosk may offer the following optional features, which, if offered, must be in compliance with the following functionality requirements:

- A. Photo Booth.** Each Digital Wayfinding Kiosk may be equipped with a 'photo booth' application, featuring a pedestrian-oriented camera and technology to enable Users to capture and transmit "selfie" photos of themselves over a selection of Detroit-themed background images and graphics. DDP or IKE may from time to time revise the Detroit-themed background images and graphics and otherwise update the photo booth application's appearance and functionality in their reasonable discretion. The camera must be operational only upon activation by a User and must not operate on a continuous or autonomous basis without such User activation. The camera will be operated in accordance with the Privacy Policy. Captured images may be transmitted only as directed by the User and may be stored or saved only for purposes of such transmittal, upon which the images will be deleted in accordance with the Privacy Policy. The photo booth application must be available free of charge to all Users.
- B. Arcade.** Each Digital Wayfinding Kiosk may be equipped with an 'arcade' application, through which Users can play certain games through its touchscreen

interface. DDP or IKE may from time to time revise or update the arcade application's appearance, functionality, and selection of games in their reasonable discretion. No game may include any audio or visual content that can be characterized as violent, lawless, profane, obscene, pornographic or sexual in nature, or that is defamatory, discriminatory, or disparaging of any individual or entity or classification of individuals or entities, or that contains political advertising. If any game includes operation of a camera to capture the image of the User, the camera must be operational only upon activation by the User, must not operate on a continuous or autonomous basis without such User activation, and must not store or save any images or video content. The arcade application must be available free of charge to all Users.

- C. **Jobs List.** Each Digital Wayfinding Kiosk may display a jobs list featuring local job and internship opportunities.
- D. **Surveys.** Each Digital Wayfinding Kiosk may display a rotation of survey questions and allow users to provide feedback on matters of public interest, such as, but not limited to, user preferences regarding programming and amenities in parks or preferred means of public transportation. The survey questions to be displayed will be at DDP's ultimate discretion; however, DDP will make reasonable efforts to collaborate with the CITY to develop survey questions that pertain to CITY services and CITY-owned or operated facilities and amenities. DDP will share survey results with the CITY within a reasonable time following the conclusion of each survey.
- E. **Advertising.** Each Operational Kiosk may be operated to display advertising content. A Digital Wayfinding Kiosk may display advertising content so long as DDP or any successor of DDP is not in default of this Agreement beyond any applicable notice and cure period. All advertising content shall be displayed in compliance with all Applicable Laws, including but not limited to the federal Highway Beautification Act of 1965, 23 U.S.C. 131, the Michigan Highway Advertising Act of 1972, and the Michigan Department of Transportation Highway Advertising Program regulations and guidelines, as well as Chapters 4 and 50 of the 2019 Detroit City Code, all as amended. DDP will ensure that all Small Local Businesses are provided a discount of not less than 25 percent of existing rates for advertising on the Digital Wayfinding Kiosks. For purposes of such discounts, a "**Small Local Business**" means a Detroit-based entity, whether for-profit or non-profit, that employs or otherwise engages fewer than 100 employees, independent contractors, or other personnel.
- F. **Additional Features and Functionality.** The Parties acknowledge that the Digital Wayfinding Kiosks are technologically capable of operating a wide variety of applications, features, and functions besides those that are expressly identified in this Section. Further, the Parties agree that such additional functions may be made available to Users if the Parties agree upon equipping the Digital Wayfinding Kiosks with such additional functions. Any new feature must operate in accordance with the terms and conditions of this Agreement, including without limitation

Section 3.05, the Privacy Policy, as well as any other functional requirements that the Parties may agree upon, and must be operable on all Digital Wayfinding Kiosks.

**3.04: ADA Compliance.** All Digital Wayfinding Kiosks, including their features and functionality, as well as their display of all content, must be fully accessible in compliance with the federal Americans with Disabilities Act of 1990, as amended, and with other Applicable Laws. Additionally, the user interface of each Digital Wayfinding Kiosk, including the menu names and operational commands, must be available in multiple languages.

**3.05: Content Standards.** No content to be displayed on any Digital Wayfinding Kiosk, including but not limited to all advertising content, may contain any of the following (collectively, “Content Standards”):

- A.** Promote or depict profane language or imagery, gratuitous violence, the infliction of harm upon any person, animal, or property, or criminal activity;
- B.** Promote or depict pornographic, sexual, excretory, or obscene activities or subject matter, including the depiction of nudity or sexual conduct;
- C.** Contain messages that are false, misleading, or deceptive;
- D.** Contain messages that are libelous or defamatory;
- E.** Infringe upon a copyright, trademark, service mark, or other intellectual property to which the advertiser does not have sufficient rights;
- F.** Contain language, imagery, or other content that discriminates or promotes the discrimination against any individual, group of individuals, or entity on the basis of race, color, religion, national origin, citizenship, sex, gender or gender identity, age, disability, family status, military or veteran status, political affiliation, or any other protected classification;
- G.** Political advertisements that promote or oppose (i) a political party, (ii) the election of any candidate or group of candidates for federal, state, local, or judicial office, or (iii) any matter of public concern that is subject to public initiative, referendum, ballot measure, or formal governmental action, such as the vote of a legislative body or administrative decision-making of a governmental department or agency;
- H.** Promote or depict the sale, use of, or participation in any product, service, or activity that is illegal under federal, state, or local law;
- I.** Promote or depict the sale or use of tobacco products, including but not limited to cigarettes, cigars, pipes, smokeless chewing tobacco, and electronic cigarettes;
- J.** Promote or depict the sale or use of marihuana products, including but not limited to products for medical or recreational use;

- K.** Promote or depict the sale or use of firearms, including but not limited to ammunition, firearm accessories, and fireworks;
- L.** Promote or depict media intended for a mature audience, including but not limited to adult films (generally rated “X” or “NC-17”), television programming (generally rated “MA”), and video games (generally rated “M” or “A”);
- M.** Promote or depict sexually explicit adult entertainment businesses, facilities, or services, including but not limited to adult arcades, bookstores, video stores, cabarets, motion picture theaters, semi-nude modeling studios, and escort services;
- N.** Advertise legal, medical or other professional services that are coercive, deceptive, intimidating, overwhelming, or that otherwise could compromise a reasonable viewer’s ability to evaluate fully all available alternatives with reasonable judgment and appropriate self-interest; or
- O.** Contain language, imagery, or other material that is so objectionable under prevailing community standards as to foreseeably result in harm to, disruption of, or interference with the ordinary operation of the public transit system.
- P.** Contain flashing or strobing lights, noises, or other special effects that could overly distract or otherwise compromise the safety of drivers, bicyclists, or pedestrians.

Additionally, DDP will not display on Digital Wayfinding Kiosks located within 1,000 feet of an “advertisement sensitive property”, as that term is defined in Section 4-1-1 of the 2019 Detroit City Code, advertisements for alcohol products, including but not limited to beer, wine, distilled spirits, products containing alcohol products, and alcohol product accessories. DDP will be responsible for ensuring that all content is fully compliant with all Applicable Laws, as well as with the Content Standards set forth in this Section. In discharging such responsibility, DDP must establish standard operating procedures to oversee content displayed on any Digital Wayfinding Kiosk. DDP must not delegate or otherwise assign its oversight responsibilities to IKE or any other third party without prior written approval by the CITY. DDP may consult with the CITY as to the compliance of certain content with Applicable Laws, in which case the CITY and DDP will collaborate to reach a mutually agreeable determination.

In the event that the CITY identifies an advertisement displayed on any Digital Wayfinding Kiosk as not in compliance with Applicable Laws or the Content Standards and notifies DDP of such fact, DDP shall immediately coordinate with IKE to cause the advertisement to be removed from all Digital Wayfinding Kiosks within 24 hours after receipt of the CITY’s notification. Following removal of the advertisement at issue, DDP and the CITY will mutually determine whether or not the advertisement is permissible for display. If DDP and the CITY reach agreement that an advertisement is permissible, DDP and IKE may commence or recommence display of the advertisement on the Digital Wayfinding Kiosks. If DDP and the CITY do not reach such agreement, DDP and IKE will refrain from display of the advertisement.

