



Office of the City Manager

July 25, 2022

To: Honorable Mayor and Members of the City Council

From:  Dee Williams-Ridley, City Manager

Subject: IKE Smart City Kiosks, Proposed Phase Two Locations for Fulfillment of Executed Franchise Agreement (2019)

This memo provides an update on IKE Smart City Kiosks, including a summary of the community outreach conducted to identify potential locations for the remaining 16 kiosks permitted in accordance with the executed franchise agreement (2019) between the City of Berkeley and IKE Smart City Kiosks. It also provides a timeline for when the list of the proposed remaining locations will be before city council for review, discussion, and approval.

Process to Date

On October 30, 2018, the Berkeley City Council approved a 15-year franchise agreement with IKE Smart City to deploy “up to thirty-one” kiosks in Berkeley, and identified fifteen ‘phase one’ locations for kiosks in Berkeley (Attachment 1).¹ The corresponding franchise agreement and contract between IKE Smart City and the City of Berkeley was executed on July 17, 2019. The agreement stipulates that Visit Berkeley, Berkeley’s Convention and Visitor’s Bureau, will administer and oversee the content on each kiosk, and IKE Smart City is responsible for installation, operation, maintenance, and technical support for each kiosk. Revenue generated from advertising displayed on the kiosks is to be divided three ways amongst IKE, Visit Berkeley, and the City of Berkeley. Ten percent (10%) of gross revenues will go to Visit Berkeley in the first two years of the program and 25% in subsequent years of the term (to a cap of \$100,000 annually) for its costs to fund the administration and oversight of the program. In turn, Visit Berkeley will distribute the remainder of its revenue share to the City of Berkeley annually for the use of the right-of-way. Per the franchise agreement, with 31 kiosks fully operational in Berkeley, the City is expected to receive approximately \$580,229 per year in revenue (Attachment 2).²

¹ Additional Agenda Material, *IKE Smart City LLC Franchise Agreement*, page 6, Attachment 1.

² *Facilitation of the Installation of IKE Smart City Kiosks, Amending Chapter’s 20.16 and 16.18 of the Berkeley Municipal Code*, Berkeley City Council, Public Hearing, September 25, 2018, page 6, Attachment 2.

As of July 2022, 15 locations for IKE Kiosks have been approved by the Berkeley City Council, nine IKE Smart City kiosks have been installed in Berkeley, six are undergoing additional infrastructure analysis by IKE. As a result, there are 16 remaining ‘phase two’ locations for IKE Kiosks to be determined and approved by the City Council. To date, IKE kiosks have been installed in the Downtown, Lorin, and Telegraph commercial districts. Five kiosks are located in Downtown, three are in the Telegraph District and one is in the Lorin (Attachment 3). In an effort to equitably distribute the kiosks throughout the city for phase two, the remaining established commercial districts were evaluated for feasibility and designated to receive community feedback from merchants, property owners, and residents regarding kiosk locations.

Per Section 8(B) of the *IKE Smart City LLC Franchise Agreement* the remaining 16 phase two kiosk locations are to be determined using the same prescribed community outreach process deployed in determining the initial 15 phase one locations.³ This includes two rounds of community meetings, hosted by the City in each commercial district where a kiosk is proposed, no less than 30 (business) days apart. Days occurring during council recess are not considered business days.

Community Outreach

The Office of Economic Development, in partnership with Visit Berkeley, IKE Smart City and Berkeley’s commercial district associations, is currently conducting community outreach meetings to share information about the kiosks and review potential phase two kiosk locations with community members, business owners and operators, and commercial district leaders. Table 1 illustrates the community outreach meetings already conducted (Round 1) and scheduled (Round 2, in italics) for phase two IKE kiosk placements.

Table 1. Community Outreach Meetings, Phase Two – Rounds 1 & 2

Commercial District	Round 1 Meeting Location	Date & Time
Downtown	Zoom, Meeting ID: 874 1913 5486	July 7, 2022 - 9:30 AM
University Avenue	Zoom, Meeting ID: 858 2560 0114	July 7, 2022 - 11:00 AM
North Shattuck	Zoom, Meeting ID: 854 6286 8456	July 7, 2022 - 2:00 PM
Commercial District	Round 1 Meeting Location	Date & Time
Elmwood	2648 Ashby Avenue – This meeting also included a walking tour of the commercial district.	July 7, 2022 - 5:00 PM
Telegraph Avenue	Graduate Hotel, 2600 Durant Avenue	July 8, 2022 - 9:30 AM
Solano Avenue	Solano Oriental Rug Company, 1849 Solano Ave	July 8, 2022 - 1:00 PM
Fourth Street	Zoom Meeting ID: 834 6400 2234	July 8, 2022 - 2:00 PM

³ *IKE Smart City LLC Franchise Agreement*, page 6, Attachment 1.

Commercial District	Round 2 Meeting Location	<u>Tentative Date & Time</u>
Downtown	Zoom, Meeting ID: 842 9658 3340	August 31, 2022 - 10:00 AM
University Avenue	Zoom, Meeting ID: 883 3105 7387	August 25, 2022 - 10:00 AM
Elmwood	Zoom, Meeting ID: 849 9933 6078	August 24, 2022 - 9:00 AM
Telegraph Avenue	Zoom, Meeting ID: TBD	August 24, 2022 - Time TBD
Fourth Street	Zoom, Meeting ID: 849 1888 5857	August 24, 2022 - 2:00 PM

Based on initial feedback from community outreach conducted to date, the following is observed:

1. No IKE Kiosks are proposed for Solano Avenue;
2. No IKE Kiosks are proposed for Shattuck Avenue north of Hearst Avenue;
3. No IKE Kiosks are proposed for Euclid Avenue south of LeConte Avenue;
4. No IKE Kiosks are proposed on Fourth Street north of Hearst Avenue.

Proposed Phase Two Locations

Table 2 lists and Attachment 4 illustrates potential locations for Phase Two of IKE kiosk placements arranged by commercial district and intersection. These locations are in development and are presented for discussion and feedback.

Table 2. Proposed Kiosk Locations, Phase 2 – *In Development (for Discussion)*

Commercial District	Address or Intersection	Comments
University Avenue	University & 6th Street University & San Pablo Addison & San Pablo	
Downtown	Shattuck & Dwight Shattuck & Haste Shattuck & Channing Shattuck & Berkeley Square Shattuck & Addison University & Shattuck (SW corner) Hearst & Oxford (NW corner) Shattuck & Blake	Current Built/Live: 5 (phase 1)
Lorin	Shattuck & Blake* (shared with Downtown)	Built/Live: 1
Elmwood	College Avenue & Ashby College Avenue & Alcatraz	
Telegraph	Durant Ave & Bowditch St Telegraph/Channing Garage Piedmont Ave & Bancroft Way	Built/Live: 3
Fourth Street	Fourth St. & University Ave Overpass Amtrak Station – University Ave	

Once additional feasibility analysis is complete by IKE Smart City, the finalized 16 proposed kiosk locations will be shared at the Round 2 community meetings scheduled for August 2022 (see Table 1). Once this outreach is complete, staff will submit the recommended proposed phase two kiosk locations to the Berkeley City Council (anticipated by the end of calendar year 2022). Installation of the second round of kiosks could begin in spring of 2023, provided the locations are approved by the council.

Attachments:

- 1: Additional Agenda Material for Supplemental Packet 2, *Facilitation of the Installation of IKE Smart City Kiosks, Amending Chapter's 20.16 and 16.18 of the Berkeley Municipal Code*, Berkeley City Council, Item 30, October 30, 2018.
- 2: Public Hearing, *Facilitation of the Installation of IKE Smart City Kiosks, Amending Chapter's 20.16 and 16.18 of the Berkeley Municipal Code*, September 25, 2018.
- 3: Map: Existing and Entitled IKE Smart City Kiosks, July 20, 2022.
- 4: Map: IKE Smart City Kiosks Phase Two Preliminary Proposed Locations, July 21, 2022.

cc: Paul Buddenhagen, Deputy City Manager
LaTanya Bellow, Deputy City Manager
Eleanor Hollander, Economic Development Manager
Mark Numainville, City Clerk
Jenny Wong, City Auditor
Farimah Brown, City Attorney
Liam Garland, Director of Public Works
Matthai Chakko, Assistant to the City Manager



Office of the City Manager

ADDITIONAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: October 30, 2018

Item Number: 30

Item Description: **Facilitation of the Installation of IKE Smart City Kiosks;
Amending Chapters 20.16 and 16.18 of the Berkeley Municipal
Code**

Submitted by: **Jordan Klein, Economic Development Manager**

The Franchise Agreement is modified to include provisions for privacy protections and phased deployment.

The Second Amendment to IKE Agreement between the Berkeley Convention & Visitors Bureau (Visit Berkeley) and IKE Smart City reflects the renegotiated terms and program revisions that were agreed to in September.

The IKE Smart City memo on surveillance and data privacy concerns provides information on how the kiosks will perform and the specific features that will not be in operation in the kiosks in Berkeley.

IKE SMART CITY LLC FRANCHISE AGREEMENT

THIS agreement is made and entered into this _____ day of _____, 2018 by and between the City of Berkeley, a municipal corporation ("City"), and IKE SMART CITY LLC, an Ohio limited liability company ("Grantee").

WHEREAS, pursuant to Chapter 9.60 of the Berkeley Municipal Code (BMC), Grantee has applied to City for a Franchise ("Franchise") to install advertising and wayfinding kiosks on sidewalks in the City of Berkeley; and

WHEREAS, on September 25, 2018, the City Council held a public hearing for the purpose of hearing persons in favor of or in opposition to the granting of such Franchise; and

WHEREAS, the City Council has determined that the grant of such Franchise to Grantee is in the public interest; and

WHEREAS, City and Grantee desire to enter into a Franchise Agreement ("Agreement") in order that Grantee may provide advertising and wayfinding kiosks in the City of Berkeley;

NOW, THEREFORE, City and Grantee do hereby agree as follows:

1. GRANT OF FRANCHISE

By Ordinance No. _____ City granted to Grantee an exclusive Franchise authorizing Grantee to install advertising and wayfinding kiosks in the City of Berkeley and to use the public rights of way for such purpose. Grantee acknowledges that this Franchise is subject to the terms and conditions specified in the City Charter, the terms and conditions specified in Ordinance No. _____-N.S., the provisions of Chapter 9.60 of the Berkeley Municipal Code, the terms and conditions of this Agreement, and the terms and conditions of the IKE agreement between Grantee and Visit Berkeley (formerly known as the Berkeley Convention and Visitors Bureau) dated February 27, 2018 and as amended ("IKE Visit Berkeley Agreement"), incorporated herein by reference. A copy of the IKE Visit Berkeley Agreement is attached hereto as Exhibit A.

2. TERM OF FRANCHISE

Subject to Section 11 of this Agreement, the Franchise shall be 15 years.

3. RELATIONSHIP OF GRANTEE TO CITY

A. Grantee shall be deemed at all times to be a franchisee and shall be wholly responsible for the manner in which Grantee performs the services required of Grantee by the terms of this Agreement. Grantee shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be

construed as creating an employment or agency relationship between City and Grantee.

- B. Terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Grantee's services only and not to the means by which such a result is obtained.
- C. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement.

4. GRANTEE'S RECORDS

- A. Grantee shall keep and maintain books of account and other records showing all business transactions conducted by Grantee in connection with the Franchise granted to Grantee. Such records shall be kept at Grantee's place of business shown in Section 15 of this Agreement for receipt of notices.
- B. Grantee shall require its subcontractors, if any, who perform any services in connection with the Franchise granted to Grantee to keep and maintain books of account and other records showing all business transactions conducted by such subcontractors in connection with the Franchise granted to Grantee.
- C. Pursuant to Section 61 of the City Charter, all such books of account and other records shall be subject to inspection and/or audit at Grantee's place of business during normal business hours upon request or demand of the City Manager, City Auditor, City Attorney, or other City officer, employee or consultant authorized by any of these officers. The purpose of such inspection and/or audit shall be for verification of any revenues, fees or penalties paid by Grantee, and the accuracy thereof, as well as compliance with the terms and conditions of both this Agreement and the IKE Visit Berkeley Agreement.

5. AUDIT REQUIREMENT

In the event any audit conducted by City or by City's representative discloses that Grantee has made any misrepresentation with respect to the fees, penalties, or any other payments due to City, or discloses that Grantee has underpaid fees, penalties, or any other payments due to City in an amount greater than One Thousand Dollars (\$1,000), then in addition to any other remedies available to City, Grantee shall reimburse City for City's costs incurred in the performance of the audit, including any legal fees or expenses incurred. Such reimbursement shall be paid by Grantee within thirty (30) days of the date City notifies Grantee of the amount of City's costs.

6. INDEMNIFICATION

- A. Grantee shall defend, indemnify, and save harmless City and its respective commissioners, officers, agencies, departments, agents, and employees (each, an "Indemnified Party"; and collectively, "Indemnified Parties") from and against any and all claims, demands, causes of action, proceedings or lawsuits brought by third-parties ("Claims"), and all losses, damages, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including attorneys' fees and other costs of defense) (collectively, with Claims, "Liabilities"), resulting from, or arising out of, the operation of the Kiosk Program

and the provision of Services, whether such operation or Services is performed or provided by Grantee or by Grantee's subcontractors or any other person acting for or on behalf of Grantee.

- B. Notwithstanding the foregoing, the following shall be excluded from Grantee's indemnification and defense obligations contained in the preceding paragraph:
1. Any Liabilities to the extent resulting from, or arising out of:
 - a. the gross negligence or willful misconduct of any Indemnified Party;
 - b. Grantee complying with the written directives or written requirements of City, if Grantee has previously objected to such written directives or requirements in writing, with respect to (A) the location or configuration of any wayfinding kiosk in relation to the street or sidewalk on which such kiosk is located or to which it adjoins, or (B) a City's standards for alteration or maintenance of sidewalks; or
 - c. the condition of any public property outside of the perimeter of a kiosk and not otherwise controlled by Grantee (and expressly excluding from this clause (c) the condition of the kiosks).
- C. If any Claim against Grantee includes claims that are covered by clause (B)(1)(c) above or claims contesting City's authority to issue a permit for a kiosk then each party shall be responsible for its own defense against such Claims.
- D. Upon receipt by any Indemnified Party of actual notice of a Claim to which such Indemnified Party is entitled to indemnification in accordance with this Section 6, such Indemnified Party shall give prompt notice of such Claim to Grantee. Grantee shall assume and prosecute the defense of such Claim at the sole cost and expense of Grantee. Grantee may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.
- E. Nothing in this Agreement shall constitute a waiver or limitation of any rights which City may have under applicable law. All rights and remedies of City, whether under this Agreement or other applicable law, shall be cumulative.

7. INSURANCE REQUIREMENTS

- A. Minimum Coverages. The insurance requirements specified in this section shall cover Grantee's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Grantee authorizes to work under this Agreement (hereinafter referred to as "Agent"). Grantee shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

- B. Grantee shall include in every subcontract the requirement that the subcontractor maintain adequate insurance coverage with appropriate limits and endorsements to cover the risks associated with work to be performed by the subcontractor. To the extent that a subcontractor does not procure and maintain such insurance coverage, Grantee shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Grantee's indemnity obligation under Section 6 as to itself or any of its subcontractors in the absence of such coverage.
- C. In the event Grantee or its subcontractors procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Grantee's or its subcontractor's insurance, as the case may be, be primary without right of contribution from City.
1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee for injury by disease and \$1,000,000 for injury for each accident, and any and all other coverage of Grantee's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of City. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Grantee is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
 2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Grantee and Grantee's officers, agents, and employees and with limits of liability which shall not be less than \$2,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$4,000,000, and Personal & Advertising Injury liability with a limit of not less than \$2,000,000. Such policy shall contain a Waiver of Subrogation in favor of City. City and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Operator's operations.
 3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by Grantee and Grantee's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.
 4. Umbrella Insurance in the amount of \$4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
 5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to City and having minimum limits of \$3,000,000 per claim. The policy shall provide coverage for all work performed by

Grantee and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Grantee. Grantee may delegate the obligation to maintain Errors and Omissions Professional Liability Insurance to a subcontractor, but the failure of such subcontractor to maintain such insurance shall not relieve Grantee of its obligation to maintain such insurance.

6. Property Insurance. Property Insurance covering Grantee's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of City (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of City.
- D. Acceptable Insurers. All policies will be issued by insurers qualified to do business in California and with a Best's Rating of A-VIII or better.
 - E. Deductibles and Retentions. Grantee shall be responsible for payment of any deductible or retention on Grantee's policies without right of contribution from City. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.
 - F. In the event that City is entitled to coverage as an additional insured under any Grantee insurance policy that contains a deductible or self-insured retention, Grantee shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Grantee, subconsultant, subcontractor, or any of their employees, officers or directors, even if Grantee or subconsultant is not a named defendant in the lawsuit.
 - G. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Grantee shall:
 1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
 2. Maintain and provide evidence of similar insurance for at least three (3) years following the expiration or termination of this Agreement, including the requirement of adding all additional insureds; and
 3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the commencement of any work hereunder, Operator shall purchase "extended reporting" coverage for a minimum of three (3) years after the expiration or termination of this Agreement.
 - H. Failure to Maintain Insurance. All insurance specified above shall remain in force until the expiration or termination of this Agreement. Grantee must notify City if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

- I. Certificates of Insurance. Prior to commencement of any work hereunder, Grantee shall deliver to City Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.
- J. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Grantee are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Grantee.