**3.06: Privacy and Security.** DDP and its Vendors must ensure, in consultation with the CITY’s Chief Information Officer, that the Digital Wayfinding Network protects the privacy and



information security of all Users. No Digital Wayfinding Kiosk may be equipped with or operate security cameras, facial recognition, or any other audio or visual surveillance capability. Any photographic capability, for example as part of the photo booth or arcade applications, may be operational only upon activation by a User and may remain operational for only as long as necessary for the User's purposes. Unless expressly authorized by this Agreement, the Digital Wayfinding Kiosks must not save or store Users' Personally Identifiable Information, and DDP will not share any User's Personally Identifiable Information, in violation of the Privacy Policy or Applicable Law. The Digital Wayfinding Kiosks must not require Users to establish a unique username, password, or account in order to access or utilize any of its features or functionality. Neither DDP nor its Vendors may sell any User's Personally Identifiable Information to any third party without the express written permission of the CITY. The Digital Wayfinding Kiosks must be operated in accordance with the Privacy Policy. DDP must ensure that such Privacy Policy is accessible to all Users via each Digital Wayfinding Kiosk. The Privacy Policy may be updated from time to time by IKE, and any such revisions shall be provided to the CITY. No revisions to the Privacy Policy will constitute an amendment to this Agreement or be subject to the requirements of Article XIII, herein. The Wi-Fi service will be configured to display a splash screen on a User's Wi-Fi enabled device prior to any User's connection to the Wi-Fi service. The splash screen will include suggestions for protecting the privacy and security of personal and confidential information, such as banking credit card, password, and other private information, when using a public Wi-Fi service.

**3.07: Proprietary Ownership.** The Parties acknowledge that the Digital Wayfinding Network, including all Digital Wayfinding Kiosks, the software used in the operation thereof, and all patents, designs, trademarks, copyrights, and other intellectual property rights of IKE in and to the Digital Wayfinding Network, the Digital Wayfinding Kiosks, or any component thereof, will at all times remain the property of IKE. All content to be displayed on any Digital Wayfinding Kiosk that is created by or on behalf of DDP will be the property of DDP or its Vendors, or licensed for use by DDP or its Vendors. All content to be displayed on any Digital Wayfinding Kiosk that is created by the CITY or otherwise provided by the CITY to DDP for display will be the property of the CITY or licensed for use by the CITY.

The Parties agree that the use of their respective names, logos, brands, trademarks, copyrights, and service marks (collectively, "**Marks**") may be helpful in providing information to the public through the Digital Wayfinding Kiosks. Each Party will retain all intellectual property rights as they may exist to its own Marks, and the CITY hereby grants to DDP and IKE a non-exclusive, non-transferrable, royalty-free license to use the CITY's Marks. Except as provided in the preceding sentence, no license to use any existing or future Mark of either Party, by implication or otherwise, is granted to the other Party under this Agreement. The CITY may revoke the license granted to DDP and IKE to use the CITY's Marks at any time, whereupon the DDP and IKE will immediately cease their use of such Marks and in connection therewith shall be relieved of the obligation to display any specific Community Messages that contain any such Marks.

## ARTICLE IV: PLANNING AND PERMITTING

- 4.01: Numbers.** The Digital Wayfinding Network, when completed, will consist of not fewer than 30 Digital Wayfinding Kiosks.
- 4.02: Planning.** Upon the Effective Date of this Agreement, the Parties will jointly commence a Planning Phase, during which time they will collaborate to determine by mutual agreement the specific number of Digital Wayfinding Kiosks and the locations at which each is to be installed. Of the first 30 locations for Digital Wayfinding Kiosks that are agreed upon, at least one such location must be within the portion of each of the seven Council Districts outside of the Greater Downtown Area (“**Neighborhood Locations**”). Specific locations may be selected based on a variety of considerations, including but not limited to:
- A.** Public engagement with and feedback from community organizations, local businesses, and individuals;
  - B.** Pedestrian and vehicular traffic volumes;
  - C.** Proximity to restaurant/retail clusters, commercial corridors, and business districts;
  - D.** Proximity to key cultural, entertainment, and recreational venues, attractions, and points of interest;
  - E.** Proximity to hubs for public transportation and transit;
  - F.** Accessibility to electric and communications utilities;
  - G.** Handicap accessibility, in accordance with the requirements of Section 3.03 of this Agreement; and
  - H.** Information from the various CITY departments, such as the Department of Public Works, Department of Information Technology, Planning and Development Department, Buildings, Safety Engineering, and Environmental Department, Historic District Commission, and the Department of Neighborhoods, among other departments, the expertise of which may be pertinent for planning purposes.

The Planning Phase will continue until such time that the Parties have mutually agreed upon the specific locations of not fewer than 30 Digital Wayfinding Kiosks, at which time it will conclude.

- 4.03: Approvals.** Once the location of a Digital Wayfinding Kiosk is agreed upon pursuant to Section 4.02, above, the Parties may proceed to secure all Approvals for such Digital Wayfinding Kiosk, as may be necessary under Applicable Laws, which may include, but are not limited to, construction permits, encroachment permits, and utility connection approvals. The Parties acknowledge that the specific requirements of particular Approvals or information obtained during the approval process, such as technical information

regarding access to utilities and underground conflicts, may necessitate the revision of certain locations for Digital Wayfinding Kiosks that were agreed upon during the Planning Phase. Accordingly, if such circumstances necessitate that the exact location of a Digital Wayfinding Kiosk be revised within the same general vicinity as was agreed upon during the Planning Phase, then the exact location specified in the Approvals for such Digital Wayfinding Kiosk will control for purposes of the City's agreement to such location, and DDP shall not be required to obtain any modification to the City's agreement to the original location provided during the Planning Phase. If the approval process necessitates that the exact location of a Digital Wayfinding Kiosk be revised beyond and outside of the same general vicinity as was agreed upon during the Planning Phase, then the Parties will cooperate in good faith to mutually agree upon a new location for such Digital Wayfinding Kiosk. For these purposes, "general vicinity" should be construed as a location within 1,000 feet of the original location agreed upon during the Planning Phase. DDP acknowledges that the installation of the Digital Wayfinding Kiosks in the public right of way is subject to approval by the Detroit City Council. In such event, the City shall not require DDP to submit engineered drawings or plans prior to the City Council's approval of the locations. Once City Council has approved a location, DDP will prepare and submit engineered drawings and plans of that location to the City's Department of Public Works for its review and approval as a part of seeking the Approvals for such location.

DDP and its Vendors will be responsible to apply for and secure all such Approvals. The CITY will make reasonable efforts to ensure that DDP's applications for Approvals from the CITY are not unreasonably delayed or arbitrarily denied and will otherwise generally support DDP and its Vendors in securing such Approvals but will have no responsibility to secure such approvals on their behalf. All Approvals, including those that may be required under the 2012 City of Detroit Charter or the 2019 Detroit City Code, or that may otherwise be issued by or upon the approval of the CITY, will otherwise be subject to their ordinary review and approval procedures, and the CITY does not approve nor guarantee the approval of any such Approvals by operation of this Agreement.

## ARTICLE V: CONSTRUCTION AND INSTALLATION

**5.01: Installation and Construction.** DDP will be responsible for ensuring that all installation and construction activities by IKE, including delivery and siting of all Digital Wayfinding Kiosks in such numbers and in substantially the locations as identified during the Planning Phase, or as revised during the approval process as described in Section 4.03 of this Agreement, connection to electrical and communications utilities, and other necessary construction activities, at IKE's sole expense. The CITY will work in good faith with DDP during the Planning Phase to explore the feasibility of connecting the Digital Wayfinding Kiosks to existing electrical infrastructure owned or controlled by the CITY in the public right of way, including electrified power sources for streetlights, traffic infrastructure, and festival lights, and the like, and allowing DDP and IKE to use spare or unused circuits, wires or conduits in the right-of-way to minimize the need for new trenching. All costs for connections to City electrical infrastructure or use of power, including administrative or overhead costs, will be borne by IKE. DDP must cause IKE to perform all installation and

construction activities in accordance with applicable requirements of all Approvals and Applicable Laws. If a Digital Wayfinding Kiosk is planned to be located on private property, or if access to or across private property is necessary for the installation of a Digital Wayfinding Kiosk, including its associated utility connections, DDP will require IKE to make reasonable efforts to secure at its sole expense sufficient rights to ensure that the Digital Wayfinding Kiosk will be fully operational and accessible to all Users. If DDP or IKE is unable to secure such rights at a reasonable cost or if at any time following the parties' agreement on a location for a Digital Wayfinding Kiosk, DDP or IKE determines that such location is impracticable for the installation of a Digital Wayfinding Kiosk, DDP and the CITY will cooperate in good faith to mutually agree upon a new location for such Digital Wayfinding Kiosk. DDP and its Vendors will make reasonable efforts to ensure that installation and construction activities related to each Digital Wayfinding Kiosk are commenced promptly according to the installation timeline set forth in Section 5.02 of this Agreement and are completed as quickly as feasibly possible, so as to ensure minimal disruption to pedestrian and vehicular traffic in the surrounding area. Installation of a Digital Wayfinding Kiosk will not be considered complete until it is fully operational.

- 5.02: Installation Timeline.** Installation of the Digital Wayfinding Kiosks will occur in two phases, which may be referred to as “**Installation Phase I**” and “**Installation Phase II**”. Each Installation Phase must include the installation of Digital Wayfinding Kiosks at no fewer than 15 locations. Installation of Digital Wayfinding Kiosks at not less than four (4) of the Neighborhood Locations must be completed during Installation Phase I, and Installation of Digital Wayfinding Kiosks at the remainder of the required Neighborhood Locations must be completed during Installation Phase II. Installation Phase I will commence upon the issuance of all Approvals for Digital Wayfinding Kiosks at 15 locations and will continue for 180 days thereafter. Installation Phase II will commence upon the issuance of all Approvals for an additional 15 locations and will continue for 180 days thereafter.
- 5.03: Expansion.** At any time following the Planning Phase, the Parties may by mutual agreement expand the Digital Wayfinding Network to include additional Digital Wayfinding Kiosks beyond the number initially contemplated during the Planning Phase. As part of such mutual agreement, the Parties will jointly determine the scope and schedule for expansion, including the number of additional Digital Wayfinding Kiosks and timeframes for their planning, permitting, and installation. Upon such agreement, the Parties will undertake a planning process similar in nature to the Planning Phase envisioned in Article IV of this Agreement to determine specific locations of the additional Digital Wayfinding Kiosks and DDP and its Vendors will apply for and secure all necessary Approvals and undertake construction and installation of the additional Digital Wayfinding Kiosks, all in general accordance with Articles IV and V, respectively, of this Agreement. All Digital Wayfinding Kiosks installed as part of any expansion effort must operate as part of the Digital Wayfinding Network.

## ARTICLE VI: MAINTENANCE AND REPAIRS

**6.01: General Maintenance.** DDP must keep (or cause IKE or other of its Vendors to keep) all Digital Wayfinding Kiosks in generally clean, sanitary, and safe condition and in good order and repair and functional for their intended purposes. DDP will engage one or more Detroit-based entities as Vendors to perform cleaning and maintenance of the Digital Wayfinding Kiosks. DDP and its Vendors will be responsible for regular cleaning and maintenance, including the prompt removal of graffiti from the Digital Wayfinding Kiosks and removal of debris, glass, garbage, snow, and other obstacles from the Digital Wayfinding Kiosks and their immediately surrounding areas, at its own expense.

**6.02: Maintenance and Repair of Digital Wayfinding Kiosks.** DDP and its Vendors must perform regular inspection and preventative maintenance of all Digital Wayfinding Kiosks. Such inspection and maintenance must encompass each Digital Wayfinding Kiosk's hardware and other material components, as well as its operating system, programs, applications, and other software, and may include installation of updates or patches to such software to ensure that it remains reasonably up to date and functional for its intended purposes. As part of its maintenance responsibilities, DDP will timely pay (or cause IKE to timely pay) all utility fees and other expenses associated with the Digital Wayfinding Kiosks to ensure that they remain fully operational.

In the event that any Digital Wayfinding Kiosk is damaged, destroyed, or otherwise in need of repair, DDP will promptly notify the CITY of such circumstance, take whatever steps as may be reasonably necessary to prevent further damage or destruction, and undertake all necessary repair, restoration, reconstruction, or replacement of the Digital Wayfinding Kiosk so as to return it to good order and repair and fully operational status as quickly as feasibly possible.

**6.03: Maintenance of Utility Services.** DDP and its Vendors must maintain all utility services for all Digital Wayfinding Kiosks, including connections to electrical and communications utilities. If utility services are interrupted for any period of time and for any reason, DDP will promptly coordinate with the appropriate utility providers and make best efforts to the reasonable extent of its ability to reestablish service.

**6.04: Conflicting Activities.** DDP understands and acknowledges that certain locations where Digital Wayfinding Kiosks are sited in the City right of way may be subject to multiple conflicting uses, including but not limited to construction or excavation activities, street closures, or special events that may from time to time limit or restrict prospective Users' access to one or more Digital Wayfinding Kiosks ("**Conflicting Uses**"). In the event that the CITY anticipates that a Conflicted Use will completely prevent access to one or more Digital Wayfinding Kiosks, the CITY will make reasonable efforts to notify DDP of the location, duration, and nature of such Conflicting Use in advance thereof to the extent feasible. If the Conflicting Use is anticipated to cause physical damage to the Digital Wayfinding Kiosk or result in a safety issue that necessitates the physical removal of a Digital Wayfinding Kiosk from its location, the CITY will coordinate with DDP to facilitate such removal and storage of the Digital Wayfinding Kiosk. If the duration of such removal is anticipated to be longer than 60 days, the CITY and DDP will cooperate in good faith to mutually agree upon a new permanent location for the Digital Wayfinding Kiosk

through the planning and permitting process set forth in Article IV and the construction and installation process set forth in Article V of this Agreement, as may be applicable.

## **ARTICLE VII: EXPENSES AND REVENUE SHARING**

**7.01: Allocation of Expenses to DDP.** DDP will assume sole responsibility, either directly or through its Vendors, including IKE, for all expenses payable under this Agreement not expressly allocated to the CITY, including but not limited to those expenses associated with:

- A.** Planning Phase activities, including but not limited to preparation of pedestrian and vehicular traffic studies, local business surveys, public forums and other means of community engagement, and field inspections of potential locations.
- B.** Approvals, including but not limited to the preparation of applications and other materials, as well as application fees.
- C.** Sufficient rights to any private property as may be necessary for the siting, installation, construction, and operation of all Digital Wayfinding Kiosks, as well as their accessibility to all Users.
- D.** Procurement of Digital Wayfinding Kiosks, whether by purchase, lease, license, or other means, including but not limited to their shipping and delivery.
- E.** Installation and construction of the Digital Wayfinding Kiosks, including but not limited to all demolition and site preparation work, installation and construction activities, connection to electrical and communications utilities, and site restoration.
- F.** Operation, maintenance and repair of the Digital Wayfinding Network, including but not limited to keeping each Digital Wayfinding Kiosk fully operational and, along with their surrounding areas, in clean condition and good repair, regular inspection and preventative maintenance, software updates, and the repair, restoration, reconstruction, or replacement of Digital Wayfinding Kiosks, all so as to ensure that each remains fully operational at all times.
- G.** The development, creation, and production of all content to be displayed on the Digital Wayfinding Kiosks that is created by or on behalf of DDP, including all Wayfinding Information and advertising content.
- H.** DDP's activities to wind down the Digital Wayfinding Network upon the expiration or termination of this Agreement, including but not limited to removal of all Digital Wayfinding Kiosks and restoration of all locations upon such removal as close as reasonably practicable to their conditions prior to the date the Digital Wayfinding Kiosks were installed thereon.