8. KIOSKS

- A. Grantee may install and operate up to thirty one (31) wayfinding kiosks on sidewalks in Berkeley.
- B. Permitting process and prohibited locations

Before selecting sites for the kiosks in any given commercial area, and at least 30 days before submitting an application for a permit under Berkeley Municipal Code Chapter 16.12 for installation, the City shall hold at least one (1) but not more than three (3) community meetings in the commercial area where the kiosks are proposed to be located. Grantee may propose any number of kiosk locations in a given commercial area for consideration at community meetings. These meetings will be arranged by the City in collaboration with the Grantee, the District Councilmember, and the Business Improvement District (“BID”) Advisory Board or Commercial Business Association (“CBA”) in the area where any kiosks are proposed. The meetings will include but not be limited to the following processes:

 - A two (2) day demonstration of the IKE kiosk at locations chosen by the City for members of the community to view and interact with the kiosks;
 - Site walks in each district that show using carpet footprints and life-size Ike kiosk cutouts for each pending location per district;
 - Use of comment cards that will outline objection issues that may arise in relation to chosen sites, including but not limited to proximity to residential district, ADA compliance, sidewalk clearance, obstacle to retail entrance.
 1. Grantee, in consultation with the City Manager and City Engineer, shall consider comments made at the community meetings in good faith, and shall make reasonable efforts to address concerns that are raised.
 2. The City Engineer shall send a notice of approval promptly after approving any permit for installation of a kiosk under Chapter 16.12 to the office of the Council member in whose district the kiosk is to be installed. The permit shall not be final until the expiration of 15 days after the date of the notice. A Council member who receives a notice of approval under this paragraph may request that the permit be reviewed by the City Council by preparing an agenda item and submitting it to the City Clerk no later than fifteen (15) days after the date of the notice. Any such Council item shall include a statement of reasons why the location approved for the kiosk is unacceptable, and shall propose either a substitute location or substantive direction as to how to identify a

substitute location. Timely submission of a Council item under this paragraph shall stay the effectiveness of the permit until it is acted upon by the City Council.

3. The City Council shall consider the permit at the next meeting after the item is submitted, consistent with agenda procedures. The permit shall be deemed approved unless it is rejected by an affirmative vote of the Council.
4. Kiosks may only be located in "C" and "M" prefixed zoning districts, except for the MU-R zoning district. In no event may kiosks be located in front of single family residences or K-12 schools.

C. Construction Period Requirements:

1. Construction shall be coordinated with utility companies and other persons with rights to install or maintain infrastructure in the public right-of-way.
2. Construction shall be scheduled and conducted so as to minimize interference with public use of the right-of-way including access to the right-of-way from private property.
3. Noise-producing site preparation and construction activities shall only occur on weekdays between the hours of 8 am to 5 pm in residential areas and between the hours of 7 am to 7 pm in commercial areas, or as designated on permit notes or attachments. Construction in residential areas shall be limited to installation of utilities in support of a kiosk.
4. All trucks and equipment shall use the best available noise control techniques and equipment including improved mufflers, intake silencers, ducts, engine enclosures, and noise-reducing shields or shrouds.
5. Impact tools such as jackhammers, pavement breakers, and noise drills shall be hydraulically or electrically powered wherever feasible to avoid noise associated with compressed air exhaust from pneumatically powered tools. When the use of pneumatic tools is unavoidable, an exhaust muffler shall be used on the compressed air exhaust to lower noise levels.
6. External jackets shall be used on tools where feasible to achieve noise reductions. To the extent possible, quieter procedures should be used, such as drilling instead of jack hammering.
7. Stationary noise sources involved in construction should be located as far as possible from sensitive receptors. If location within 20 feet of homes, schools, neighborhood parks, and retail businesses is necessary, stationery sources should be muffled and enclosed with temporary sheds.
8. Trucks and other vehicles should not be permitted to idle when waiting at or near the construction site.
9. Affected streets and sidewalks should be swept, if possible with water sweepers using reclaimed water, at the end of each workday if soil, sand, or other material has been carried onto them.
10. When trenching is necessary, all trenches shall be covered at the end of each workday. The total time that a trench may remain open in any segment of the public right of way should not exceed one week,

D. Kiosks shall be installed, operated, maintained and removed in compliance with this agreement and shall conform to the requirements of the City Engineer established pursuant to or to implement Berkeley Municipal Code section 16.18.040.H. No kiosk shall be installed or operated without documented conformance with Section 8(B) of this agreement and without written approval from the City Manager or his/her designee. The City Manager at his or her sole discretion may reject any and all proposed locations.

1. The kiosk display shall not display light that is of such intensity or brilliance to cause glare or otherwise impair the vision of a driver. No kiosk display shall display light of such intensity that interferes with the effectiveness of an official traffic sign, signal or device. Any violation of this section will result in the City requiring the kiosk display to turn off the display or show a "full black" image until the display can be brought into compliance.
2. The kiosk display shall have a default mechanism or setting that will cause the sign to turn off or show a "full black" image if a visible malfunction occurs.
3. The grantee shall have six (6) hours to turn off the display or show a "full black" image after a malfunction is reported to the grantee.

E. Permanent Relocation and/or removal of kiosk.

1. Except as provided for in Section F below, no request to permanently relocate or permanently remove a kiosk shall be considered within two (2) years of the initial installation of that kiosk. The City may request no more than two (2) permanent relocations and/or (1) permanent removal of a kiosk per year.
2. Prior to requesting permanent relocation or permanent removal, a petition shall be signed by at least 30 residents and business owners within a 1,000 foot radius of the location of the kiosk, and shall propose at least two (2) alternative locations in close proximity to the original kiosk location. Grantee, in consultation with the City Manager and City Engineer, shall consider the proposed alternative locations as well as any concerns raised in the petition, in good faith, and shall make reasonable efforts, which may include relocation or removal of the kiosk, to address those concerns.

F. Temporary Relocation and/or removal of kiosk.

1. At its sole discretion the City may require the temporary removal or the permanent relocation of kiosks as reasonably necessary to facilitate streetscape improvements or to address public health or safety concerns. These temporary relocations and/or removals shall be done at no costs to the City.
2. Public utility providers and transit agencies may require the temporary removal or the permanent relocation of kiosks as reasonably necessary to facilitate improvements and/or maintenance of public utilities and transit agency facilities at no costs to the public utility providers or transit agencies.
3. Requests to temporarily relocate or remove a kiosk shall be executed by Grantee within 30 business days of formal notice to the Grantee.

G. Grantee shall comply with all terms of the IKE Visit Berkeley Agreement and its failure to do so shall be considered a breach of this Agreement subject to Section 11. In addition, Grantee shall provide all data specified in Exhibit B of

the IKE Agreement to the City on the same terms as it provides that data to the Berkeley Convention & Visitors Bureau.

- H. Grantee shall provide security to the City for the removal of kiosks in the form of a performance bond in the minimum amount of \$2 million.
- I. Upon the expiration or earlier termination of this Agreement or upon any relocation of a kiosk pursuant to the terms of this Section 8, Grantee shall remove the kiosks and restore the area upon which each such kiosk was located as close as reasonably practicable to the condition the same was in immediately preceding the installation of the kiosk thereon, subject to reasonable wear and tear, and shall do all such work as is reasonably necessary to cap off the utilities serving such kiosks.
- J. Grantee will keep the kiosk technology in "best in class" condition including but not limited to a minimum of (1) one software update per month throughout the term. If Grantee fails to keep meet these technical requirements the City will have the right to terminate the agreement if Grantee cannot remedy within (30) days of written notice by the City.
- K. Privacy Protections.
Grantee may not activate the pinhole security camera or any other security camera on kiosks unless authorized to do so by action of the City Council.
- J.L. Phased deployment.
Grantee shall conduct a phased deployment of kiosks such that after the first ten (10) units are installed no additional units may be installed for six (6) months.

9. COMPLIANCE WITH LAW

Grantee shall perform, implement and manage the installation, operation, maintenance and removal of its kiosks in accordance with applicable federal, state, and local law, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this Agreement.

10. PERMITS AND LICENSES

Grantee shall obtain and maintain, at Grantee's sole cost and expense, all permits and licenses applicable to Grantee's operations under this Franchise, which are required of Grantee by any governmental agency.

11. TERMINATION OF FRANCHISE

- A. If at any time City believes Grantee may not be adequately performing its obligations under this Agreement, City may request from Grantee written assurances of performance and a written plan to correct observed deficiencies in Grantee's performance if written notice of the same is provided by City. Failure to provide written assurances constitutes a separate ground to declare a default under this Agreement.
- B. Grantee shall be in default of this Agreement and City may, in addition to any other legal or equitable remedies available to City, terminate the Grantee's right to perform under the Franchise:
 - 1. Should Grantee make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a

- voluntary petition in bankruptcy, be adjudged bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, filing any answer admitting or not contesting the material allegations of a petition filed against Grantee in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Grantee or of all or any substantial part of the properties of Grantee, or if Grantee, its directors or shareholders, take action to dissolve or liquidate Grantee; or
2. Should Grantee commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from City to Grantee demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Grantee to avail itself of this time period in excess of 10 calendar days, Grantee must provide City within the 10 day period a written plan acceptable to City to cure said breach, and then diligently commence and continue such cure according to the written plan); or
 3. Should Grantee violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Franchise and does not cure such violation within ten (10) days of the date of the notice from City to Grantee demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Grantee to avail itself of this time period in excess of 10 calendar days, Grantee must provide City within the 10 day period a written plan to cure said violation acceptable to City, and then diligently commence and continue performance of such cure according to the written plan.)

12. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Grantee acknowledges that, pursuant to the Americans with Disabilities Act (“ADA”), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Grantee shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights laws. Grantee will not be responsible for ADA matters which are in the control of City. Grantee agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Grantee, its employees, agents or assigns shall constitute a material breach of this Agreement.

13. NON- DISCRIMINATION

In order to minimize the probability of a claim being filed against the City, in the performance of this Agreement, Grantee shall not discriminate against any employee or

applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

14. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER

Grantee has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Grantee is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Contractor shall pay all state and federal income taxes and any other taxes due. Grantee certifies under penalty of perjury that the taxpayer identification number written below is correct.

15. RECEIPT OF NOTICES

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Agreement and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Agreement, all notices to City shall be addressed as follows:

Office of Economic Development
City of Berkeley
2180 Milvia Street
5th Floor
Berkeley, CA 94704

For purposes of this Agreement, all notices to Grantee shall be addressed as follows:

Adam Borchers
IKE SMART CITY LLC
250 N. Hartford Avenue
Columbus, OH 43222

16. GOVERNING LAW/VENUE

This Agreement shall be deemed executed in the County of Alameda and governed by California law. Venue for any dispute arising under this Agreement shall be in the County of Alameda.

17. CONFIDENTIALITY

A. Grantee acknowledges and agrees that City is a public entity subject to the provisions of the Public Records Act (Cal. Gov. C. 6250 *et seq.*) Except as otherwise required by law, including the Charter of the City of Berkeley and the Berkeley Municipal Code, City will not disclose trade secrets or proprietary financial information received from Grantee. Any such trade secrets or proprietary financial information which Grantee believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

B. Duty to Defend:

Upon a request for records regarding this Agreement, City will immediately notify Grantee and specify a time when the records will be made available for inspection. If the Grantee, in a timely manner, identifies any proprietary, trade secret, or confidential commercial or financial information which Grantee determines is not subject to public disclosure, the Grantee will be required to fully defend (including all attorney's fees and costs), in all forums, the City's refusal to produce such information; otherwise, City will make such information available to the extent required by law. To the maximum extent permitted by law, Grantee shall indemnify and hold harmless City from any and all judgments, liabilities, fines or penalties imposed as a result of City's refusal to disclose records regarding this Agreement.

18. AMENDMENTS

The terms and conditions of this Agreement shall not be altered or otherwise modified except by a written amendment to this Agreement executed by City and Grantee.

19. ENTIRE CONTRACT

A. The terms and conditions of this Agreement, all exhibits attached and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement shall supersede any and all prior contracts, oral or written, regarding the subject matter between City and Grantee. No other contract, statement, or promise relating to the subject matter of this Agreement shall be valid or binding except by a written amendment to this Agreement.

20. SEVERABILITY

If any part of this Agreement or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

21. WAIVER

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this Agreement or a waiver of any other default of Grantee.

22. ASSIGNMENT

Grantee may not assign this Agreement without the prior written consent of the City, except that Grantee may assign its right to any money due or to become due hereunder.

23. SECTION HEADINGS

The sections and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

WITNESS THE EXECUTION OF this agreement ON THE DATE WRITTEN BELOW EACH SIGNATURE:

CITY OF BERKELEY

By: _____

City Manager

Countersigned by:

CITY AUDITOR

Attest:

City CLERK

Approved as to Form:

Deputy City Attorney

GRANTEE

Grantee Representative Name (printed or typed)

By: _____
Signature

Printed name and title of signatory, if different from Grantee Representative name

Tax Identification No. _____

Berkeley Business License No _____

Incorporated: Yes _____ No _____

Certified Woman Business Enterprise: Yes No __

Certified Minority Business Enterprise: Yes _____ No __

If yes, state ethnicity: _____

Certified Disadvantaged Business Enterprise: Yes __ No ____

SECOND AMENDMENT TO IKE AGREEMENT

THIS SECOND AMENDMENT TO IKE AGREEMENT (the "Amendment") is made as of October 25, 2018 (the "Effective Date") by and between BERKELEY CONVENTION & VISITORS' BUREAU, a California not for profit corporation ("DMO"), and IKE SMART CITY, LLC, an Ohio limited liability company ("Company").

RECITALS

- A. DMO and Company are parties to a certain IKE Agreement dated February 27, 2018, as amended by that certain First Amendment to IKE Agreement dated September 4, 2018 (collectively, the "Agreement"), pursuant to which DMO granted certain rights to Company for the installation and operation of IKE Kiosks within the City, as more particularly defined in the Agreement.
- B. DMO and Company hereby desire to amend the Agreement to modify the terms thereof in accordance with the terms of this Amendment.

AGREEMENT

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

1. Advertising Content. Section 11(d) of the Agreement is hereby amended as follows:
 - a. Subpart (iii) is modified by adding "Juul, vaping," before "tobacco" therein.
 - b. The addition of subpart (vii) immediately following subpart (vi) as follows:
"; and (vii) advertisements or displays promoting firearms;"
 - c. The addition of subpart (viii) immediately following subpart (vii) as follows:
"; and (viii) advertisements or displays promoting alcoholic drinks having an alcohol content of 20% or higher."
2. Advertising Sales. Section 11 of the Agreement is hereby amended by adding subsection (f) to the end thereof as follows:
"(f) Advertising Sales. The Company hereby agrees to offer a discount of fifty percent (50%) off the applicable price to purchase advertisement time on the IKE Kiosks for advertisements purchased by any businesses headquartered in the city of Berkeley, California."

3. Reconciliation Statement. Section 2 of Exhibit A is hereby amended by adding the following to the end thereof:

“Following receipt of each Reconciliation Statement, and after delivery to the Company of at least fifteen (15) days prior written notice, which notice must be given to the Company within sixty (60) days after receipt of the Reconciliation Statement, DMO, at its sole cost and expense (except as set forth below) shall have the right directly or through an agent appointed by it, to examine and/or audit the books and records evidencing the Company’s Gross Revenue as set forth in the Reconciliation Statement during normal business hours and at the Company’s principal place of business. DMO shall not be permitted to audit more than once the books and records pertaining to any given calendar year, and the Company shall not be obligated to keep any books and records pertaining to any given calendar year for a period of more than thirty-six (36) months following the end of such calendar year. DMO and the Company each shall use its best efforts to cooperate in such review and negotiations and to promptly resolve any discrepancies between DMO and the Company in the accounting of such revenue. If it is determined that the Company under reported the Gross Revenue, the Company shall promptly pay DMO such amount of underpayment. If it is determined that the Company over reported the Gross Revenue, the Company shall be entitled to offset the next payment of Revenue Share by the amount of such overpayment or, if the Term has expired or been terminated, DMO shall promptly pay the amount of such overpayment to the Company. If the audit shows an underpayment by greater than three percent (3%) of the amount DMO was entitled to receive during any given year, then the Company shall reimburse DMO all reasonable, substantiated out-of-pocket costs of DMO’s audit, not to exceed Two Thousand Five Hundred and No/100 Dollars (\$2,500.00).”


4. DMO Content. Sections 3(b) and 3(c) of Exhibit A are hereby modified by deleting the words “one (1)” appearing in the first line thereof and replacing it with the words “two (2)”.
5. Capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the Agreement.
6. Except as modified herein, the terms and conditions of the Agreement shall remain in full force and effect. In the event the terms of this Amendment conflict with the terms of the Agreement, the terms of this Amendment shall control.

(Signatures on the following page)

IN WITNESS WHEREOF, DMO and Company have executed this Amendment on the day and year first above written.