**7.02: Allocation of Expenses to the CITY.** CITY will assume sole responsibility for the expenses associated with the following:

- A. Activities of CITY personnel, acting in the ordinary course of their employment by the CITY, in performing various activities under this Agreement;
- B. The development, creation, and production of all content to be displayed on the Digital Wayfinding Kiosks that is created by or on behalf of the CITY, including Community Messaging content.
- C. The CITY's activities to wind down its activities upon the expiration or termination of this Agreement.
- D. Any internal or third party expenses incurred by the CITY in the negotiation, administration or enforcement of this Agreement, in processing or providing input or information with regard to the Planning Phase, or otherwise.

**7.03: Revenue Sharing.** DDP represents that under the terms of the IKE Agreement, all revenues arising from the operation of the Digital Wayfinding Kiosks will accrue to IKE, either directly or through its Vendors, and that IKE is responsible to make certain Revenue Share Payments to DDP, which are calculated on a quarterly basis as the greater of:

- A. 50% of Net Kiosks Revenues arising during the previous Calendar Quarter, or
- B. One-quarter of the applicable minimum annual revenue share, as follows:

First Year	\$8,500.00 per Operational Kiosk
Second Year	\$11,000.00 per Operational Kiosk
Third Year	\$13,500.00 per Operational Kiosk
Fourth and Subsequent Years	The minimum annual revenue share amount for the previous year, multiplied by a factor of 1.03, per Operational Kiosk

DDP further represents that (1) the "First Year" for any Digital Wayfinding Kiosk constitutes the first twelve-month period following the date when such Digital Wayfinding Kiosk first becomes fully operational, (2) that all Revenue Share Payments are due to it from IKE on a quarterly basis no later than the 30<sup>th</sup> day following the end of each Calendar Quarter, and that any Revenue Payment for the Calendar Quarter during which the subject Digital Wayfinding Kiosk first becomes fully operational may be equitably prorated on a monthly basis.

In recognition of their respective efforts to ensure the successful operation of the Digital Wayfinding Network and seamless incorporation of the Digital Wayfinding Kiosks into Detroit's downtown and neighborhood streetscapes, the Parties agree that the Revenue Share Payments should be shared equitably between them. Commencing upon completion of the first Calendar Quarter during which the first Digital Wayfinding Kiosk becomes fully operational, DDP shall pay to the CITY an amount equal to 50% of each Revenue

Share Payment received from IKE pursuant to the IKE Agreement following each Calendar Quarter. DDP will be responsible for all administrative expenses that it incurs and will not deduct any such expenses from the portion of each Revenue Share Payment that is payable to the City under this Section. DDP will make all payments to the CITY within 30 days following DDP's receipt of a Revenue Share Payment from IKE pursuant to the IKE Agreement, but in no case any later than 60 days following the end of each Calendar Quarter. DDP will make revenue share payments payable to "City of Detroit" and submit such payments by means directed by the CITY.

## **ARTICLE VIII: REPORTING, RECORDKEEPING, AND COMMUNICATIONS**

**8.01: Reporting.** DDP must prepare and submit quarterly reports to the City regarding the use of and revenues associated with operation of the Digital Wayfinding Network. The first report will pertain to the period commencing upon the first day of Installation Phase I and continuing through the end of the then-current Calendar Quarter. Subsequent reports will pertain to corresponding Calendar Quarters, continuing until the conclusion of the Term of this Agreement. The report pertaining to each Calendar Quarter will be due 30 days following the conclusion of such Calendar Quarter. DDP will submit such reports to the CITY as specified in Section 14.01 of this Agreement.

The form of the reports will be determined by mutual agreement of the Parties and will include the following information:

- A.** The number and locations of all Digital Wayfinding Kiosks that have been installed by the conclusion of the reporting period;
- B.** The number and locations of all Digital Wayfinding Kiosks that are fully operational for any portion of the reporting period;
- C.** Total User impressions and utilization of features and applications of each Digital Wayfinding Kiosk; **D.** Reasonably detailed information on the DDP generated Community Content displayed on the Digital Wayfinding Kiosks during the reporting period; and
- E.** The Gross Kiosk Revenues and Net Kiosk Revenues generated during the immediately preceding Calendar Quarter, as well as calculations of the Revenue Share Payment made to DDP and the portion thereof payable to the CITY for such Calendar Quarter.

**8.02: Recordkeeping, Examination, and Audit.** Each Party must keep and maintain source documents, data, records, and other information pertinent to its activities under this Agreement ("Records") in accordance with generally accepted accounting principles or other accounting standards consistently applied by such party for a minimum of three (3) years following the expiration or termination of this Agreement, but in no case for less time than may be required to maintain compliance with Applicable Laws.



DDP grants to the CITY the right to examine and audit all Records and other pertinent documents and information at any time upon reasonable prior written notice as the CITY in its sole discretion may deem necessary, in accordance with the following:

- A. DDP must make all Records available to the CITY for examination and audit during normal business hours at its primary place of business in the City of Detroit. In the course of such examination and audit, representatives of the CITY may take note of any deficiencies in DDP's record-keeping practices or other deficiencies in its performance under this Agreement. The CITY will notify DDP of any such deficiencies and upon receipt of such notice, DDP must take appropriate measures to remedy all such deficiencies within 10 days. The failure to timely complete such remedy will constitute a material failure by DDP to perform in accordance with this Agreement.
- B. Any unpaid revenues owed to the CITY in accordance with Article VII of this Agreement that are discovered in the course of the CITY's examination or audit must be paid by DDP to the CITY within 30 days after the CITY's notification thereof.
- C. Each Party will be responsible for its own audit costs.
- D. Nothing in this Agreement may function or be construed as a restriction upon the authority of the City of Detroit Auditor General, as set forth in the 2012 Detroit City Charter, including but not limited to the powers to audit all accounts chargeable against the CITY and to settle disputed claims.

DDP must ensure that all provisions of this Section are replicated in all agreements with each of its Vendors, such that each Vendor will have the same recordkeeping obligations and the CITY will have the same rights to examine and audit each Vendor's Records, as set forth herein. Notwithstanding the foregoing and in consideration that IKE is not a party to this Agreement, the CITY agrees that in conducting any such audit permitted by this Article VIII, the CITY will refrain from making or retaining copies of any financial or other Records in the sole possession of IKE.

**8.03: Points of Contact:** Promptly upon the Effective Date of this Agreement, each Party will appoint from among its respective staffs and identify to the other Party a single individual to serve as its primary point of contact with the other Party for purposes of coordinating their respective activities under this Agreement, including but not limited to Digital Wayfinding Kiosk features and functionality under Article III, planning activities under Article IV, construction and installation activities under Article V, and maintenance and repair activities under Article VI of this Agreement. Each Party will promptly notify the other Party upon any change in the individual who will serve in such role or their contact information.

**8.04: Meetings.** Representatives of the Parties will meet, whether in person or by video or telephone conference, at their mutual convenience on a periodic basis to review their

performance under this Agreement, the contents of DDP's reporting, and any other relevant issues that may arise from time to time.

- 8.05: Confidentiality.** Each Party will keep and maintain as confidential all source documents, records, and other information, including Records, pertinent to its activities under this Agreement that are marked by either Party as such and will refrain from releasing such information to third parties without notice to the other Party, subject to any disclosure requirements contained in the Michigan Freedom of Information Act, Public Act 442 of 1976, as amended, or other Applicable Laws, as defined herein. Should the CITY receive a request for any information deemed confidential by this Agreement, the CITY shall notify DDP and IKE of such request and shall not interfere with the efforts of DDP or IKE, as the case may be, to obtain an appropriate protective order or otherwise seek legal or equitable remedies to prevent or limit the disclosure of such information.

### ARTICLE IX: INSURANCE

- 9.01 Coverage.** DDP assumes all risks associated with the installation and construction, maintenance, and operation of the Digital Wayfinding Network, and must maintain at its expense during the term of this Agreement the following insurance:

Type:	Amount Not Less Than:
Workers' Compensation	Michigan Statutory minimum
Employers' Liability	\$500,000.00 minimum each disease \$500,000.00 minimum each person \$500,000.00 minimum each accident
Commercial General Liability Insurance (Broad Form Comprehensive)	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Automobile Liability Insurance (covering all owned, hired and non-owned vehicles with personal and property protection insurance, including residual liability insurance under Michigan no fault insurance law)	\$1,000,000.00 combined single limit for bodily injury and property damage

DDP must provide to the CITY certificates of insurance evidencing compliance with the insurance requirements set forth above.

- 9.02 Additional Insured.** DDP's commercial general liability insurance policy must include an endorsement naming the "City of Detroit" as an additional insured. The additional insured endorsement must provide coverage to the additional insured with respect to liability arising out of the named insured's operations at or use of the Digital Wayfinding Network.

The commercial general liability policy must state that DDP's insurance is primary and not excess over any insurance already carried by the City of Detroit and provide blanket contractual liability insurance for all written contracts.

- 9.03: Prior Notice.** All insurance policies must be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior notice to the CITY. Certificates of insurance evidencing the coverage required by this Agreement must be submitted to the CITY upon DDP's execution of this Agreement in a form reasonably acceptable to the CITY.
- 9.04: Vendors.** If any work is contracted out by DDP for any work associated with the installation or operation of the Digital Wayfinding Kiosks in connection with this Agreement, DDP must require each Vendor to obtain and maintain the types and limits of insurance set forth herein and shall require documentation of same, copies of which shall be promptly furnished to the CITY.
- 9.05: Deductibles.** DDP will be responsible for payment of all deductibles contained in any insurance required under this Agreement. The provisions requiring DDP to carry the insurance required herein shall not be construed in any manner as waiving or restricting the liability of DDP under this Agreement.
- 9.06: Revisions to Coverage.** If during the term of this Agreement, changed conditions or other pertinent factors, in the reasonable judgment of the CITY, render inadequate the insurance limits stated above, DDP will furnish on demand such additional coverage as may reasonably be required under the circumstances. All such additional insurance will be obtained at DDP's expense, under valid and enforceable policies issued by insurers of recognized responsibility which are well-rated by national rating organizations and are reasonably acceptable to the CITY.

## ARTICLE X: INDEMNIFICATION

- 10.01 Indemnity.** DDP will indemnify and hold harmless the CITY and all other affiliated, or subsidiary entities or commissions now existing or hereafter created, their agents and employees (in their capacity as such) against and from any and all third party liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, architects, engineers and other consultants) which may be imposed upon, incurred by or asserted against CITY by reason of any of the following occurring in association with the Digital Wayfinding Network during the term of this Agreement:
- A.** Any work, act, error, omission or thing done in or about the Digital Wayfinding Kiosks, or any part thereof or affecting same, by DDP or its agents, Vendors, employees, licensees, invitees, or associated, affiliated or subsidiary entities of DDP (herein all collectively called "Associates") for whose acts any of them might be liable;

- B. Any use, possession, occupation, or operation of DDP's equipment; and
- C. Any negligent or tortious act or omission of DDP relative to its obligations hereunder with respect to the Digital Wayfinding Kiosks;
- D. Any failure by DDP to perform its obligations under this Agreement, including any loss or expense incurred by an employee of the CITY which arises out of or pursuant to such failure.

The laws of the State of Michigan, as interpreted by a Michigan court of law, will be applied to determine percentages of fault resulting from claims successfully adjudicated for damages by third parties against DDP and the CITY.

#### **ARTICLE XI: EFFECTIVE DATE, TERM, AND TERMINATION**

**11.01: Term and Effective Date.** The term of this Agreement will commence on the Effective Date and expire on the last day of the tenth (10<sup>th</sup>) full calendar year following the date on which the final Digital Wayfinding Kiosk is installed pursuant to the procedures outlined in Articles IV and V of this Agreement (the "**Initial Term**"). The Initial Term shall automatically renew for up to two successive periods of five years each (each a "**Renewal Term**"), provided that, as of the commencement of each Renewal Term, DDP is not then in default, beyond any applicable notice and cure period of its maintenance and repair obligations set forth in Section 6.01 and 6.02, or its obligation to pay the revenue share payments required by Article VII. The Effective Date of this Agreement will be the date upon which this Agreement has been fully executed by a duly authorized agent of each Party and has been approved by the City of Detroit Law Department, and the transactions contemplated hereby have been approved pursuant to the Resolution of the Detroit City Council.

**11.02: Default and Termination for Cause.** Each of the following occurrences constitutes a default under the Agreement ("Event of Default"):

- A. The failure of DDP to submit payments when due;
- B. The failure of DDP or its Vendors to comply with the terms and conditions of all Approvals;
- C. The material failure by either Party in the performance of any covenant, obligation, agreement or provision of this Agreement;
- D. The filing of a petition by or against DDP (i) in any bankruptcy or other insolvency proceeding; (ii) seeking any relief under any state or federal debtor relief law; (iii) for the appointment of a liquidator or receiver for all or substantially all of DDP's property or for DDP's interest in this Agreement, and in any such instance the same is not dismissed within sixty (60) days after the filing thereof; and

**E.** The assignment by DDP for the benefit of its creditors.

Upon the occurrence of any Event of Default under this Agreement, the Party not in default may notify the defaulting Party in writing. The defaulting Party will have 45 days after the date of such written notice to cure the default or, in the event of a default that is not capable of being cured within the 45-day cure period, to diligently pursue the cure to completion. If additional Approvals are required to effect a cure, the defaulting Party will diligently pursue such Approvals and upon receiving such Approvals the foregoing cure periods shall apply to the completion of the cure. Failure to cure such default as provided above shall be considered a material breach of this Agreement. Upon either Party's material breach of this Agreement, the Party not in material breach may, in its sole discretion: (a) seek specific performance of the applicable obligation that is the subject of a material breach; (b) elect to cure or perform the applicable obligation that is the subject of the material breach; or (c) issue a notice of termination to the Party in material breach, 60 days after which this Agreement will be terminated. In no event and under no circumstances may DDP seek or be entitled to money damages.

Notwithstanding the foregoing, if the City desires to terminate this Agreement due to a default by DDP that continues beyond any applicable notice and cure period, City shall notify IKE of such desire, and so long as IKE is not in default of the terms and conditions of IKE Agreement, beyond any applicable notice and cure period, IKE may elect to receive an assignment of DDP's rights and obligations under this Agreement. In connection with any such assignment, the CITY hereby agrees that IKE shall not be required to cure, and shall have not liability for, any monetary defaults of DDP under this Agreement. If IKE elects to receive an assignment of DDP's rights and obligations under this Agreement, DDP shall execute such commercially reasonable assignment document to effectuate the same, and if DDP fails to so execute such assignment document within ten (10) days after receipt thereof, DDP hereby appoints IKE as its attorney-in-fact for the purpose of executing such assignment document for and on behalf of DDP. If IKE does not elect to receive an assignment of this Agreement, then the City may terminate this Agreement. Additionally, if the City desires to terminate this Agreement due to a default by DDP that continues beyond any applicable notice and cure period, and IKE is in default of the terms and conditions of its Subcontract with DDP beyond any applicable notice and cure period, the City will have the right, after complying with any applicable notice and cure period, to terminate this Agreement.

In no event may DDP terminate this Agreement in the event of a default of the CITY hereunder without first obtaining IKE's prior written approval.