DMO:

BERKELEY CONVENTION & VISITORS' BUREAU, a
California not for profit corporation

By: 
Print Name: BARBARA HILLMAN
Its: _____

COMPANY:

IKE SMART CITY, LLC,
an Ohio limited liability company

By: 
Pete Scantland, CEO

Jordan Klein
Economic Development Manager
Office of Economic Development, City of Berkeley
2180 Milvia St, Fifth Floor
Berkeley, CA 94704

Via Email

Re: Surveillance and Data Privacy Concerns – IKE Kiosks

Over the past few weeks a number of concerned people have inquired about the potential impacts of IKE kiosks on their privacy. IKE Smart City (ICS) understands these concerns and shares the community's values on issues of privacy. ICS's business model is to sell advertising on kiosks, not to sell personal data.¹ We appreciate this opportunity to respond to the concerns that have been expressed and to be able to set out more clearly than we have in the past the relevant facts about IKE kiosks, their components, and what information they can and cannot capture.

IKE kiosks contain a variety of different types of technology. To the extent these devices can capture data (even though it will be largely uninstalled or inoperative in Berkeley as we explain below), the explicit intention of each device is to capture data that is anonymous or specifically related issues of security.

Each IKE kiosk has a pin hole camera above the security call button. This camera is only activated when a person presses the security call button, and takes a snapshot of or records the event. These cameras will be enabled only if the City so requests. The City has not requested that they be operational, so they will not function, and will not capture any data.

The kiosks can also incorporate security cameras that are capable of capturing images of nearby people. These cameras are not installed in the prototypical model, but can – and will only – be installed if the City requests. Since the City has not so requested, these cameras will not be installed.

¹ For instance, there are no third-party apps on kiosks.

The kiosks also include “selfie cameras”², which passers-by may use to take “selfies”. These cameras only operate when engaged by the user to take a selfie of her or himself. The resulting picture is sent to a telephone number entered by the user. These phone numbers are used by a third-party relay service that sends the picture to the person requesting. Once the picture is sent, neither the phone number nor the picture is retained. Neither the City nor IKE Smart City are capable of accessing any of this data.

Finally, kiosks contain an MAC ID-based system for anonymously measuring the number of pedestrians within a specified radius³. This system will be disabled in kiosks located in Berkeley and will not collect any data.

Other than pedestrian counter data, IKE kiosks are equipped with devices that perform monitoring of environmental conditions, such as air quality. These devices are Air Quality Monitor AQ 600. Please see the attached specification sheet that details the capabilities of this technology.

We hope that the above addresses the privacy-related concerns that have been expressed to date. In a nutshell, ICS’s business model is selling advertising, not personal data. The kiosks that (we hope) will be installed in Berkeley will be limited to taking and providing selfies (which will not be retained) to users who engage that feature, and environmental information.

Sincerely,

Chris Greene
Managing Director

CC: Oakland Privacy c/o: Tracy Rosenberg
Barbara Hillman, Visit Berkeley
Kieron Slaughter, City of Berkeley

² Camera is a PC grade camera off the rack integrated and installed by ISC. It is not a separate module. This is current information, and it is possible that as technology develops, this equipment may be replaced with different equipment.

³ This is the only device or system that the kiosks can use to measure pedestrian activity, aside from the security cameras, which will not be installed.



Office of the City Manager

Attachment 2

PUBLIC HEARING
September 25, 2018

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Economic Development Manager
Subject: Facilitation of the Installation of IKE Smart City Kiosks; Amending Chapters 20.16 and 16.18 of the Berkeley Municipal Code

RECOMMENDATION

1. Pursuant to Berkeley Municipal Code Chapter 9.60, conduct a public hearing and upon conclusion, adopt a first reading of an Ordinance granting a franchise agreement with IKE Smart City, LLC and the City of Berkeley to operate wayfinding kiosks in Berkeley.
2. Adopt a first reading of an Ordinance amending Section 20.16.090 of the Berkeley Municipal Code (the Sign Ordinance) to exempt wayfinding kiosks placed in the City pursuant to a contract between the City and Visit Berkeley (formerly the Convention & Visitors Bureau); and amending Section 16.18.040 of the Berkeley Municipal Code (the Encroachment Ordinance) to exempt wayfinding kiosks installed pursuant to a contract between Visit Berkeley and the City of Berkeley, provided they are installed and maintained in conformance with the requirements of the City Engineer.

SUMMARY

Interactive Kiosk Experience (IKE) is a relatively new 'smart city' amenity that has been successfully deployed or is planned for deployment in cities across the country including Denver, Los Angeles, San Diego, and Baltimore. Visit Berkeley, our local destination marketing organization, has partnered with IKE Smart City, LLC to deploy IKE in Berkeley. This advertisement-supported platform consists of digital, touchscreen kiosks that serve as information portals, economic development tools, engagement opportunities and safety resources. In order to proceed with this project, Council action is required to grant a franchise agreement to IKE Smarty City, LLC, and to modify two sections of the Berkeley Municipal Code to exempt IKE kiosks from regulations of signage and encroachments of the public right-of-way.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impact of this recommendation is positive, as the City will bear minimal costs related to the program's establishment (staff time), and will collect a portion of advertising revenues generated by the kiosks. The City of Berkeley will receive revenue from a contract with Visit Berkeley on a quarterly basis, representing 7.5% of total

revenues collected during the first two years of the 25-year franchise agreement, and 18.75% of total revenues in each subsequent year. Preliminary projections anticipate approximately \$580,229 per year in General Fund revenue to the City of Berkeley once the program is fully deployed, or approximately \$18,700 per year per kiosk that is deployed.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley utilizes a variety of mediums, vendors and infrastructure to display information relevant to visitors and residents in commercial shopping districts.

Recently, several of the City's partner organizations- Visit Berkeley, the Downtown Berkeley Association and other commercial district associations- have suggested that Berkeley implement an updated, modern approach to content delivery in a uniform, accessible manner, across the City's commercial districts. In February 2018, Visit Berkeley and IKE Smart City entered into a contract to facilitate the implementation of Interactive Kiosk Experience in Berkeley (Attachment 3).

The City of Berkeley currently has a contract with Visit Berkeley for a variety of services including marketing, wayfinding and advertising Berkeley events, commercial districts and businesses. A contract amendment with Visit Berkeley will facilitate the installation of up to 31 wayfinding kiosks throughout Berkeley to enhance Visit Berkeley's ability to engage with residents, tourists, shoppers, workers, and other community members. These kiosks would be connected to the internet and allow passers-by to access useful information about Berkeley events and amenities via interactive touchscreens. Information specified by Visit Berkeley, as well as advertisements to generate revenue to pay for the project, would also be displayed.

The Sign Ordinance (BMC Title 20) regulates and limits signage throughout the City of Berkeley. Because the proposal to install wayfinding kiosks involves the display of information that could be considered signage under the Sign Ordinance on public and private property in Berkeley, it is advisable to address this issue in the Sign Ordinance, in a manner similar to bike share station advertising. Specifically, in the case of bike share stations, the Sign Ordinance was amended to exempt advertising associated with the stations from most of the Sign Ordinance's limitations. The proposed amendment would enact a parallel exemption for any signage on the wayfinding kiosks.

Similarly, because the kiosks would be physical objects in the public right of way (sidewalks) they would be considered subject to the Encroachment Ordinance (BMC Chapter 16.18). Staff recommends that Council amend the Encroachment Ordinance to make clear that the kiosks will not require encroachment permits, although they will have to conform to City Engineer installation requirements.

Furthermore, because the kiosks will provide advertising opportunities in the public right-of-way, pursuant to Article XII, section 76 of the Charter and Berkeley Municipal Code section 9.60.050, a franchise agreement would be required. In order to enter into such an agreement, the City Council declared September 25, 2018 as the date for the public hearing for the review of the agreement (Attachment 1, Exhibit A).

BACKGROUND

IKE is a communication platform created to help cities and business improvement districts connect with citizens and visitors in dynamic new ways. Through a system of vivid, durable touchscreen displays containing an ever-expanding series of applications, IKE aims to enhance the pedestrian experience in the City of Berkeley. IKE is a self-sustaining platform that provides a meaningful recurring revenue stream to the city, and requires no capital or operational investment from the city.

IKE was developed in concert with the Downtown Denver Partnership, with the goal of building a wayfinding and city communication system for the digital age, and delivering it in a self-sustaining business model requiring no investment from the city. While originally designed to satisfy common goals of Business Improvement Districts (BIDs), a partnership with Discover Los Angeles has led to the development of functionality benefiting destination marketing organizations, such as our own Visit Berkeley.

IKE encourages exploration and discovery of a city through enhanced wayfinding and communication. By presenting relevant information along pedestrians' path, it allows cities, business improvement districts and destination marketing organizations to connect with visitors and residents alike in an unprecedented way, improving geographic and economic mobility for all. The IKE kiosks also feature an adjustable screen and are fully compliant with the Americans with Disability Act (ADA). The daylight viewable displays feature a local dimming LED back light for high bright, high contrast picture quality, low power consumption and utilize a unique fan-less thermal management system for silent 24/7 operation.

One side of the interactive kiosks serves information portals, economic development tools, engagement opportunities and a safety resource, while the second functions as an advertising platform for businesses. There are directory functions for downtown restaurants, bars, stores and hotels, as well as event listings, maps, walking directions and transit information.

IKE Kiosks will offer the following features for users:

- Turn-by-turn directions, with mobile integration to transfer those directions right to your cell phone or tablet
- Real time information on public transportation, ride sharing services, bike sharing
- Public feedback opportunities through public polling or 'questions of the week'
- Events and attractions
- Shopping, dining, medical, homeless services and points of interest
- Public safety announcements
- Weather updates
- Wi-Fi hotspot
- Job postings
- Pedestrian counters
- Shelter and service information for the homeless
- "Selfie" photo booth feature allowing for integration with social media
- Emergency communication

- Air quality monitoring
- Games
- Information in multiple languages

IKE has been successfully deployed in a number of cities around the United States such as Denver, CO, San Diego, CA, Baltimore, MD, and Miami Beach, FL. Staff consulted with a representative from the Downtown Denver Partnership who confirmed a positive experience with the product and program.

The franchise agreement and the agreement between Visit Berkeley and IKE Smart City, LLC include procedures and performance standards outlined below.

Outreach

IKE staff has spent approximately eleven months engaging with local stakeholders to plan for the most appropriate deployment in Berkeley, and plans to continue that engagement throughout the process. IKE staff commit to participating in community meetings in each commercial district or City Council District upon request prior to the installation of the kiosks.

Siting & Locations

IKE may install and operate up to 31 wayfinding kiosks throughout Berkeley and the location will be selected based on criteria such as commercial activity, visibility, pedestrian foot traffic, and infrastructure constraints. Staff representing IKE have worked with staff from City of Berkeley, Visit Berkeley, the Downtown Berkeley Association, other stakeholder groups and members of the community to determine appropriate locations for the kiosks. Attachment 4 includes a draft map of the proposed IKE Kiosks. Kiosks would be deployed throughout the City of Berkeley at major intersections and arteries, key points of interest and heavily foot-trafficked areas. This approach will maximize visibility and engagement, and provide wayfinding and other beneficial content to the highest volume of residents and guests. Prior to installation, the City of Berkeley and community members will have additional opportunities to provide input on the proposed locations. Kiosks will be deployed in phases, with initial installations in Downtown Berkeley.

Repair and Maintenance

IKE will maintain the IKE kiosks in good and operable condition, reasonable wear and tear excepted. IKE will promptly and adequately repair all damage to the IKE kiosks and replace IKE kiosks as reasonably necessary throughout the term.

Relocation/Removal

Generally, requests to relocate a kiosk will not be considered within two (2) years of the initial installation of that kiosk. Thereafter, the City may request one relocation and/or removal of a kiosk per year. Additionally, the City may require the temporary removal or the permanent relocation of kiosks as reasonably necessary to facilitate streetscape improvements or to address public health or safety concerns.

Members of the public may initiate a kiosk removal or relocation, by generating a petition signed by 50% of the property owners and business owners within a 300 foot radius of the location of the kiosk. IKE, in consultation with the City Manager and City Engineer, shall consider the proposed alternative locations as well as any concerns raised in the petition, and shall make reasonable efforts to address those concerns, which may include relocation or removal of the kiosk.

Content & Data

Content will be shown on the IKE kiosks in accordance to the following schedule:

1. During 'Interactive Mode', Visit Berkeley content will occupy a minimum of sixty-six percent (66%) of the screen area on each of the IKE kiosks.
2. During 'Passive Mode', at least one (1) spot (or discreet unit of time when content may be displayed) out of every eight (8) spots shown on an IKE kiosks screen will contain Visit Berkeley directed content.

The Visit Berkeley contract also contains restrictions on certain types of advertising content such as displays with nudity or pornographic images, tobacco or marijuana advertisements, sugary sweetened beverage advertisements and political advertisements.

IKE will establish a workflow and provide access to the Content Managing System (CMS) for City staff to provide content for the kiosks and the City will have the ability to request changes and modifications from IKE staff.

Design

IKE will install two models, the IKE Mini and the IKE Standard. The Mini is a compact 6 foot tall model for placement in lower density areas with smaller architectural structures, narrow sidewalks, and slower moving traffic. The Standard is approximately 8 feet in height and is intended for high density areas with larger buildings, wider sidewalks, and fast moving traffic. The IKE team worked with the City of Berkeley and stakeholders to create a design that will reinforce the City's brand and add increased vibrancy and visual interest to the surrounding areas. IKE has also created a preliminary Berkeley specific design concept of both models and welcomes additional feedback on the final design. Illustrations and design details can be viewed in Attachment 4.

Costs and Revenues

IKE is a self-sustaining platform that provides a recurring revenue stream to the city, and is installed, operated and maintained entirely at cost to IKE Smart City, LLC. IKE is supported by a limited amount of advertising and sponsorship available during the passive mode of operation. The content displayed when engaged by a user is available at no charge to the user or any destination.

As a contracting agent to the City for marketing, wayfinding and other information, Visit Berkeley is the most suitable partner to administer and oversee the IKE kiosk program. An amendment to the existing contract between the City and Visit Berkeley incorporates the IKE program in Visit Berkeley's scope of work and memorializes the revenue

sharing split that will be generated from this program (Attachment 5). IKE will provide 10% of gross revenues to Visit Berkeley in the first two years of the program and 25% in subsequent years of the term. Visit Berkeley will distribute 75% of their revenue share to the City and Visit Berkeley may retain 25% for its costs for administration of the program. The revenue will be distributed to the City within 30 days of Visit Berkeley receiving it and preliminary projections anticipate approximately \$580,229 per year in General Fund revenue to the City of Berkeley once the program is fully operational.

ENVIRONMENTAL SUSTAINABILITY

The City of Berkeley's Climate Action Plan has several recommended actions that will be satisfied through the implementation of the IKE Smart City Kiosks. Chapter 3: Sustainable Transportation & Land Use identifies the need to "Enhance Marketing, Community Education and Incentives". Goal 6: "Make public transit more frequent, reliable, integrated and accessible" includes an implementing action to install real-time transit signage at bus stations and stops. Goal 9: "Enhance and expand outreach, marketing and education regarding land use and transportation" includes an implementing action to launch marketing and branding campaign that informs community members of their alternative transportation options. IKE Kiosks will feature multi-modal real time transit information which will reinforce the City's commitment to sustainable transportation services.

RATIONALE FOR RECOMMENDATION

The IKE platform delivers valuable 'smart city' services, reinforces Berkeley's brand as a progressive innovator, and contributes to the establishment of a vibrant, pedestrian-oriented urban downtown area. IKE's suite of applications is designed to deliver value to residents and visitors of all economic means; boost local economic development; and support neighborhood organizations, business improvement districts, travel and tourism bureaus, workforce development organizations, and multiple city agencies. The software allows for the incorporation of new ideas and applications that respond to the community's needs and opportunities.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Jordan Klein, Manager, Office of Economic Development, 510-981-7534

Attachments:

1. Ordinance
Exhibit A: DRAFT Franchise Agreement between IKE Smart City Kiosk, LLC, and the City of Berkeley
2. Ordinance Amending BMC Sections 20.16.090 and 16.18.040 to Exempt Wayfinding Kiosks from Sign Ordinance and Encroachment Ordinance
3. Contract Between Visit Berkeley and IKE Smarty City LLC
4. IKE Smart City Kiosk Presentation and Location Map
5. Visit Berkeley contract scope amendment
6. Public Hearing Notice

ORDINANCE NO. #,###-N.S.

AUTHORIZING THE CITY MANAGER TO EXECUTE A FRANCHISE AGREEMENT BETWEEN IKE SMART CITY, LLC AND THE CITY OF BERKELEY TO OPERATE WAYFINDING KIOSKS IN BERKELEY FOR NO LESS THAN 25 YEARS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Council finds as follows:

- a. Visit Berkeley (formerly the Convention and Visitors Bureau) has entered into a contract with IKE Smart City, LLC (IKE) to install and operate wayfinding kiosks.
- b. The kiosks will provide various public benefits, including real-time transportation information, job listings for Berkeley residents and youth, promotion of local retail, shelter and service information for homeless individuals, and public health and safety information and notifications.
- c. The IKE wayfinding kiosks rely on sponsorship and advertising revenue.
- d. The wayfinding kiosks will be located on the city's public rights of way and will generate revenue for Visit Berkeley and the City of Berkeley.
- e. Up to 31 wayfinding kiosks will be distributed throughout the commercial districts of Berkeley.