**11.04 No Waiver.** No failure by the CITY or DDP to insist upon the strict performance of any covenant, agreement, term, or condition of this Agreement or to exercise any right, power or remedy consequent upon a breach thereof and no acceptance of full or partial compensation by the CITY during the continuance of any such breach by the CITY shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

- 11.05 Disposition Upon Conclusion or Termination.** Upon the conclusion or earlier termination of this Agreement, DDP will promptly unwind the Digital Wayfinding Network at its sole expense. Specific actions that DDP and its Vendors will undertake include, but are not limited to:
- A. Removal of all Digital Wayfinding Kiosks;
  - B. Removal or capping of all electric and communications utility infrastructure associated with the Digital Wayfinding Kiosks;
  - C. Restoration of all locations where a Digital Wayfinding Kiosk had been installed as close as reasonably practicable to the conditions that existed upon its installation;
  - D. Termination of all agreements for the display of advertisements on the Digital Wayfinding Kiosks; and
  - E. Payment to the CITY of the final revenue share payments, in accordance with Section 7.03 of this Agreement; and
  - F. Preparation and submission to the CITY of all final reporting, in accordance with Section 8.01 of this Agreement.

## **ARTICLE XII: COMPLIANCE WITH LAWS**

- 12.01: In General.** Each Party is individually responsible, and DDP is responsible for its Vendors, to remain in compliance in all respects with all Applicable Laws. Neither Party will be responsible for ensuring the other Party's compliance with Applicable Laws at any time, unless so required under Applicable Laws. Any material violation of Applicable Laws by one Party will constitute a material breach and grounds for termination of this Agreement by the other Party in accordance with Section 11.02, herein.
- 12.02: Non-Discrimination.** DDP and its Vendors will refrain from refusing, restricting, withholding, or denying any accommodations, services, privileges, advantages or facilities or otherwise discriminating, directly or indirectly, against its members or prospective members on the basis of race, color, ethnicity, national origin, religious beliefs or practices, age, disability, pregnancy, marital status, parental status, military status, employment or educational status, gender, sex, sexual orientation, gender identity or expression, or any other protected classification, in accordance with Chapter 23 of the Detroit City Code and other Applicable Laws.
- 12.03: Avoidance of Conflicts.** DDP represents that it presently has no interest, direct or indirect, and does not intend during the term of this Agreement to acquire any such interest or employ any person having any such interest, which would conflict in any manner or degree with the performance of this Agreement.

### ARTICLE XIII: AMENDMENTS

**13.01: Amendments.** The Parties may from time to time consider it in their best interest to change, modify or extend a term, condition or covenant of this Agreement. Any such change, modification or extension, which is mutually agreed upon by and between the parties shall be incorporated in a written amendment (“Amendment”) to this Agreement. No Amendment to this Agreement will be effective unless it is in writing, expressly makes reference to this Agreement, is executed by a duly authorized representative of each Party, is approved by the City of Detroit Law Department, and is approved pursuant to Resolution of the Detroit City Council, as approved by the Mayor of the City of Detroit, that incorporates such Amendment.

### ARTICLE XIV: NOTICES

**14.01: Notices.** All notices, requests, notifications, and other communications (collectively, “Notices”) related to this Agreement will be given by a Party in writing, signed by an authorized representative of the Party, and hand delivered, mailed by first-class mail, or mailed by overnight courier and addressed as follows:

If to the CITY:	Detroit Department of Public Works Coleman A. Young Municipal Center Detroit, Michigan 48226 <i>Attention:</i> Ron Brundidge, Director
With a copy to:	City of Detroit Law Department Coleman A. Young Municipal Center 2 Woodward Avenue, Suite 500 Detroit, Michigan 48226 <i>Attention:</i> Corporation Counsel
If to DDP:	Downtown Detroit Partnership, Inc. 1 Campus Martius, Suite 380 Detroit, Michigan 48226 <i>Attention:</i> Chief Community Impact Officer
With a copy to:	The Miller Law Firm 1001 Woodward, Suite 850 Detroit, Michigan 48226 <i>Attention:</i> Melvin Butch Hollowell

All Notices shall be deemed given on the day of mailing. Either Party to this Agreement may change its address for the receipt of Notices at any time by giving written notice thereof to the other as herein provided. Any Notice given by a Party must be signed by any authorized representative of such Party.

## ARTICLE XV: MISCELLANEOUS TERMS

- 15.01: Independent Parties.** The Parties acknowledge and agree that the CITY and DDP are independent of each other and do not intend, as a result of this Agreement or otherwise, to become a joint venture, partners, employees, servants, agents, representatives, contractors, or any type of related business entities to one another with respect to the subject matter of this Agreement.
- 15.02: Assignment.** Either Party may assign its respective rights and obligations under this Agreement to an affiliate entity 15 days following its prior written notice to and receipt of consent from the other Party. Such consent shall not be withheld unreasonably by either Party.
- 15.03: Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of any of the successors and assigns of the Parties, subject to the restrictions on assignment contained herein.
- 15.04: Exclusivity.** The Parties acknowledge and agree that this Agreement is exclusive between them, such that DDP must not enter into an agreement with any entity other than the CITY for the deployment and operation of a Digital Wayfinding Network in Detroit. Additionally, the CITY must not enter into an agreement with any entity other than DDP to allow for the installation and operation of any Competing Devices, as hereinafter defined, on property owned or controlled by the City and located within 250 feet of an existing Digital Wayfinding Kiosk. The parties acknowledge and agree that any existing Competing Device that is located within 250 feet of a Digital Wayfinding Kiosk and that was permitted and installed prior to the date of this Agreement may remain at its current location. The term “Competing Devices” means kiosks or other structures utilizing a digital display medium to host advertisements.
- 15.05: Choice of Law and Venue.** This Agreement will be construed and enforced in accordance with the laws of the State of Michigan. DDP agrees, consents and submits to the personal jurisdiction of any competent court in Wayne County, Michigan for any action brought against it arising under this Agreement. DDP agrees that service of process at the address and in the manner specified in Section 11 will be sufficient to put DDP on notice and hereby waive any and all claims relative to such notice. DDP and the CITY also agree that they will not commence any action against the other party because of any matter whatsoever arising out of or related to the validity, construction, interpretation, and enforcement of this Agreement in any courts other than those in the County of Wayne, State of Michigan unless original jurisdiction can be had in either the Michigan Court of Appeals, Michigan Supreme Court or the U.S. District Court for the Eastern District of Michigan, Southern Division.
- 15.06: Force Majeure.** Neither Party will be responsible or liable to the other Party for non-performance or delay in performance of any of the terms or conditions of this Agreement due to acts or occurrences beyond the control of the nonperforming or delayed Party, including without limitation, acts of God, acts of government, terrorism, wars, riots, strikes or other labor disputes, shortages of labor or materials, fires, and floods, provided that the



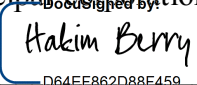
non performing or delayed Party provides to the other Party written notice as soon as possible, but in no event more than 30 days after the force majeure event occurs, of the existence of and the reason for such nonperformance or delay.

- 15.07: Merger.** This Agreement, including the Exhibits and Amendments hereto, contains the entire agreement between the Parties and all prior negotiations and agreements are merged herein. Neither DDP, the CITY, nor their respective agents has made any representations or warranties with respect to the Digital Wayfinding Network or this Agreement, except as expressly set forth herein, and no rights, or remedies are or shall be acquired by the Parties by implication or otherwise unless expressly set forth herein.
- 15.08: Severability.** In the event that any provision in this Agreement or its application is found by a court to be impermissible, invalid, or unenforceable, then that provision will be stricken and will be replaced by a provision that is permissible, valid, and enforceable, and by mutual agreement of the Parties comes closest to expressing the intent of the stricken provision. The remainder of this Agreement shall remain in full force and effect in accordance with its original overall intent to the fullest extent permitted by Applicable Laws.
- 15.09: Interpretation.** Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa. Unless the context otherwise expressly requires, the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section. This Agreement shall be construed to give effect to its terms without any presumption that it is to be construed against its draftsman or otherwise construed in favor of or against either Party. Each Party has been represented by counsel of its choice and has participated equally in connection with the preparation, negotiation and execution of this Agreement.
- 15.10: Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one document. Each counterpart may be executed by facsimile or electronic signature, which will be deemed to be an original signature, to the extent permitted by Applicable Laws.
- 15.11: Authority of the CITY.** Notwithstanding anything in this Agreement or otherwise to the contrary, this Agreement shall not be binding on the CITY until this Agreement has been fully executed by the duly authorized representatives of the CITY, approved by the Detroit City Council and the Corporation Counsel, and signed by the Chief Procurement Officer. Any Amendment must likewise be fully executed by the duly authorized representatives of the CITY, approved by the City Council and the Law Department and signed by the Chief Procurement Officer.
- 15.12: Third-Party Beneficiary.** The CITY and DDP hereby acknowledge and agree that IKE is a third-party beneficiary of the terms of this Agreement.