Section 2. The City Manager is hereby authorized to enter into a 25 year franchise agreement, which may be extended upon mutual consent with IKE Smart City LLC, as operator of the wayfinding kiosks program. As a contracting agent to the City for marketing, wayfinding and other information, Visit Berkeley is an appropriate party to administer and oversee the IKE kiosk program. The proposed revenue allocation is that IKE will provide 10% of gross revenues to Visit Berkeley in the first two years of the program and 25% in subsequent years of the term. Visit Berkeley may retain the lesser amount of 25% of the revenue share or \$100,000, for its costs for administration of the program, and will distribute the remainder of the revenue share to the City of Berkeley. The revenue will be distributed to the City within 30 days of Visit Berkeley receiving it and preliminary projections anticipate approximately \$829,361 per year in General Fund revenue to the City of Berkeley once the program is fully deployed, or approximately \$26,754 per year per kiosk that is deployed.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chamber, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

IKE SMART CITY LLC FRANCHISE AGREEMENT

THIS agreement is made and entered into this _____ day of _____, 2018 by and between the City of Berkeley, a municipal corporation ("City"), and IKE SMART CITY LLC, an Ohio limited liability company ("Grantee").

WHEREAS, pursuant to Chapter 9.60 of the Berkeley Municipal Code (BMC), Grantee has applied to City for a Franchise to install wayfinding kiosks on sidewalks in the City of Berkeley ("Franchise"); and

WHEREAS, on September 25, 2018, the City Council held a public hearing for the purpose of hearing persons in favor of or in opposition to the granting of such Franchise; and

WHEREAS, the City Council has determined that the grant of such Franchise to Grantee is in the public interest; and

WHEREAS, City and Grantee desire to enter into a Franchise Agreement ("Agreement") in order that Grantee may provide wayfinding kiosks in the City of Berkeley;

NOW, THEREFORE, City and Grantee do hereby agree as follows:

1. GRANT OF FRANCHISE

By Ordinance No. _____ City granted to Grantee an exclusive Franchise authorizing Grantee to install wayfinding kiosks in sidewalks in the City of Berkeley and to use the public sidewalks and rights of way for such purpose. Grantee acknowledges that this Franchise is subject to the terms and conditions specified in the City Charter, the terms and conditions specified in Ordinance No. _____-N.S., the provisions of Chapter 9.60 of the Berkeley Municipal Code, and the terms and conditions of this Franchise agreement ("Agreement").

2. TERM OF FRANCHISE

Subject to Section 11 of this Agreement, the Franchise shall be not less than 25 years.

3. RELATIONSHIP OF GRANTEE TO CITY

A. Grantee shall be deemed at all times to be a franchisee and shall be wholly responsible for the manner in which Grantee performs the services required of Grantee by the terms of this Agreement. Grantee shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Grantee.

- B. Terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Grantee's services only and not to the means by which such a result is obtained.
- C. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement.

4. GRANTEE'S RECORDS

- A. Grantee shall keep and maintain books of account and other records showing all business transactions conducted by Grantee in connection with the Franchise granted to Grantee. Such records shall be kept at Grantee's place of business shown in Section 15 of this Agreement for receipt of notices.
- B. Grantee shall require its subcontractors, if any, who perform any services in connection with the Franchise granted to Grantee to keep and maintain books of account and other records showing all business transactions conducted by such subcontractors in connection with the Franchise granted to Grantee.
- C. Pursuant to Section 61 of the City Charter, all such books of account and other records shall be subject to inspection and/or audit at Grantee's place of business during normal business hours upon request or demand of the City Manager, City Auditor, City Attorney, or other City officer, employee or consultant authorized by any of these officers. The purpose of such inspection and/or audit shall be for verification of any fees or penalties paid by Grantee, and the accuracy thereof.

5. AUDIT REQUIREMENT

In the event any audit conducted by City or by City's representative discloses that Grantee has made any intentional misrepresentation with respect to the fees or penalties due to City, or discloses that Grantee has underpaid fees or penalties due to City in an amount greater than One Thousand Dollars (\$1,000), then in addition to any other remedies available to City, Grantee shall reimburse City for City's costs incurred in the performance of the audit. Such reimbursement shall be paid by Grantee within thirty (30) days of the date City notifies Grantee of the amount of City's costs.

6. INDEMNIFICATION

- A. Grantee shall defend, indemnify, and save harmless City and its respective commissioners, officers, agencies, departments, agents, and employees (each, an "Indemnified Party"; and collectively, "Indemnified Parties") from and against any and all claims, demands, causes of action, proceedings or lawsuits brought by third-parties ("Claims"), and all losses, damages, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including attorneys' fees and other costs of defense) (collectively, with Claims, "Liabilities"), resulting from, or arising out of, the operation of the Kiosk Program and the provision of Services, whether such operation or Services is performed or provided by Grantee or by Grantee's subcontractors or any other person acting for or on behalf of Grantee.

- B. Notwithstanding the foregoing, the following shall be excluded from Grantee's indemnification and defense obligations contained in the preceding paragraph:
1. Any Liabilities to the extent resulting from, or arising out of:
 - a. the gross negligence or willful misconduct of any Indemnified Party;
 - b. Grantee complying with the written directives or written requirements of City, if Grantee has previously objected to such written directives or requirements in writing, with respect to (A) the location or configuration of any wayfinding kiosk in relation to the street or sidewalk on which such kiosk is located or to which it adjoins, or (B) a City's standards for alteration or maintenance of sidewalks; or
 - c. the condition of any public property outside of the perimeter of a kiosk and not otherwise controlled by Grantee (and expressly excluding from this clause (c) the condition of the kiosks).
- C. If any Claim against Grantee includes claims that are covered by clause (B)(1)(c) above or claims contesting City's authority to issue a permit for a kiosk then each party shall be responsible for its own defense against such Claims.
- D. Upon receipt by any Indemnified Party of actual notice of a Claim to which such Indemnified Party is entitled to indemnification in accordance with this Section 6, such Indemnified Party shall give prompt notice of such Claim to Grantee. Grantee shall assume and prosecute the defense of such Claim at the sole cost and expense of Grantee. Grantee may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.
- E. Nothing in this Agreement shall constitute a waiver or limitation of any rights which City may have under applicable law. All rights and remedies of City, whether under this Agreement or other applicable law, shall be cumulative.

7. INSURANCE REQUIREMENTS

- A. **Minimum Coverages.** The insurance requirements specified in this section shall cover Grantee's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Grantee authorizes to work under this Agreement (hereinafter referred to as "Agent"). Grantee shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.
- B. Grantee shall include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover the risks associated with work to be performed by the Agent. To the extent that an Agent does not procure and maintain such

insurance coverage, Grantee shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Grantee's indemnity obligation under Section 6 as to itself or any of its Agents in the absence of such coverage.

- C. In the event Grantee or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Grantee's or its Agent's insurance, as the case may be, be primary without right of contribution from City.
1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee for injury by disease and \$1,000,000 for injury for each accident, and any and all other coverage of Grantee's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of City. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Grantee is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
 2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Grantee and Grantee's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of City. City and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Operator's operations.
 3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by Grantee and Grantee's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.
 4. Umbrella Insurance in the amount of \$4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
 5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to City and having minimum limits of \$3,000,000 per claim. The policy shall provide coverage for all work performed by Grantee and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Grantee. Grantee may delegate the obligation to maintain Errors and Omissions Professional Liability Insurance to an Agent, but the failure of

such Agent to maintain such insurance shall not relieve Grantee of its obligation to maintain such insurance.

6. Property Insurance. Property Insurance covering Grantee's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of City (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of City.
- D. Acceptable Insurers. All policies will be issued by insurers qualified to do business in California and with a Best's Rating of A-VIII or better.
- E. Self-Insurance. Grantee's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to City.
- F. Deductibles and Retentions. Grantee shall be responsible for payment of any deductible or retention on Grantee's policies without right of contribution from City. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.
- G. In the event that City is entitled to coverage as an additional insured under any Grantee insurance policy that contains a deductible or self-insured retention, Grantee shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Grantee, subconsultant, subcontractor, or any of their employees, officers or directors, even if Grantee or subconsultant is not a named defendant in the lawsuit.
- H. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Grantee shall:
 1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
 2. Maintain and provide evidence of similar insurance for at least three (3) years following the expiration or termination of this Agreement, including the requirement of adding all additional insureds; and
 3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the commencement of any work hereunder, Operator shall purchase "extended reporting" coverage for a minimum of three (3) years after the expiration or termination of this Agreement.
- I. Failure to Maintain Insurance. All insurance specified above shall remain in force until the expiration or termination of this Agreement. Grantee must notify City if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

- J. Certificates of Insurance. Prior to commencement of any work hereunder, Grantee shall deliver to City Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.
- K. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Grantee are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Grantee.

8. KIOSKS

- A. Grantee may install and operate up to thirty one (31) wayfinding kiosks on sidewalks in Berkeley.
- B. Before selecting sites for the kiosks in any given commercial area, and at least 30 days before beginning construction, Grantee shall hold at least one (1) but not more than four (4) community meetings in the commercial area where the kiosks are proposed to be located. Grantee may propose any number of kiosk locations in a given commercial area for consideration at community meetings. These meetings will be arranged by the Business Improvement District ("BID") Advisory Board or, if there is no BID, Commercial Business Association (CBA) in the area where the kiosks are proposed, or if there is no BID or CBA in the area, by the Councilmember for that district. If the BID, CBA (if any) or the district Councilmember does not arrange a community meeting within thirty (30) days, City staff or the Berkeley Convention and Visitors Bureau may do so. Grantee, in consultation with the City Manager and City Engineer, shall consider comments made at the community meetings in good faith, and shall make reasonable efforts to address concerns that are raised.
- C. Construction Period Requirements:
 - 1. Construction shall be coordinated with utility companies and other persons installing infrastructure in the public right-of-way.
 - 2. Construction shall be scheduled and conducted so as to minimize interference with public use of the right-of-way including access to the right-of-way from private property.
 - 3. Noise-producing site preparation and construction activities shall only occur on weekdays between the hours of 8 am to 7 pm in residential areas and between the hours of 7 am to 7 pm in commercial areas, or as designated on permit notes or attachments.
 - 4. All trucks and equipment shall use the best available noise control techniques and equipment including improved mufflers, intake silencers, ducts, engine enclosures, and noise-reducing shields or shrouds.
 - 5. Impact tools such as jackhammers, pavement breakers, and noise drills shall be hydraulically or electrically powered wherever feasible to avoid noise associated with compressed air exhaust from pneumatically powered tools. When the use of pneumatic tools is unavoidable, an exhaust muffler shall be used on the compressed air exhaust to lower noise levels.

6. External jackets shall be used on tools where feasible to achieve noise reductions. To the extent possible, quieter procedures should be used, such as drilling instead of jack hammering.
 7. Stationary noise sources should be located as far as possible from sensitive receptors. If location within 20 feet of homes, schools, neighborhood parks, and retail businesses is necessary, stationary sources should be muffled and enclosed with temporary sheds.
 8. Trucks and other vehicles should not be permitted to idle when waiting at or near the construction site.
 9. Affected streets and sidewalks should be swept, if possible with water sweepers using reclaimed water, at the end of each workday if soil, sand, or other material has been carried onto them.
 10. When trenching is necessary, all trenches shall be covered at the end of each workday. The total time that a trench may remain open in any segment of the public right of way should not exceed one week.
- D. Kiosks shall be installed, operated, maintained and removed in compliance with this agreement and shall conform to the requirements of the City Engineer established pursuant to or to implement Berkeley Municipal Code section 16.18.040.H. No kiosk shall be installed or operated without documented conformance with Section 8(B) of this agreement and without explicit consent from the City Manager or his/her designee.
- E. Relocation and/or removal of kiosk.
1. No request to relocate a kiosk shall be considered within two (2) years of the initial installation of that kiosk. The City may request no more than one (1) relocation and/or removal of a kiosk per year. Thereafter, Grantee need not relocate more than one (1) kiosk per year. Additionally, the City may require the temporary removal or the permanent relocation of kiosks as reasonably necessary to facilitate streetscape improvements or to address public health or safety concerns.
 2. A petition to relocate a kiosk shall be signed by at least 50% of the property owners and business owners within a 300 foot radius of the location of the kiosk, and shall propose at least two (2) alternative locations within 100 feet of the existing location kiosk. Grantee, in consultation with the City Manager and City Engineer, shall consider the proposed alternative locations as well as any concerns raised in the petition, in good faith, and shall make reasonable efforts, which may include relocation or removal of the kiosk, to address those concerns.
- F. Grantee shall comply with all terms of the "IKE Agreement" between it and the Berkeley Convention & Visitors Bureau, dated February 27, 2018, which is incorporated herein by reference, and its failure to do so shall be considered a breach of this Agreement subject to Section 11. In addition, Grantee shall provide all data specified in Exhibit B of the IKE Agreement to the City on the same terms as it provides that data to the Berkeley Convention & Visitors Bureau.
- G. Grantee shall provide security to the City for the removal of kiosks in the form of a performance bond in the minimum amount of \$2 million.

9. COMPLIANCE WITH LAW

Grantee shall perform, implement and manage the installation, operation, maintenance and removal of its kiosks in accordance with applicable federal, state, and local law, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this Agreement.

10. PERMITS AND LICENSES

Grantee shall obtain and maintain, at Grantee's sole cost and expense, all permits and licenses applicable to Grantee's operations under this Franchise, which are required of Grantee by any governmental agency.

11. TERMINATION OF FRANCHISE

- A. If at any time City believes Grantee may not be adequately performing its obligations under this Agreement, City may request from Grantee written assurances of performance and a written plan to correct observed deficiencies in Grantee's performance if written notice of the same is provided by City. Failure to provide written assurances constitutes a separate ground to declare a default under this Agreement.
- B. Grantee shall be in default of this Agreement and City may, in addition to any other legal or equitable remedies available to City, terminate the Grantee's right to perform under the Franchise:
 - 1. Should Grantee make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, filing any answer admitting or not contesting the material allegations of a petition filed against Grantee in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Grantee or of all or any substantial part of the properties of Grantee, or if Grantee, its directors or shareholders, take action to dissolve or liquidate Grantee; or
 - 2. Should Grantee commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from City to Grantee demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Grantee to avail itself of this time period in excess of 10 calendar days, Grantee must provide City within the 10 day period a written plan acceptable to City to cure said breach, and then diligently commence and continue such cure according to the written plan); or
 - 3. Should Grantee violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Franchise and does not cure such violation within ten (10) days of the date of the notice from City to Grantee

demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Grantee to avail itself of this time period in excess of 10 calendar days, Grantee must provide City within the 10 day period a written plan to cure said violation acceptable to City, and then diligently commence and continue performance of such cure according to the written plan.); or

12. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Grantee acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Grantee shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights laws. Grantee will not be responsible for ADA matters which are in the control of City. Grantee agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Grantee, its employees, agents or assigns shall constitute a material breach of this Agreement.

13. NON-DISCRIMINATION

In order to minimize the probability of a claim being filed against the City, in the performance of this Agreement, Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

14. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER

Grantee has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Grantee is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Contractor shall pay all state and federal income taxes and any other taxes due. Grantee certifies under penalty of perjury that the taxpayer identification number written below is correct.

15. RECEIPT OF NOTICES

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Agreement and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Agreement, all notices to City shall be addressed as follows:

Office of Economic Development
City of Berkeley
2180 Milvia Street
5th Floor
Berkeley, CA 94704

For purposes of this Agreement, all notices to Grantee shall be addressed as follows:

Adam Borchers
IKE SMART CITY LLC
250 N. Hartford Avenue
Columbus, OH 43222

16. GOVERNING LAW/VENUE

This Agreement shall be deemed executed in the County of Alameda and governed by California law. Venue for any dispute arising under this Agreement shall be in the County of Alameda.

17. CONFIDENTIALITY

- A. Grantee acknowledges and agrees that City is a public entity subject to the provisions of the Public Records Act (Cal. Gov. C. 6250 *et seq.*) Except as otherwise required by law, including the Charter of the City of Berkeley and the Berkeley Municipal Code, City will not disclose trade secrets or proprietary financial information received from Grantee. Any such trade secrets or proprietary financial information which Grantee believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.
- B. Duty to Defend:
Upon a request for records regarding this Agreement, City will immediately notify Grantee and specify a time when the records will be made available for inspection. If the Grantee, in a timely manner, identifies any proprietary, trade secret, or confidential commercial or financial information which Grantee determines is not subject to public disclosure, the Grantee will be required to fully defend (including all attorney's fees and costs), in all forums, the City's refusal to produce such information; otherwise, City will make such information available to the extent required by law. To the maximum extent permitted by law, Grantee shall release and hold harmless City from any and all judgments, liabilities, fines or penalties imposed as a result of City's refusal to disclose records regarding this Agreement.

18. AMENDMENTS

The terms and conditions of this Agreement shall not be altered or otherwise modified except by a written amendment to this Agreement executed by City and Grantee.

19. ENTIRE CONTRACT

- A. The terms and conditions of this Agreement, all exhibits attached and any documents expressly incorporated by reference represent the entire agreement

between the parties with respect to the subject matter of this Agreement. This Agreement shall supersede any and all prior contracts, oral or written, regarding the subject matter between City and Grantee. No other contract, statement, or promise relating to the subject matter of this Agreement shall be valid or binding except by a written amendment to this Agreement.

- B. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the Coordination Agreement, the terms and conditions of the Coordination Agreement shall control.

20. SEVERABILITY

If any part of this Agreement or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

21. WAIVER

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this Agreement or a waiver of any other default of Grantee.

22. ASSIGNMENT

Grantee may not assign this Agreement without the prior written consent of the City, except that Grantee may assign its right to any money due or to become due hereunder.