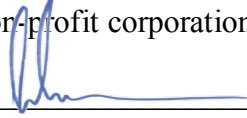
[Signatures appear on next page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates shown below, to be effective as of the Effective Date.

CITY OF DETROIT,  
a Michigan municipal corporation

By:   
Name: Hakim Berry  
Its: Chief operating officer  
Date: 4/5/2021

DOWNTOWN DETROIT PARTNERSHIP, INC.,  
a Michigan non-profit corporation

By:   
Name: Eric B. Larson  
Its: CEO  
Date: Feb 17, 2021

Approved by Detroit City Council on:

\_\_\_\_\_

\_\_\_\_\_

Chief Procurement Officer

In accordance with §18-5-4 of the Detroit City Code, I hereby certify that proper and fair consideration has been received by the City pursuant to this contract.

Approved as to form in accordance with § 7.5-206 of the 2012 City of Detroit Charter.

\_\_\_\_\_

Finance Director

\_\_\_\_\_

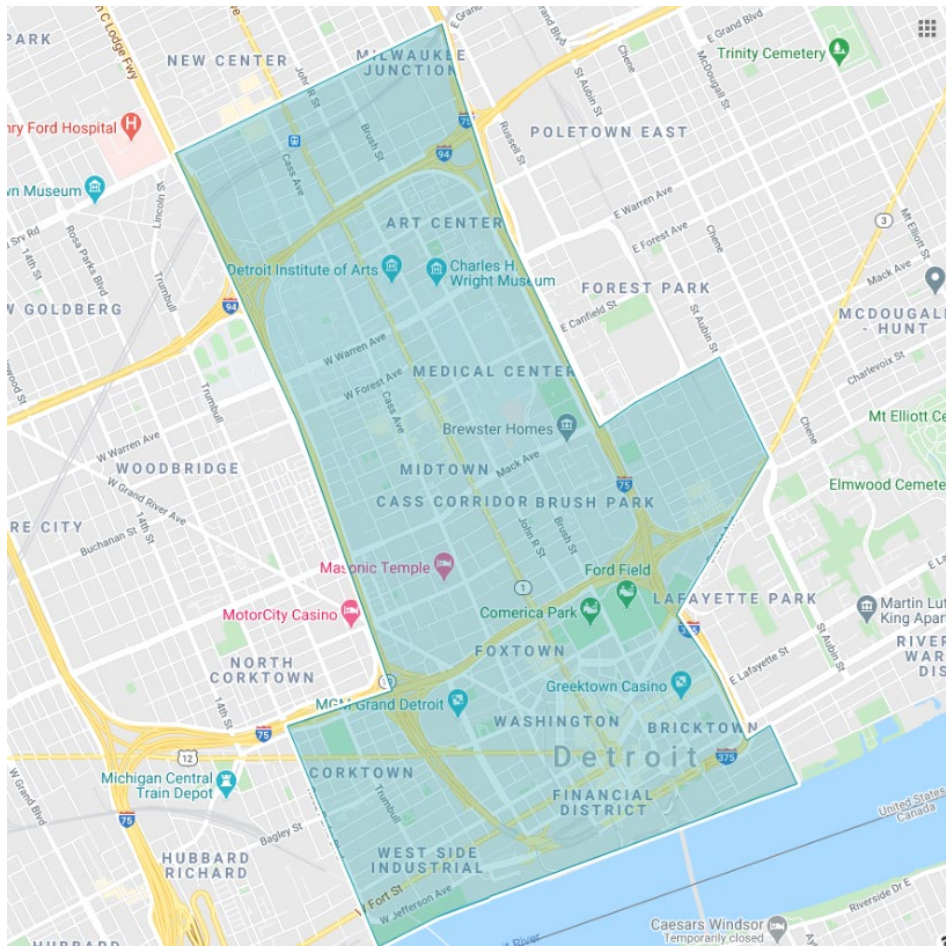
Supervising Assistant Corporation Counsel