23. SECTION HEADINGS

The sections and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

WITNESS THE EXECUTION OF this agreement ON THE DATE WRITTEN BELOW EACH SIGNATURE:

CITY OF BERKELEY

By: _____

City Manager

Countersigned by:

CITY AUDITOR

Attest:

City CLERK

Approved as to Form:

Deputy City Attorney

GRANTEE

Grantee Representative Name (printed or typed)

By: _____
Signature

Printed name and title of signatory, if different from Grantee Representative name

Tax Identification No. _____

Berkeley Business License No _____

Incorporated: Yes _____ No __

Certified Woman Business Enterprise: Yes, No __

Certified Minority Business Enterprise: Yes _____ No __

If yes, state ethnicity: _____

Certified Disadvantaged Business Enterprise: Yes __ No ____

ORDINANCE NO. #,###-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 20.16.090 TO EXEMPT WAYFINDING KIOSKS FROM SIGN ORDINANCE AND SECTION 16.18.040 TO EXEMPT WAYFINDING KIOSKS FROM ENCROACHMENT ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code section 20.16.090 is amended to read as follows:

20.16.090 Exempt signs.

A. Subject to subdivisions D and E, signs placed on bus shelters that are sponsored or contracted by AC Transit pursuant to and in compliance with the contract between AC Transit and the City of Berkeley, and with its consent are exempt from this Title.

B. Subject to subdivisions D and E

1. Signs placed on and associated with bike share stations installed pursuant to a contract between the Metropolitan Transportation Commission and the City of Berkeley are exempt from this Title;
2. Signs placed on and associated with wayfinding kiosks installed pursuant to a contract between Visit Berkeley and the City of Berkeley are exempt from this Title.

C. Subject to subdivisions D and E, non-illuminated signs for Community and Institutional Uses as defined in section 23F.04.010, provided they do not exceed the sign area limitations in Section 20.24.040.

D. Signs that are otherwise exempt from this Title under subdivisions A and B are not exempt from the following provisions:

1. 20.16.020 (Clearance requirements);
2. 20.16.040 (Obstructing certain areas or facilities prohibited); and
3. 20.16.120 (Moving signs).

E. Signs that are otherwise exempt from this Title under subdivisions A and B may not be wind signs; rotate, flash, blink, dispense bubbles, or emit sounds; or include strings of pennants, streamers, banners, twirlers, propellers, inflatable devices, or any similar attention-attracting devices.

Section 2. That Berkeley Municipal Code section 16.18.040 is hereby amended to read as follows:

16.18.040 Exemptions from permit requirements.

The following encroachments may be placed or maintained without a permit:

A. Mailboxes, however, must be placed in accordance with the rules and regulations at the United States Post Office Department and no box shall be placed so as to endanger the life or safety of the traveling public.

B. Newspaper racks which are installed and maintained in accordance with Chapter 16.40 or 16.44.

C. Lawns of any grass and type not prohibited by other laws.

1. The lawn shall not extend into the traveled way of the public street, not into the drainage ditches, gutters, and other drainage facilities, and not into that portion of the sidewalk area required for pedestrian usage.

2. The general public may not be denied the use of the planted area for pedestrian or other lawful travel. The City may use the planted area for any purpose whatsoever, and may issue a permit to any applicant to go thereon to perform work. If the lawn is damaged or disturbed in the course of such work, it will be removed and replaced by the permittee doing the work unless the permit specifically states otherwise.

D. Decorative Noncommercial Installations authorized and lawfully maintained under Section 14.48.180.

E. Sidewalk Cafe Seating and Benches and Planters authorized and lawfully maintained under Section 14.48.200, Chapter 23E.24, and former Chapter 23E.26.

F. Signs authorized and lawfully maintained under Title 20.

G. Objects such as, but not limited to, tables, chairs, umbrellas and canopies that are permitted pursuant to Chapter 9.48.

H. Wayfinding kiosks installed pursuant to a contract between Visit Berkeley and the City of Berkeley, provided they are installed and maintained as in conformance with the requirements of the City of Berkeley Municipal Code, California Manual on Uniform Traffic Control Devices (MUTCD), and the City Engineer.

Section 3. Posting.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

IKE AGREEMENT

THIS IKE AGREEMENT (this "Agreement") is made this 27 day of FEBRUARY 2018 (the "Effective Date"), by and between BERKELEY CONVENTION & VISITORS' BUREAU, a California not for profit corporation ("DMO"), and IKE SMART CITY, LLC, an Ohio limited liability company ("Company").

BACKGROUND INFORMATION

- A. The Company is engaged in the development, installation, operation and maintenance of interactive wayfinding platforms, including IKE Kiosks (as hereinafter defined).
- B. DMO is a destination marketing organization that has been created to address the unique needs of the City of Berkeley, California (the "City") and desires to improve the experience for the residents of the City and visitors through the use of IKE Kiosks.
- C. DMO and the Company desire to coordinate efforts to discuss the deployment of IKE Kiosks within the City, and if successful, DMO desires to grant Company the exclusive right to serve as DMO's subcontractor for the right to construct, install, operate, maintain, repair, replace, upgrade and remove IKE Kiosks in and on the Locations (as hereinafter defined) all in accordance with the terms set forth in this Agreement.

AGREEMENT

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

1. **Incorporation of Background Information.** The foregoing background information is hereby incorporated and made a part of this Agreement.
2. **Definitions.**
 - a. "City Agreement" means that certain agreement entered into by and between DMO and the City, pursuant to which DMO is granted rights for the installation and operation of IKE Kiosks on City Locations.
 - b. "City Locations" means those Locations on property owned by the City.
 - c. "Digital IKE Kiosks" means the interactive media kiosks operated by the Company for the purpose of displaying static and digital content, and which may provide, without limitation, those services and applications as set forth on **Exhibit B**. The Digital IKE Kiosks are referred to individually as a "Digital IKE Kiosk".
 - d. "DMO Directed Content" means any and all content provided to Company by DMO, any business improvement districts that partner with DMO (the "BIDs") or the City for display on IKE Kiosks or created by the Company at the direction of DMO, the BIDs or the City, including any content on which DMO, the BIDs or City logos, trademarks or other DMO, BIDs or City marks may appear.

- e. “Fiscal Quarter” means the periods between and including (i) January 1st through March 31st, (ii) April 1st through June 30th, (iii) July 1st through September 30th, and (iv) October 1st through December 31st.
- f. “Freedom of Information Law” or “FOI Law” means all applicable state and federal statutes, laws, ordinances, rules, regulations, requirements and codes, related to any public request for information, requiring certain proceedings of government agencies to be open or available to the public, or otherwise known as a “Sunshine Law”.
- g. “Gross Revenue” means the total revenue earned by the Company in connection with the sale of advertisements on the IKE Kiosks located on City Locations.
- h. “IKE Kiosks” means the Digital IKE Kiosks and Static IKE Kiosks. The IKE Kiosks are referred to individually as an “IKE Kiosk”.
- i. “Installation Work” means all work performed by the Company to install an IKE Kiosk at a Location, including any and all work necessary to bring electrical service or fiber optic cable to that Location.
- j. “Intellectual Property Rights” or “IPR” means the Company’s patents, registered designs and trademarks, together with applications therefor and copyrights of any kind.
- k. “Interactive Mode” means the condition of an IKE Kiosk during any period in which a user is actively engaging the IKE Kiosk.
- l. “Locations” means the City Locations and the Private Locations, all of which are subject to the mutual agreement of the parties and subject to change as set forth in this Agreement. The Locations are referred to individually as a “Location”.
- m. “Operational Date” means the date on which an IKE Kiosk is installed and capable of carrying advertisements and performing the functions and services set forth in this Agreement.
- n. “Passive Mode” means the condition of an IKE Kiosk during any period in which no users are actively engaging the IKE Kiosk.
- o. “Private Agreements” means an agreement between the Company and the owner of a Private Location governing the placement of an IKE Kiosk thereon.
- p. “Private Locations” means those Locations on property not owned by the City.
- q. “Revenue Share” means the amount paid by the Company to DMO for the ability to use encroachment, special use, or other permit granted to it by the City for the placement of IKE Kiosks; DMO’s partnership in content development for IKE Kiosks; and DMO’s advice on locations where IKE Kiosks shall be placed, as set forth on **Exhibit A**.
- r. “Required Approvals” means any and all governmental approvals, permits and entitlements the City, Company or DMO deems reasonably necessary for the installation and operation of IKE Kiosks.

- s. “Software” means any and all software used in the operation of the IKE Kiosks.
- t. “Spot” means a discrete unit of time during Passive Mode when content may be displayed on IKE Kiosk screens.
- u. “Static IKE Kiosks” means the media kiosks operated by the Company for the purpose of displaying digital content via an iPad and static content. The Static IKE Kiosks are referred to individually as a “Static IKE Kiosk”.
- v. “Term” means the period in which the Company may install and operate the IKE Kiosks, as set forth on Exhibit A.

3. **Permitting Period, Location Selection and Agreements.** From and after the Effective Date, the parties shall work together on an exclusive basis to ensure that the Required Approvals are obtained for at least thirty (30) City Locations, including working together on an exclusive basis to prepare and submit a list of at least thirty (30) City Locations to the City, as well as permit applications for the installation, operation and maintenance of the IKE Kiosks on the Locations and the display of Advertisements thereon. During any time when the parties are seeking the Required Approvals, the Company may engage in certain efforts as the Company deems necessary to advocate for the same. DMO shall provide reasonable advance notice to the Company of any and all meetings and conversations between DMO and the City regarding the terms of the City Agreement. The Company shall be permitted to participate in such meetings and conversations. DMO shall present all proposed drafts of the City Agreement to the Company, and the Company shall be permitted to review the same and shall have approval rights over any covenants in the City Agreement establishing requirements for maintenance, installation, content development, removal and upkeep of the IKE Kiosks located on City Locations. Unless the Company has provided its written approval for such terms in the City Agreement, the Company shall have no obligation to comply with such terms nor shall the Company be liable to DMO for the Company’s noncompliance with those terms. With respect to any Private Locations, the parties shall work together in good faith to obtain a Private Agreement for each such Location, which Private Agreement shall be executed by and between the owner of the Private Location and the Company.

4. **Grant of Rights.** DMO hereby agrees to allow the Company to exclusively use and operate pursuant to any permits or other Required Approvals received by DMO granting the right to construct, install, operate, maintain, repair, replace, upgrade and remove IKE Kiosks in and on the Locations during the Term of this Agreement. DMO covenants and agrees that the rights granted in this Agreement to the Company are exclusive to the Company, and DMO shall not contract with any party, other than the Company, for the use of the aforementioned permits or Required Approvals or the construction, installation or operation of any other street furniture or kiosks containing digital or static advertising within the City. DMO and the Company shall work together in good faith to discuss the number and locations within the City for the installation of IKE Kiosks or other street furniture or kiosks.

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

6. **Revenue Share.** From and after the Operational Date for each IKE Kiosk and through the end of the Term, the Company shall pay to DMO the Revenue Share in accordance with the terms set forth on the attached Exhibit A. All payments of the Revenue Share shall be made at DMO’s address as

set forth in Section 22 of this Agreement, or at such other address as may be designated by DMO from time to time.

7. **Plan Approval.** The Company shall develop and deliver to DMO drawings, plans and specifications for the Installation Work (the "Plans"), setting forth in reasonable detail the work necessary to install the IKE Kiosk and the dimensions and size of the IKE Kiosk to be installed at the Locations. DMO shall review the Plans and provide its advice and counsel thereto within fifteen (15) days after receipt of the Plans. The Company shall not submit applications for permits or other Required Approvals to the City for the placement of IKE Kiosks or begin any Installation Work with respect to a particular Location unless DMO has reviewed the Plans. DMO shall cooperate with the Company in submitting applications for permits and other Required Approvals to the City for the Installation Work.

8. **Required Approvals.** The Company shall bear all costs and expenses associated with obtaining any and all Required Approvals. DMO agrees to assist the Company with making and submitting applications for and obtaining and maintaining the Required Approvals contemplated by this Agreement.

9. **Installation Work.** Upon receipt of the City's approval of the Plans and issuance of all Required Approvals, the Company shall work diligently to install the IKE Kiosks in accordance with an installation schedule prepared by the Company and the terms of the City Agreement, provided that the Company has reviewed and approved in writing the same. All Installation Work shall be at the Company's sole cost and expense. The Company shall perform the Installation Work in a good and workmanlike manner and in compliance with all applicable laws, regulations and rules and the Required Approvals.

10. **Utility Services.**

a. **Services.** DMO will cooperate with the Company to seek the approvals necessary to obtain utility services and telecommunications services, including any agreements necessary to provide access over, under and across any property in order for the utility or telecommunications company to provide such other service to the Company as Company may require in furtherance of its use of the Locations. If any utility services or telecommunications services are unavailable or unable to be obtained for a particular Location, DMO shall cooperate with the Company to find a reasonably suitable substitute Location.

b. **Cost.** The Company shall pay all costs associated with bringing utility services and telecommunications services to each Location, including any and all costs associated with negotiating and obtaining access rights across private property in connection with the same. Additionally, the Company shall pay the costs of all utility services and telecommunication services used or consumed by the Company on each Location directly to the suppliers of such services.

c. **Disruption of Services.** If any utility services are interrupted or otherwise unavailable to one or more IKE Kiosks due to no fault of the Company, DMO shall cooperate with the Company to ensure the utility services are restored to such IKE Kiosks as soon as reasonably practicable.

11. **Covenants of the Company.**

a. Repair and Maintenance. The Company shall maintain the IKE Kiosks in good and operable condition, reasonable wear and tear excepted. The Company shall promptly and adequately repair all damage to the IKE Kiosks and replace the IKE Kiosks as reasonably necessary throughout the Term to ensure the same are capable of operating for their intended purposes. The Company shall further perform such repair and maintenance work as set forth in the City Agreement, provided that the Company has reviewed and approved in writing the same.

b. Compliance with Laws. The Company shall comply with all federal, state and municipal laws, order, rules and regulations applicable to the use of the IKE Kiosks and the display of content thereon.

c. DMO Content. As and when requested by DMO, the Company shall meet with DMO to discuss the development of DMO Directed Content for the IKE Kiosks. DMO Directed Content shall appear on the IKE Kiosks during the Interactive Mode and Passive Mode in the frequencies and amounts as set forth on Exhibit A.

d. Advertising Content. The Company shall not display any of the following types of advertisements on the IKE Kiosks: (i) political advertisements or advertisements or displays designed to promote views of particular political groups or influence opinions of others on public policy issues; (ii) advertisements or displays which involve nudity, partial nudity or pornographic, lewd or sexually explicit images or services that would be offensive to generally prevailing community standards; (iii) tobacco or marijuana advertisements; (iv) content that could be deemed offensive by reasonable local community standards; (v) advertisements or displays which condone discrimination based upon race, religion, creed, ethnicity, disability, gender or sexual orientation; and (vi) advertisements or displays promoting non-diet soft drinks and other drinks having a high sugar content, which is defined as drinks that contain more than 8 grams of sugar per 12 ounces of liquid or 12 grams of sugar per 20 ounces of liquid. If DMO notifies the Company of a violation of this Section 11(d), the Company shall remove the violating content within twenty-four (24) hours after receipt of such notice from DMO, and if the Company disputes that the content at issue violates this Section 11(d), the parties shall thereafter work together in good faith to resolve any dispute regarding such content.

e. Liens. The Company shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under the Company. The Company shall also indemnify, hold harmless and defend DMO against any such liens, including the reasonable fees of DMO's attorneys. Such liens shall be discharged by the Company within thirty (30) days after notice by DMO of filing thereof by bonding, payment or otherwise, provided that the Company may contest, in good faith and by appropriate proceedings, any such liens.

12. Covenants of DMO.

a. Maintenance. DMO agrees to cooperate with the Company and the City to ensure that the Locations and the property adjacent to the Locations are maintained in a good and clean condition and otherwise in a manner so as to not impede or limit access to the IKE Kiosks.

b. DMO Content. DMO shall work with the Company in good faith to create DMO Directed Content for the IKE Kiosks. DMO shall promptly and thoroughly provide information requested by, and answer any and all questions from, the Company regarding the development of

any DMO Directed Content. DMO shall promptly respond to any requests for approval of DMO Directed Content and shall communicate any objections to such content clearly and in writing.

13. **Property Ownership.** DMO acknowledge that the IKE Kiosks, the Software, including any enhancements thereto regardless which party generated the enhancements, the IPR and any intellectual property rights in and to any of the content created by the Company and displayed thereon, including DMO Directed Content, shall belong to the Company and no part thereof shall become or be deemed the property of DMO. Each party shall do all such acts and things as the other party may reasonably require for the purpose of preserving or perfecting the foregoing. DMO shall promptly notify the Company of any infringement or unauthorized use of the IKE Kiosks, the Software, any IPR or any content created for the IKE Kiosks, including DMO Directed Content, of which it becomes aware and will cooperate fully to take all actions necessary to terminate such infringing or unauthorized use. Additionally, the Company acknowledges that all logos, trademarks and other marks of DMO belong to DMO and no part thereof shall become or be deemed to be the property of the Company, regardless of whether the same are incorporated into DMO Directed Content. DMO agrees, at its sole cost and expense, take all actions necessary to maintain ownership of its logos, trademarks and other marks during the Term. DMO represents and warrants that it has the right, power and authority to use the logos, trademarks and other marks of the City in any DMO Directed Content.

14. **Insurance and Indemnification.** The Company shall obtain and keep in full force and effect, at its sole cost and expense, comprehensive general liability and property damage insurance against claims for bodily injury, disease, illness or death and for injury to or destruction of property arising from the Company's use of Locations. Such insurance to afford protection to a limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00) with respect to bodily injury, disease, illness or death suffered by any one person and with respect to damage to or destruction of property arising out of any one accident. Each policy or policies of insurance shall name the Company as insured and DMO as additional insured, as their interests may appear. The Company shall deliver certificates of insurance, and such other evidence of continued insurance coverage in accordance with this Section prior to commencing any work on the Locations. All insurance policies of the Company required by this Agreement shall be taken out with insurers with an A.M. Best Rating or its equivalent of A-VIII or better. Upon request, the Company shall promptly deliver copies of such insurance policies, or certificates of insurance evidencing that the Company is maintaining the insurance coverages required by this Agreement.

The Company agrees to indemnify, defend, and render and save DMO harmless of and from any and all claims, expenses, fines, suits, proceedings, demands, liabilities, losses, damages and causes of action from any and all accidents, injuries or damages to any person or property arising from the installation, operation, maintenance, removal and occupancy or use of the Locations by the Company, and by any of its agents, servants, employees or contractors, or arising out of the failure of the Company to perform its obligations as set forth in this Agreement. This indemnity shall include, without limitation, indemnity against all expenses and liabilities incurred in connection with any such claim or proceeding brought thereon which shall include all reasonable attorney's fees of DMO.

15. **Representations and Warranties of DMO.** DMO represents and warrants to the Company the following:

a. **Requisite Authority.** DMO has the requisite power and authority to enter into this Agreement, to grant the rights herein granted with respect to the Locations subject to City approval as may be required, to perform its obligations hereunder and to consummate the transactions contemplated hereby; and no further action on the part of DMO is necessary to

authorize the execution and delivery by it, and the performance of its obligations under this Agreement. DMO is not aware of any action, waiver or consent by any governmental entity that is necessary to make this Agreement a valid instrument binding upon DMO in accordance with its terms.

b. Execution and Delivery. DMO has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid and binding obligation of DMO, enforceable in accordance with its terms.

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

16. Default and Remedies.

a. Default. If either party fails to comply with any term of this Agreement and such failure is not cured within thirty (30) days after receipt of written notice from the non-breaching party of the same, or, if such failure is of a nature that cannot reasonably be cured within such thirty (30) day period, the breaching party shall have such additional time as is reasonably necessary in which to cure such failure.

b. Remedies. If any breach of this Agreement is not cured within the time period set forth in Section 15(a), above, the non-breaching party shall have the right to terminate this Agreement and seek such other rights and remedies as may be available at law or in equity.

17. Assignment. Except as otherwise provided herein, neither this Agreement nor any rights or obligations hereunder may be assigned by either party without the prior consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, in the event (i) that substantially all operations of the Company are being transferred to (a) another entity by way of merger, consolidation or sale of substantially all of the stock therein or assets thereof, or (b) any person or entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Company, or (ii) there is a transfer of outstanding capital stock or other listed equity interests in and to the Company through the "over-the-counter" market or any recognized national or international securities exchange, the consent of DMO shall not be required, provided the acquiring entity, if applicable, shall agree to assume and perform all of the duties, and obligations of the Company hereunder. Notwithstanding anything contained in this Agreement to the contrary, the consent of DMO shall not be required for a collateral or conditional assignment of this Agreement to a lender of the Company, nor shall DMO consent or approval be required in connection with the Company's entering into any equipment financing or equipment leasing with respect to, or the granting of a security interest in and to, the IKE Kiosks.

18. Surrender. Upon the expiration or earlier termination of this Agreement, the Company shall remove the IKE Kiosks and restore the Locations as close as reasonably practical to their original conditions, subject to reasonable wear and tear, and shall do such work as is reasonably necessary to cap off the utilities serving the Locations.

19. **Confidentiality and Sunshine Laws.**

a. Except as provided otherwise in this Section 19, DMO and the Company, for the benefit of each other, hereby agree that neither of them will release or cause or permit to be released to the public in any manner whatsoever, the terms, conditions or substance of this Agreement or the transactions contemplated herein, without first obtaining the consent of the other party hereto, which may be granted or withheld in the sole discretion of the other party.

b. It is understood that the foregoing shall not preclude any party from discussing the substance or any relevant details of the transactions contemplated in this Agreement on a confidential basis with any of its attorneys, accountants, professional consultants, financial advisors, rating agencies, or potential lenders, as the case may be, or prevent any party hereto from complying with applicable laws, including, without limitation, governmental regulatory, disclosure, tax and reporting requirements. Notwithstanding the foregoing sentence to the contrary, both the Company and DMO acknowledge and agree that the information contained in the Exhibits to this Agreement shall be deemed information excepted from disclosure pursuant to any FOI Law.

c. In addition to any other remedies available to DMO and the Company, DMO and the Company shall each have the right to seek equitable relief, including, without limitation, injunctive relief or specific performance, against the other party or its representatives in order to enforce the provisions of this Section 19.

d. Notwithstanding any other provision of this Agreement, the provisions of this Section 19 shall survive the termination of this Agreement

20. **Force Majeure.** Neither Party shall be liable to the other for any loss, damage, claim, delay or default arising during suspension of performance due to acts of God (including storm, fire, flood and earthquake), labor disturbances (including strikes, boycotts, lockouts, etc.) war, acts of terrorism, civil commotion, imposition of any future governmental law, ordinance, rule or regulation, any strike or work stoppage, or other cause beyond the control of such Party; provided, however, that either Party shall only be entitled to rely on this Section to the extent it uses its best efforts to resume performance under this Agreement as soon as reasonably practicable after such occurrence.

21. **Casualty.** If during the Term all or a material part of any IKE Kiosk is damaged by a casualty, the Company shall have the option to terminate this Agreement with respect to such IKE Kiosk by written notice given to DMO promptly after the occurrence of the casualty. All insurance proceeds or other compensation for any such casualty shall belong to the Company.

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

If to DMO:

VISIT BERKELEY
2030 Addison St.
Berkeley, CA 94704

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

With a copy to: Kooperman Mentel Ferguson Yaross Ltd.
100 S. Fourth Street, Suite 100
Columbus, Ohio 43215
Attn: Brian Kooperman, Esq.

23. **Governing Law.** This Agreement shall be governed by and construed by the laws of the State of California, and exclusive jurisdiction over any legal action arising out of or in connection with this Agreement shall be in state courts located in the City of Berkeley, County of Alameda, State of California.

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

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

26. **Amendments; Invalidity.** This Agreement may not be amended, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver, or discharge is sought. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement or any portion thereof shall not affect the remaining portions thereof or any part hereof and this Agreement shall be amended to substitute a valid provision which reflects the intent of the parties as was set forth in the invalid provision.

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

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

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

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

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

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

33. **Attorneys' Fees and Costs**. In the event of any claim, controversy or dispute regarding this Agreement, its interpretation or the performance or enforcement of the parties' rights, duties, remedies and obligations hereunder, the prevailing party in such claim, controversy or dispute shall be awarded its reasonable attorneys' fees and costs, including its attorneys' fees and costs of any associated appeal.

[the remainder of this page intentionally left blank]

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

DMO:

BERKELEY CONVENTION & VISITORS' BUREAU,
a California not for profit corporation

By: Barbara Hillman
Print: BARBARA HILLMAN
Title: PRESIDENT

COMPANY:

IKE SMART CITY, LLC,
an Ohio limited liability company

By: _____
Pete Scantland, Chief Executive Officer

Orange Barrel Media, LLC, an Ohio limited liability company, hereby executes this IKE Agreement for the sole and limited purpose of guarantying the obligation of IKE Smart City, LLC, to remove the IKE Kiosks from the Locations in the event this IKE Agreement is terminated as a result of a default by IKE Smart City, LLC of the terms of this IKE Agreement. Orange Barrel Media, LLC shall have no liability for the performance of any of the terms set forth in the IKE Agreement other than removal of the IKE Kiosks as set forth in the immediately preceding sentence.

ORANGE BARREL MEDIA, LLC
an Ohio limited liability company

By: _____
Pete Scantland
Chief Executive Officer

EXHIBIT A

DEAL TERMS

1. **Term.** The term of this Agreement shall be for a period commencing upon the first to occur operational date for an IKE Kiosk (the "Commencement Date") and ending on the last day of the one hundred eightieth (180th) full consecutive month thereafter (the "Initial Term"). The Initial Term shall automatically renew for one (1) additional term of five (5) years (the "Renewal Term," and together with the Initial Term, the "Term") unless the Company notifies DMO in writing at least ninety (90) days prior to the expiration of the Initial Term that the Company does not desire to extend the Term. All terms, conditions and requirements of this Agreement, except for the Company's obligation to pay the Revenue Share or any other monies, shall commence as of the Effective Date.

2. **Revenue Share.** The Company shall pay to DMO during each year of the Term the Revenue Share applicable to such year. The term "Revenue Share", as used herein, means, with respect to each calendar year of the Term, an amount equal to the greater of (a) the MAG and (b) the applicable Percent Share of the annual Gross Revenue for such year. The term "MAG" means One Hundred Thousand and 00/100 Dollars (\$100,000.00) per calendar year of the Term, which amount shall be prorated for any partial calendar years. The term "Percent Share" means ten percent (10%) of the annual Gross Revenue for the operational IKE Kiosks earned by the Company during the first two (2) full calendar years plus any partial calendar year after the Commencement Date and increasing on January 1st of the third (3rd) full calendar year of the Term to twenty-five percent (25%) of the annual Gross Revenue for each IKE Kiosk earned by the Company, which percentage shall apply thereafter for the remainder of the Term. The MAG shall be paid annually in full on January 1st of each calendar year of the Term, with the first MAG payment being made on the Commencement Date and, if the Commencement Date is a date other than January 1st, the MAG shall be prorated for such partial first calendar year. From and after the Commencement Date, to the extent the Percent Share for a Fiscal Quarter exceeds twenty-five percent (25%) of the MAG paid during such full or partial calendar year, the Company shall pay the amount of such excess to DMO on or before the fifteenth (15th) day after the completion of each Fiscal Quarter during the Term and shall submit to DMO a statement of the Company's Gross Revenue for such Fiscal Quarter. Additionally, on or before January 15th of each calendar year, the Company shall submit to DMO a statement of Gross Revenue for the immediately preceding calendar year ("Reconciliation Statement"). If a Reconciliation Statement shows that the amount of the Percent Share paid during any calendar year exceeded the amount actually due and owing by the Company, the Company shall credit such overage against the Revenue Share payments next coming due until reimbursed in full; provided, however, that for the last calendar year of the Term, DMO shall reimburse the Company for the amount of any overpayment within thirty (30) days after receipt of the Reconciliation Statement. If a Reconciliation Statement shows that the amount of the Percent Share paid during any calendar year was less than the amount actually due and owing by the Company for such year, then the Company shall pay such shortfall within thirty (30) days after submission of the Reconciliation Statement.

3. **DMO Content.** DMO Directed Content will be shown on the IKE Kiosks in accordance with the following schedule:

a. During Interactive Mode, DMO Directed Content will occupy a minimum of sixty-six percent (66%) of the screen area on each of the IKE Kiosks in the City Locations.

b. During Passive Mode, at least one (1) Spot out of every eight (8) Spots shown on an IKE Kiosk screen in a City Location will contain DMO Directed Content. All Spots shall be of equal duration.

c. During Passive Mode, at least one (1) Spot out of every eight (8) Spots shown on an IKE Kiosk screen in a Private Location will contain DMO Directed Content. All Spots shall be of equal duration.

EXHIBIT B

IKE KIOSK SERVICES AND APPLICATIONS

The IKE Kiosks may display the following applications:

- (i) *Wayfinding*, including multimodal mapping to destinations, businesses and other points of interest (sorted into freestanding apps such as *Eat, Play, Shop, Stay*);
- (ii) *Getting Around*, including real-time arrival and departure information for public transit, bike share and car share services all accessed from an interactive map;
- (iii) *Question of the Week*, allowing for DMO to survey the public on its opinions and ideas;
- (iv) *Events*, including a comprehensive event and activity listing for DMO;
- (v) *Jobs*, including career and internship postings within DMO, arranged geographically to encourage workforce development;
- (vi) *Photobooth*, including customized City-themed background postcards and social media integration;
- (vii) *Emergency Communication*, including a protocol for real-time posting of essential DMO communication such as storm warnings, amber alerts and road closures;
- (viii) *Pedestrian Counting*, including RFID-based measurement of pedestrians within range of the IKE unit, and a web-based dashboard containing analytics for DMO's use;
- (ix) *Air Quality Monitoring*, including relaying data to DMO on a regular basis; and
- (x) *Arcade*, including video games employing the unique touch-screen capabilities of the IKE Kiosks.

FIRST AMENDMENT TO IKE AGREEMENT

THIS FIRST AMENDMENT TO IKE AGREEMENT (the "Amendment") is made as of Sept 4, 2018 (the "Effective Date") by and between BERKELEY CONVENTION & VISITORS' BUREAU, a California not for profit corporation ("DMO"), and IKE SMART CITY, LLC, an Ohio limited liability company ("Company").

RECITALS

- A. DMO and Company are parties to a certain IKE Agreement dated February 27, 2018 (the "Agreement"), pursuant to which DMO granted certain rights to Company for the installation and operation of IKE Kiosks within the City, as more particularly defined in the Agreement.
- B. DMO and Company hereby desire to amend the Agreement to modify the terms thereof in accordance with the terms of this Amendment.

AGREEMENT

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

- 1. Property Ownership. Section 13 of the Agreement is hereby deleted in its entirety and replaced with the following:
 - a. DMO acknowledges that the IKE Kiosks, the Software, including any enhancements thereto regardless which party generated the enhancements, the IPR and any intellectual property rights in and to any of the content created by the Company and displayed thereon, including DMO Directed Content, shall belong to the Company and no part thereof shall become or be deemed the property of DMO. Each party shall do all such acts and things as the other party may reasonably require for the purpose of preserving or perfecting the foregoing. DMO shall promptly notify the Company of any infringement or unauthorized use of the IKE Kiosks, the Software, any IPR or any content created for the IKE Kiosks, including DMO Directed Content, of which it becomes aware, and will cooperate fully to take all actions necessary to terminate such infringing or unauthorized use.
 - b. The Company acknowledges that all logos, trademarks and other marks of DMO belong to DMO and no part thereof shall become or be deemed to be the property of the Company, regardless of whether the same are incorporated into DMO Directed Content. DMO agrees, at its sole cost and expense, to take all actions necessary to maintain ownership of its logos, trademarks and other marks during the Term. DMO represents and warrants that it has the right, power and authority to use the logos, trademarks and other marks of the City in any DMO Directed Content.

c. The Company further acknowledges that any Directed Content created by the City, including its logos, trademarks and other marks is the exclusive property of the City.

2. Revenue. Section 2 of Exhibit B of the Agreement is hereby modified to add the following to the end thereof:

“Notwithstanding anything contained herein to the contrary, with respect to the Revenue Share payable to DMO hereunder, DMO may retain the lesser of an amount equal to 25% of the annual Revenue Share payable to DMO or \$100,000 (the “DMO Threshold”) and shall promptly pay to the City any portion of the Revenue Share payable to DMO under this Agreement that exceeds the aforementioned Threshold.”

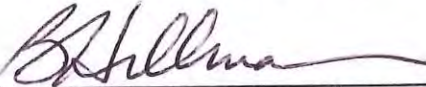
3. Capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the Agreement.
4. Except as modified herein, the terms and conditions of the Agreement shall remain in full force and effect. In the event the terms of this Amendment conflict with the terms of the Agreement, the terms of this Amendment shall control.

(Signatures on the following page)

IN WITNESS WHEREOF, DMO and Company have executed this Amendment on the day and year first above written.

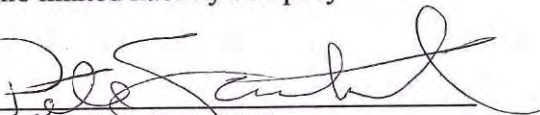
DMO:

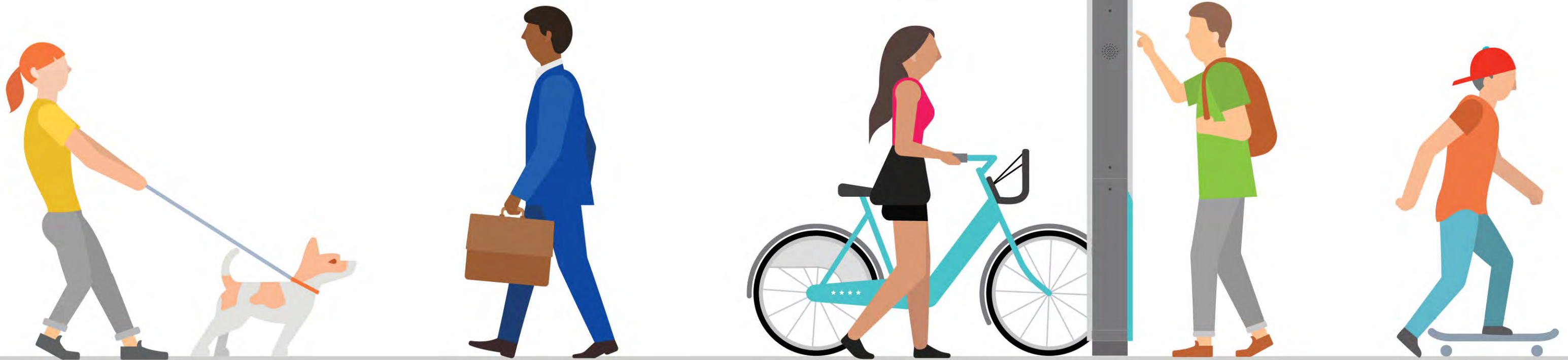
BERKELEY CONVENTION & VISITORS' BUREAU, a
California not for profit corporation

By: 
Print Name: BARBARA HILLMAN
Its: PRESIDENT & CEO

COMPANY:

IKE SMART CITY, LLC,
an Ohio limited liability company

By: 
Pete Scantland, CEO



A Valuable Smart City Hub

The IKE platform delivers valuable Smart City services, and reinforces a City's brand as a progressive innovator, by driving the three fundamental requirements of a vibrant, pedestrian-oriented urban downtown area with a thriving retail economy.