**THIS AGREEMENT IS NOT VALID OR AUTHORIZED UNTIL APPROVED BY THE DETROIT CITY COUNCIL.**

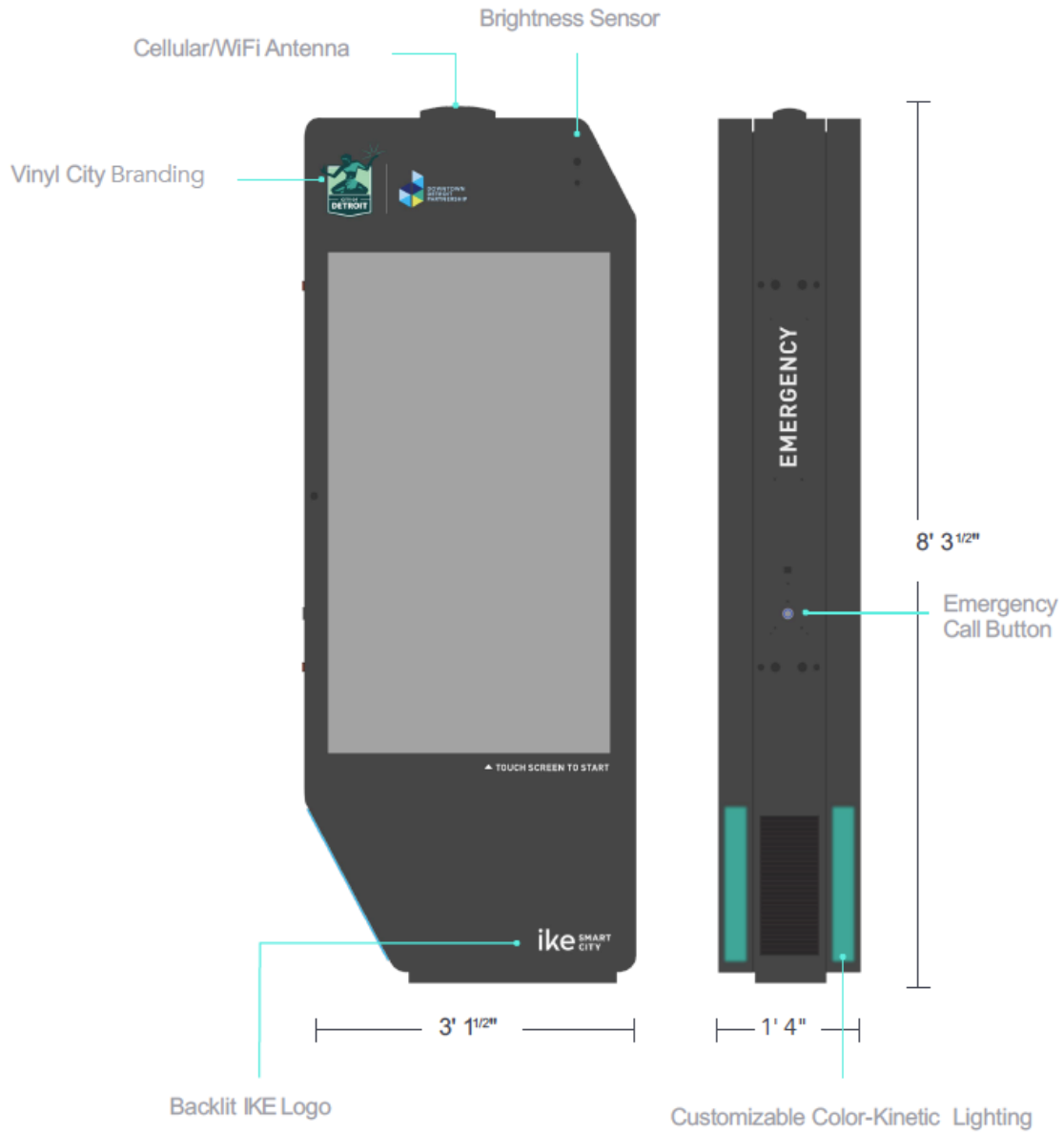


## EXHIBIT A-2: GREATER DOWNTOWN AREA MAP

The Greater Downtown Area includes all of that portion of the City of Detroit within the area bounded by the Detroit River and along Rosa Parks Boulevard (extended to the Detroit River) north to the Fischer Freeway (I-75), then east along Fischer Freeway (I-75) to the John C. Lodge Freeway (M-10), then north along the John C. Lodge Freeway (M-10) to West Grand Boulevard, then east along West Grand Boulevard and East Grand Boulevard to the Fisher Freeway (I-75), then south along the Fisher Freeway (I-75) to Mack Avenue, then east along Mack Avenue to St. Aubin Street, then south along St. Aubin Street to Gratiot Street, then southwest along Gratiot Street to Interstate 375 (I-375), then south along Interstate 375 to East Jefferson Avenue, then east along East Jefferson Avenue to Rivard Street, then south along Rivard Street (extended to the Detroit River).



## EXHIBIT B: IKE DIGITAL WAYFINDING KIOSK DIAGRAM AND SPECIFICATIONS



### Displays:

- Dual 65" touchscreen displays
- Resolution: 1920 x 1080, Aspect Ratio: 16:9

**EXHIBIT C:**  
**DIGITAL WAYFINDING KIOSK PRIVACY POLICY**

[Attached]

# Privacy Policy – Detroit, MI

## INTRODUCTION

IKE SMART CITY, LLC (“We”, “Us”, “Our”) respects your privacy and is committed to protecting it through our compliance with this policy.

This policy describes the types of information we may collect from you or that you may provide when you visit an IKE Kiosk (“Kiosk”) and our practices for collecting, using, maintaining, protecting, and disclosing that information.

Please read this policy carefully to understand our policies and practices regarding your information and how we will treat it. If you do not agree with our policies and practices, your choice is not to use the Kiosks. By accessing or using a Kiosk, you agree to this privacy policy. This policy may change from time to time. Your continued use of a Kiosk after we make changes is deemed to be acceptance of those changes, so please check the policy periodically for updates.

## USER INFORMATION COLLECTED BY A KIOSK

### General

Many of the features, services and information available on a Kiosk can be accessed by you anonymously and without requiring that you provide any information about yourself. The Kiosk will collect information on each user’s anonymous interactions with the Kiosk, such as which features, services and information are most often used and how they are used, so we can improve the Kiosk platform and your experience with the Kiosks. We may share this anonymous information without restriction with the city where the Kiosk is located and its agencies, the Downtown Detroit Partnership, and our technology partners.

### Interactive Features

The following features offered by a Kiosk are interactive: (a) 311; (b) Get Around; (c) Photo Booth; and (d) Survey Says. To access these interactive features, the Kiosk will prompt you to scan a QR code with your mobile device. The QR code will anonymously link your mobile device to the applications. If your mobile device is not capable of accessing the applications by scanning the QR code, you may access these features by providing the information requested by the Kiosk, some of which may personally identify you. The Kiosk will only ask you for information that is necessary to perform the service you request based on the interactive feature you select. Additionally, the Kiosk will only store this information long enough to perform that service, and during that time, we will not share, sell or otherwise disclose this information to any third parties, subject to any features operated by a Third-Party Partner, as described in the following paragraph. After that, the information will no longer be retained by the Kiosk or IKE.

The following interactive features of the Kiosk platform are operated or provided by, incorporate the API(s) of, or otherwise require communication or coordination with third parties (a “Third Party Partner”), and in choosing to engage these features, you agree that we can provide the information you give to a Kiosk, including any information that may

personally identify you, to that Third Party Partner: (a) 311; (b) Get Around; and (c) Photo Booth. By way of example, the 311 feature enables you to send a message to the city and receive updates on the status of your message. When engaging the 311 feature, it will not only ask you for your email address but will also provide your email address to the city so that you can receive the updates you requested. We will always disclose whether an interactive feature is operated by a Third-Party Partner, and this disclosure will appear prominently on the screen when you select one of these features. With respect to any feature operated by a Third-Party Partner, the Kiosk will only store the information you provide long enough to perform the service you request. After that, the information will no longer be retained by the Kiosk or IKE, but it may continue to be retained by the Third-Party Partner. We will only share this information with the Third-Party Partner, and we will not share, sell or otherwise disclose this information to any other third parties. We do not exercise control over our Third-Party Partners, and you will be subject to their policies and terms and conditions when you engage with any feature operated by a Third-Party Partner. For this reason, we recommend that you review their policies and terms and conditions prior to engaging with any feature operated by a Third-Party Partner.

## **OTHER SERVICES**

### **WIFI Service**

Each Kiosk may be equipped to provide Wi-Fi service to personal devices able to receive a wireless Wi-Fi signal that are located within close proximity to the Kiosk. We engage with Third Party Partners to enable us to provide the Wi-Fi service to you. If your personal device has Wi-Fi turned on, your personal device may share certain technical information with the internet service provider across the Wi-Fi signal. The technical information is available to us only for twelve (12) months, after which it is deleted and no longer available to us. We do not store your browser history or track the websites you visit.

### **Environmental Sensors**

Each Kiosk may have environmental sensors that are able to collect data about the environment near a Kiosk, such as air quality. The environmental sensors do not collect any data from or about you. We will share this data without restriction to the city, our local partners and our technology partners or any other party as we reasonably deem necessary.

### **Camera**

Each Kiosk may be equipped with one or more cameras. These cameras are only activated when you engage the Photo Booth feature, and you may only use these cameras to capture an image of yourself. We will not keep any image captured by any camera. We will not use facial recognition technology, and we will not use our cameras to track your movements throughout the city.

## **DISCLOSURE OF INFORMATION**

In addition to the disclosures we have identified elsewhere in this policy, we may also disclose any and all information collected by us or that you provide to us via a Kiosk as described in this policy to our parents, subsidiaries and affiliates, and/or any entity who acquires, by any means, some or all of the assets or ownership interests of IKE Smart City, LLC.



## **DATA SECURITY**

We have implemented measures designed to secure any information you provide to us via a Kiosk from accidental loss and from unauthorized access, use, alteration and disclosure. Although we do our best to protect your information, we cannot guarantee the security of the information you provide to us via a Kiosk.

## **CHILDREN**

The Kiosks are not intended to be used by children under the age of 13 nor do we knowingly or intentionally collect personal information from children under the age of 13. If you are under the age of 13, you are not permitted to submit any personally identifiable information to us. We adhere to the Children's Online Privacy Protection Act in our operation of the Kiosks.

## **PRIVACY POLICY CHANGES**

We may update this Privacy Policy from time to time to reflect changes in applicable law. Because any personal information you provide to us is not stored or maintained in databases owned or created by us, we will be unable to notify you as and when this Privacy Policy is updated. Therefore, we encourage you to visit this Privacy Policy page periodically to view any updates.

## **CONTACT INFORMATION**

To ask question or provide comments about this policy and our privacy practices, contact us at:

250 N Hartford Ave  
Columbus, Ohio 43222

614.294.4898

[privacy@ikesmartcity.com](mailto:privacy@ikesmartcity.com)