CONNECTION

In addition to connecting residents and visitors with the very best a city has to offer through detailed listings of area restaurants, shops, activities, and resources, the IKE network provides free public Wi-Fi and denser cellular coverage through the placement of multi-carrier small cell antennas. This establishes foundational support for the creation of 5G networks and enables increased connectivity in underserved communities that are in need of additional access to social services, civic resources, and job opportunities.



NAVIGATION

IKE makes exploring a city easy by providing seamlessly integrated multi-modal wayfinding. The system displays real-time transit feeds and route schedules, as well as mapping and directions, for bus, rail, streetcar, and bike/car share services, thereby encouraging the use of public transportation and increasing mobility for all citizens.



COMMUNICATION

IKE is a highly visible medium for communicating important information and resources to the public and allows for the immediate broadcast of emergency messages and critical updates from governmental authorities. IKE also collects data to better understand the community and solicits valuable feedback from the public that can inform city improvements and optimizations.

Regulatory Processes for City Approval of IKE Kiosk Plan

In order to gain the proper regulatory approvals from the City of Berkeley, IKE and Visit Berkeley have met with their legal team and propose the following steps.

1. VISIT BERKELEY CONTRACT AMENDMENT

Currently Visit Berkeley in its contract with the City has a scope of work that outlines its responsibilities for the coming year. Visit Berkeley will propose that during the approval process for the coming year which will be on the council agenda for June 26th date, that the scope of work in its renewed contract provides for oversight of the IKE Kiosk program. The new scope of work would read as shown on slide 4.

1. REVENUE SHARING

Within the amendment to the contract between Visit Berkeley and the City there will be a component that addresses revenue sharing and how revenue created by the IKE program will be distributed to VB and the City. As shown on page 4 the current construct of this component would be that VB receive 25% of the revenues from the program to cover its costs of managing the program and the remainder would be distributed to the City by VB on a quarterly basis. It has been suggested that a council resolution be enacted as well to discuss distribution of some of the City's portion of the funds to help with BID programs for neighborhood improvements as the BIDs will be assisting in some parts of the program.

2. SIGN CODE ORDINANCE

As the current sign ordinance would prohibit advertising on kiosks in the right of way, VB and IKE have met with local legal counsel and have been recommended to have the council vote on a simple amendment to the sign ordinance as written on slide 5.

3. ENCROACHMENT PERMIT ORDINANCE

As the kiosks would qualify as a major encroachment, we suggest that the kiosks be exempted from the permit requirement as shown on the Encroachment Ordinance Amendment on slide 5.

4. STAFF MEMO

Accompanying the Amendments is a staff memo outlining the purpose and effect of these regulatory issues. Please note that the appropriate staff in Public Works and Planning departments will need to be consulted.

KEY DATES:

May 24th: Submission of staff memo and accompanying ordinance amendments

June 26th: Council Meeting to address all issues related to the kiosk deployment.

ON THE CONSENT CALENDAR

We believe that these issues are non- controversial and should be taken up on the Consent Calendar for the Council meeting.

Criteria for Determining Optimal IKE Locations

MAXIMIZE AWARENESS

- Maximizing visibility of each IKE helps users understand individual kiosks as part of a larger IKE network, thus encouraging interactive use and increasing overall effectiveness of the IKE program.

MAXIMIZE PEDESTRIAN ACCESS

- Sites with a high volume of pedestrian traffic maximize use of interactive features and IKE visibility.

MAXIMIZE VEHICULAR VISIBILITY

- Each IKE should be seen by a high volume of automobile traffic. This ensures that emergency and civic messages are shared with the public and advertising revenue is adequate to support ongoing operation of the unit.
- When IKE unit is placed at an intersection, IKE should be located on the passenger-side of the intersection past the cross-street to maximize visibility and maximize passenger visibility.

LOCATE IN RIGHT OF WAY AND ON PUBLIC PROPERTY

- The use case shows that a significant portion of the kiosks in the IKE network must be located in the Public Right of Way to maximize both pedestrian access and vehicular visibility.
- Locating IKEs in the Right of Way ensures that users perceive IKE as a credible broadcast platform endorsed by the City. Right of Way locations increase the likelihood that viewers recognize emergency commands as messages from the City and makes viewers more likely to abide by instructions.

RECOMMENDED SITES

- Heavily trafficked mass transit stops/stations.
- Pedestrian-oriented retail districts. These are districts with street-facing storefronts and the majority of street frontage is occupied by retail stores and restaurants.
- Public amenities, civic buildings, and cultural institutions. These locations provide residents and tourists information on municipal services/spaces.
- Near event venues. E.g. sports arenas, convention centers, large parks, and museums.

SITES TO AVOID

- Sites on privately owned land.
- Sites in residential districts.

IKE Model Considerations

Since each neighborhood within a City has its own unique streetscape, IKE comes in both a standard and mini model to ensure successful integration and adherence to footprint parameters.



IKE MINI

Compact model for placement in lower density areas with smaller architectural structures, narrow sidewalks, and slower moving traffic.

IKE STANDARD

Standard model for placement in high density areas with larger buildings, wider sidewalks, and fast moving traffic.

Program Recommendation

OBM recommends the deployment of thirty (30) IKE digital kiosks throughout the City of Berkeley at major intersections and arteries, key points of interest and heavily foot-trafficked areas. This approach will maximize visibility and engagement, and provide wayfinding and other beneficial content to the highest volume of residents and guests.

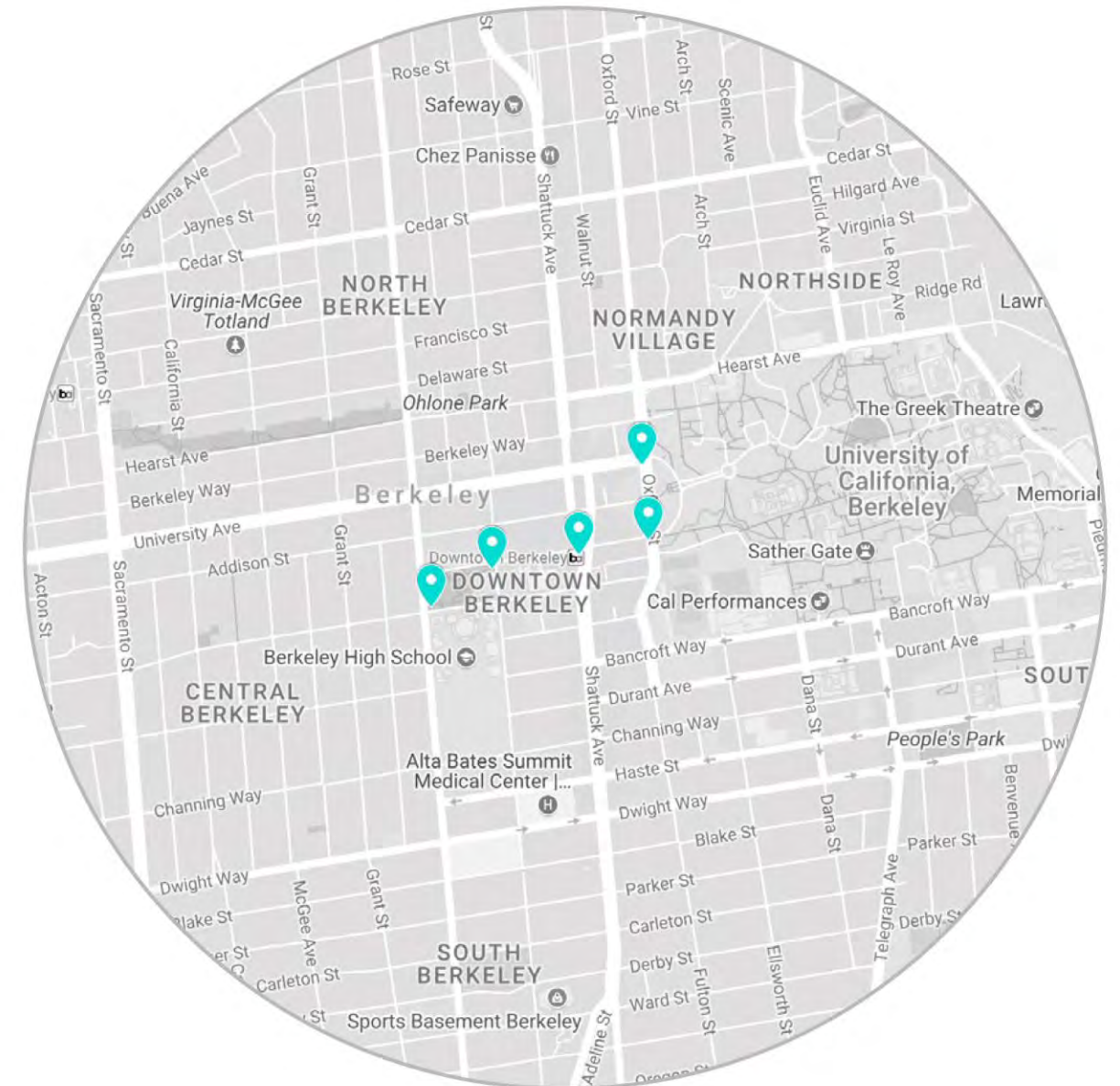


- **DOWNTOWN/CIVIC CENTER:** 5 IKEs
- **TELEGRAPH & BANCROFT:** 3 IKEs
- **SOLANO:** 3 IKEs
- **DOWNTOWN/NORTH SHATTUCK:** 5 IKEs
- **4TH ST:** 2 IKEs
- **OTHER:** 13 IKEs

Downtown/North Shattuck



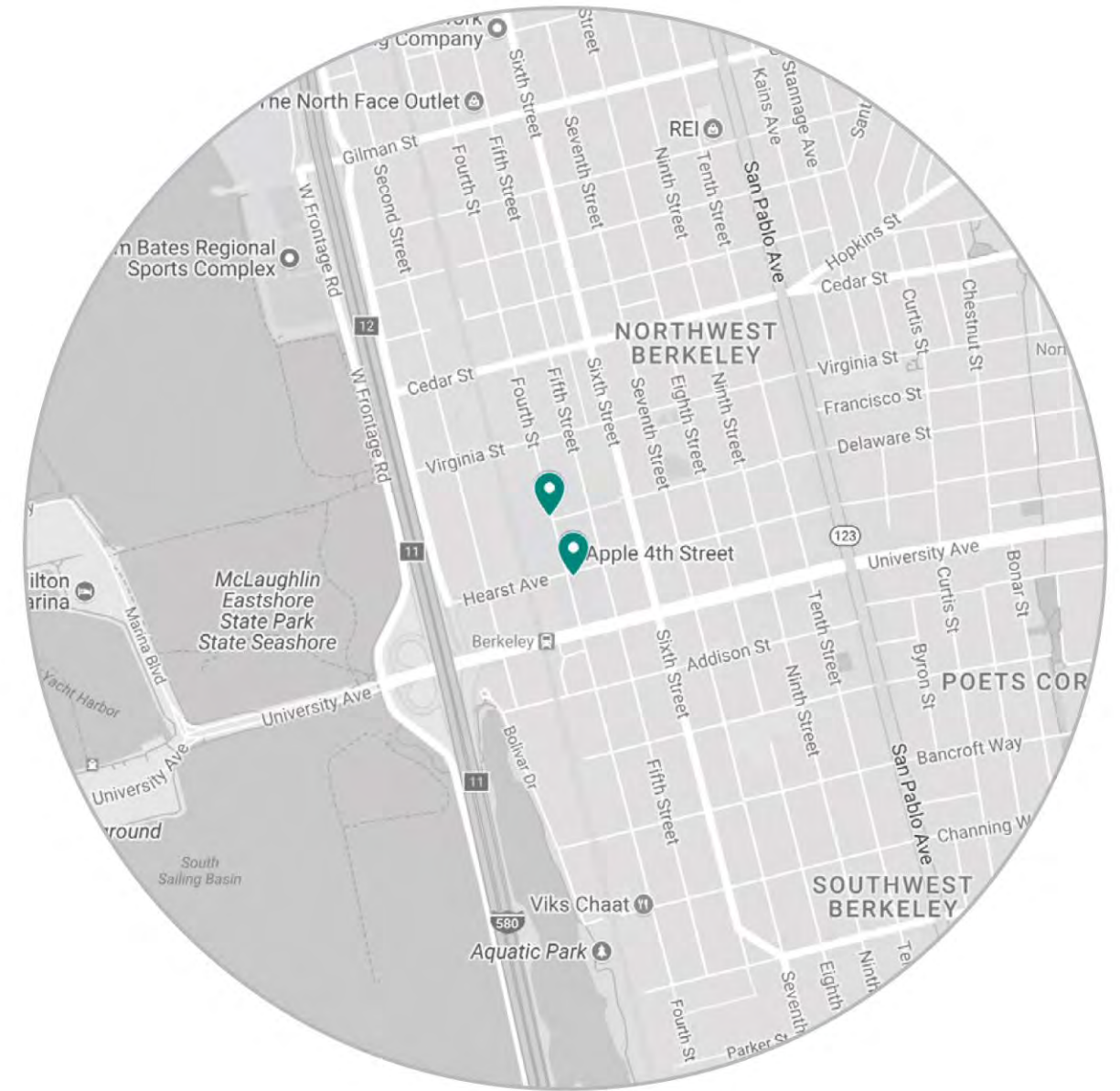
Downtown/Civic Center



Telegraph & Bancroft



4th St



Solano

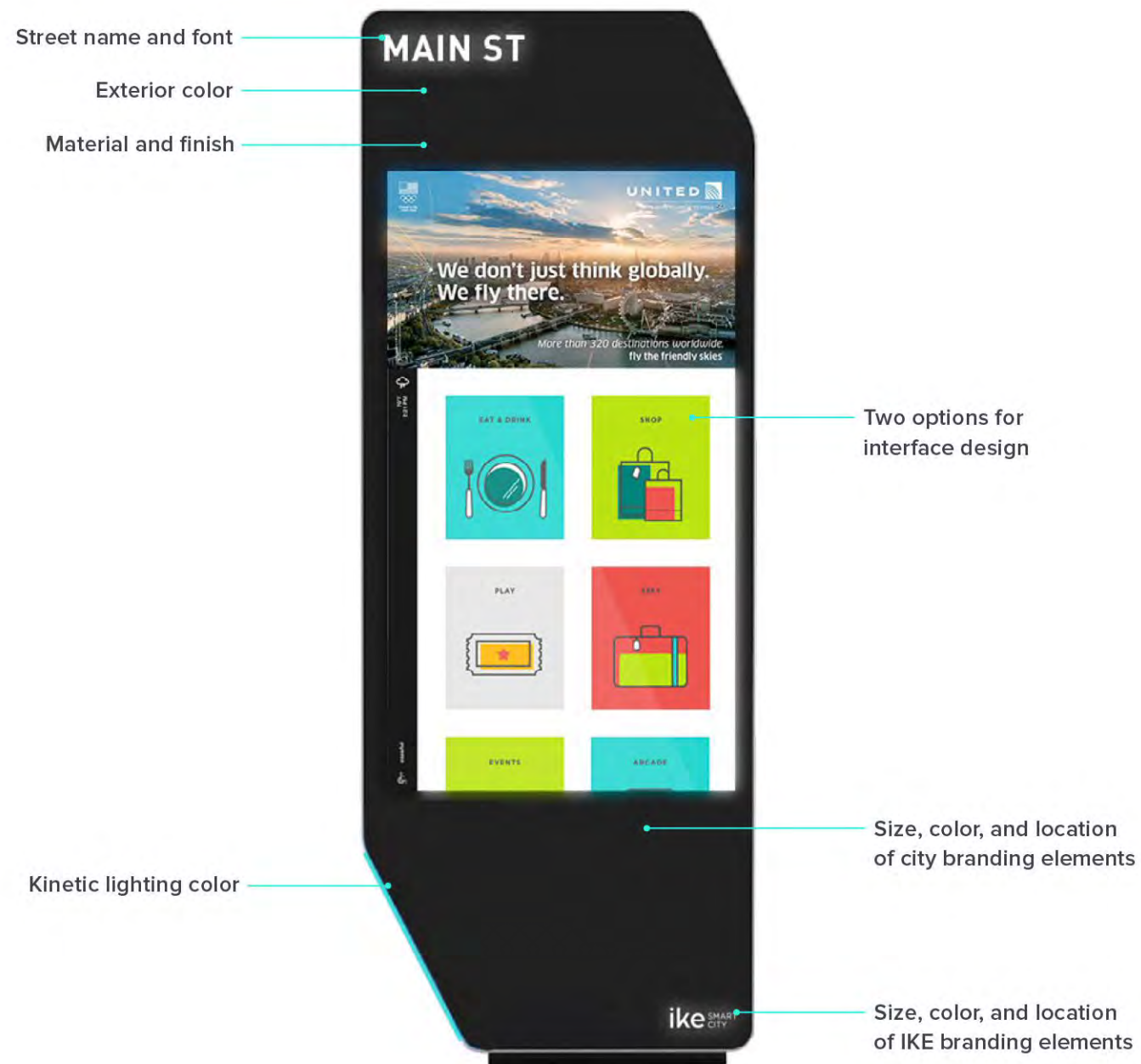


Other



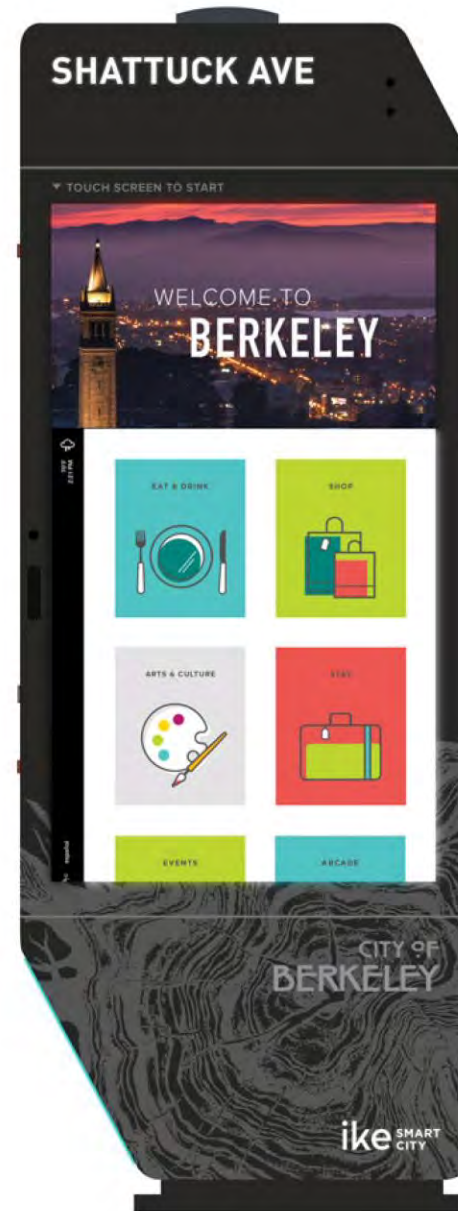
Customizable Design

As shown below, color, finish, material accents, lighting, navigation, branding, and user interface are all customizable to provide cities with design options and flexibility.

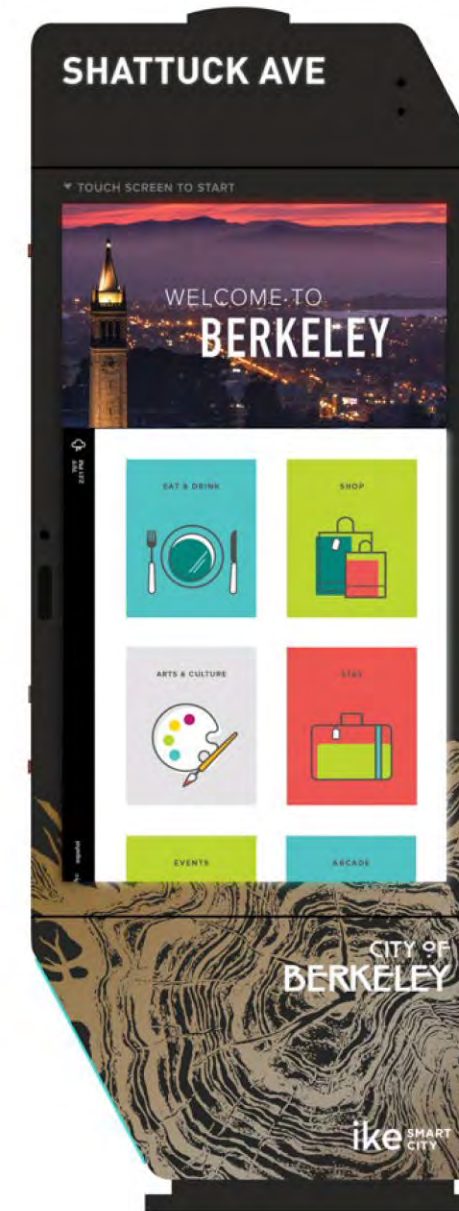


IKE + Berkeley

The IKE team will work closely with the City of Berkeley to create a design that will reinforce the City's brand and add increased vibrancy and visual interest to the surrounding areas.



OPTION 1

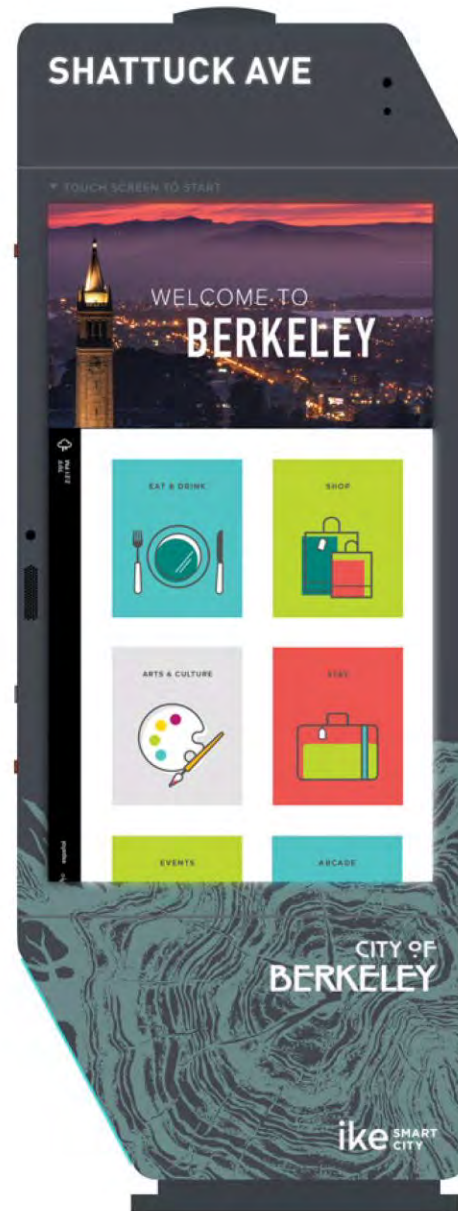


OPTION 2

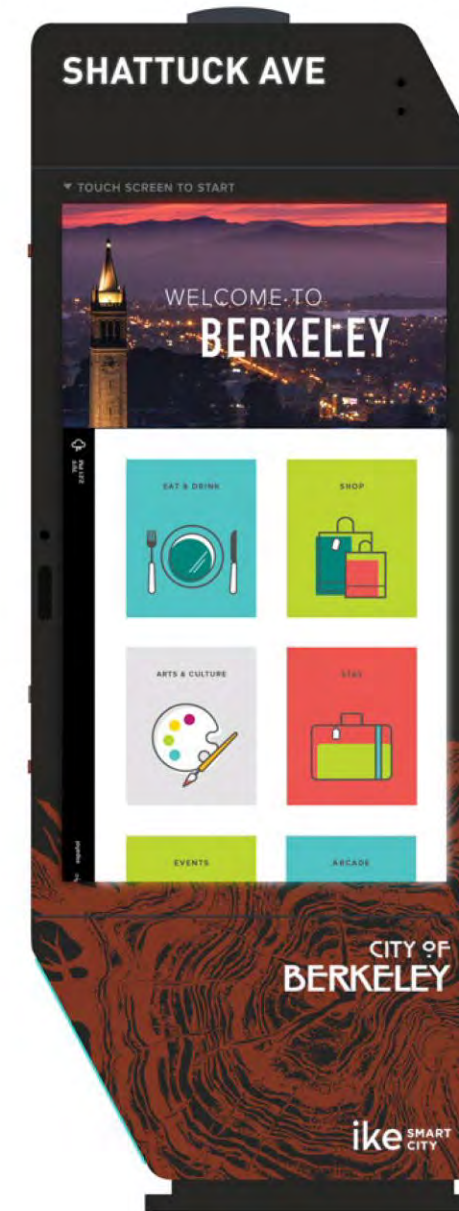


IKE + Berkeley

The IKE team will work closely with the City of Berkeley to create a design that will reinforce the City's brand and add increased vibrancy and visual interest to the surrounding areas.



OPTION 3



OPTION 4



Applications

IKE's suite of current applications are designed to deliver value to all constituencies - residents and visitors of all economic means; economic development, and neighborhood organizations such as business improvement districts, travel and tourism bureaus, workforce development, and multiple city agencies. Our software is developed in an agile process, with our city partners joining us at the table to develop new ideas and applications which are then realized by our team.



THINGS TO DO

EAT & DRINK

Drives traffic to area businesses with free detailed listings of restaurants, cafes, and other dining establishments.

SHOP

Encourages a thriving economy with listings of area shops, stores, and retail centers at no cost to local businesses.

EVENTS

Highlights city happenings and opportunities for residents and visitors to participate in local events.

ACTIVITIES

Creates a vibrant and energetic city with detailed listings of attractions, points-of-interest, and things to do.

ARTS & CULTURE

Shares all the museums, theatres, galleries, and music the city has to offer.

PARKS & OUTDOOR

Helps people discover the best parks, gardens and outdoor sporting venues across the city.

STAY

Makes it easy to visit by providing detailed listings of hotels, motels, and other lodging establishments.

HOW TO GET THERE

GET AROUND

Provides multi-modal wayfinding, as well as real-time schedules and information for all forms of public transit including rail, bus, streetcar, bike, and car share services.

COMMUNITY SERVICES

SOCIAL SERVICES

Supports underserved areas with detailed listings of valuable resources such as addiction and recovery centers, food banks, and family services.

SHELTER

Provides those in need with locations and real-time availability of safe shelters and beds.

JOB BOARD

Provides communities with easy access to area job listings and employment opportunities.

CIVIC RESOURCES

Makes it easy to get important things done with detailed listings of city, state and federal buildings and services.

311

Keeps the public informed with a real-time feed of aggregated city and service requests, and provides a platform for citizens to report a problem or issue.

SURVEY SAYS

Allows the public to share opinions by responding to questions issued by the city to gain citizen input on initiatives and issues.

FUN & GAMES

PHOTO BOOTH

Allows pedestrians to take a selfie against an iconic City backdrop and enables photo sharing on social media.

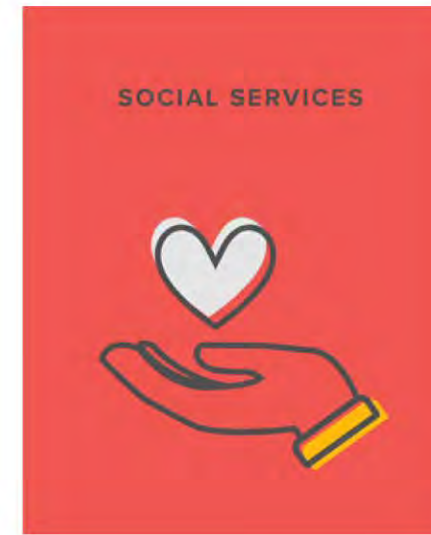
ARCADE

Entertains and engages pedestrians with a fun and easy to use video game.

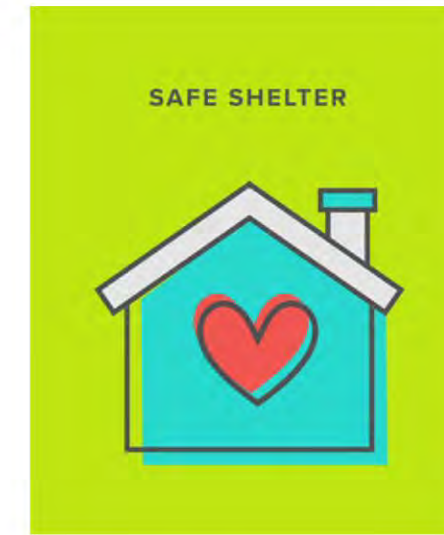
Serving All Communities Equally

Recognizing the need for cities to provide information availability and connectivity to underserved communities, our team has developed the IKE platform to include applications that deliver against those objectives. IKE's Social Services, Shelter, Job Board, and Civic Resources applications were signed to allow access to important community resources.

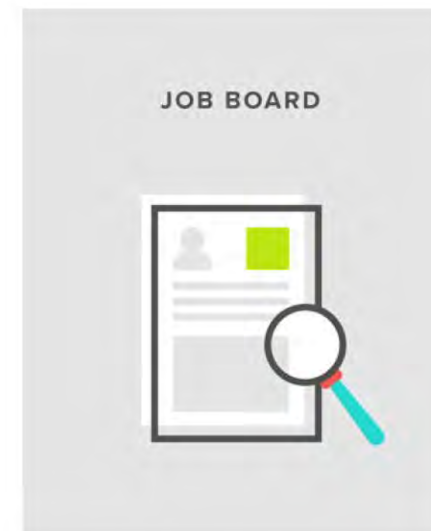
From food support, job opportunities and addiction assistance to safe shelters for men, women, and families, IKE helps cities serve the underserved and acts as free Wi-Fi hub that makes it easier for all citizens to find the help they need.



Food Support, Family Services, Addiction & Recovery, Charities & Giving, Mental Health



Safe Shelter, Type, Locations & Real-Time Bed Availabilities



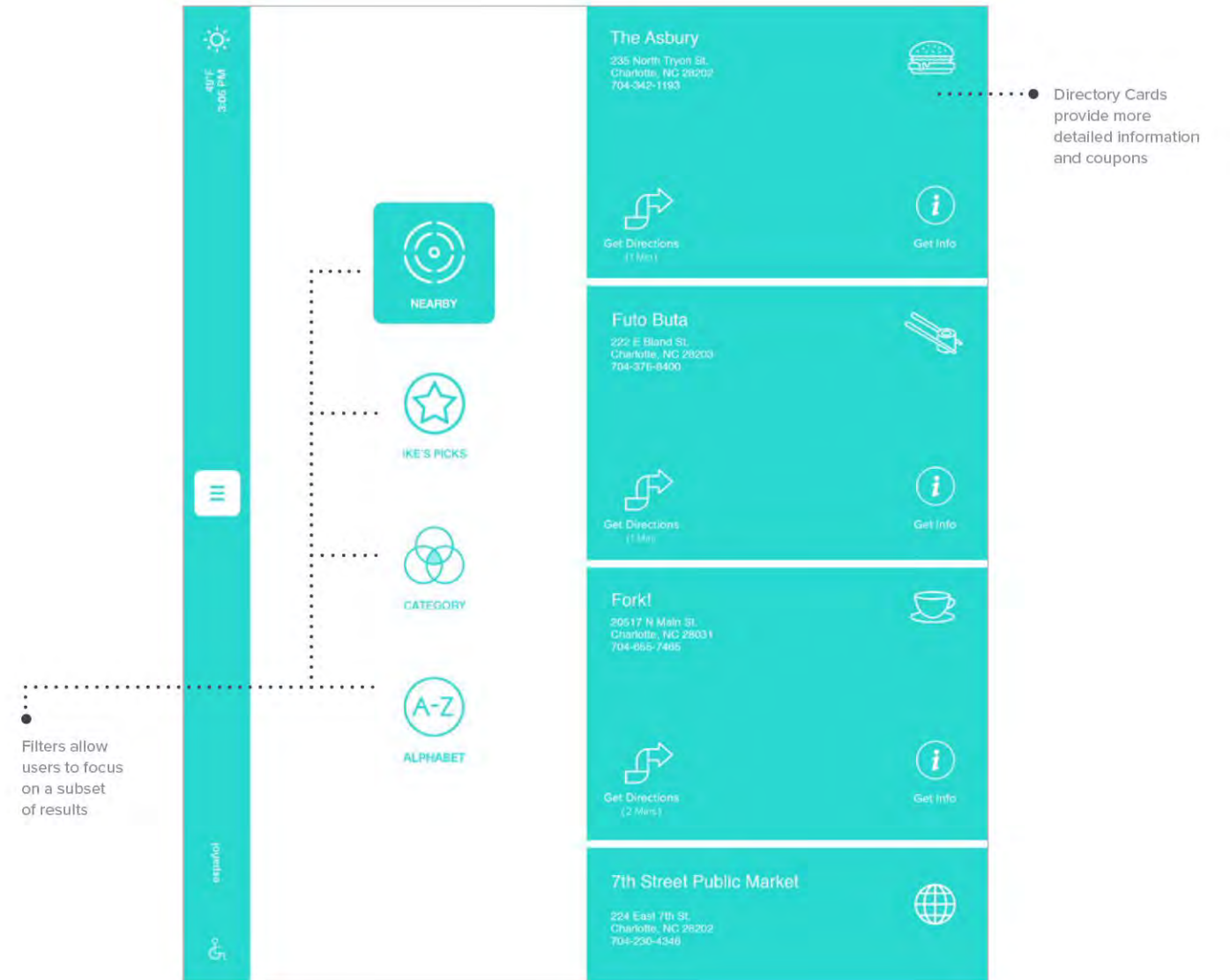
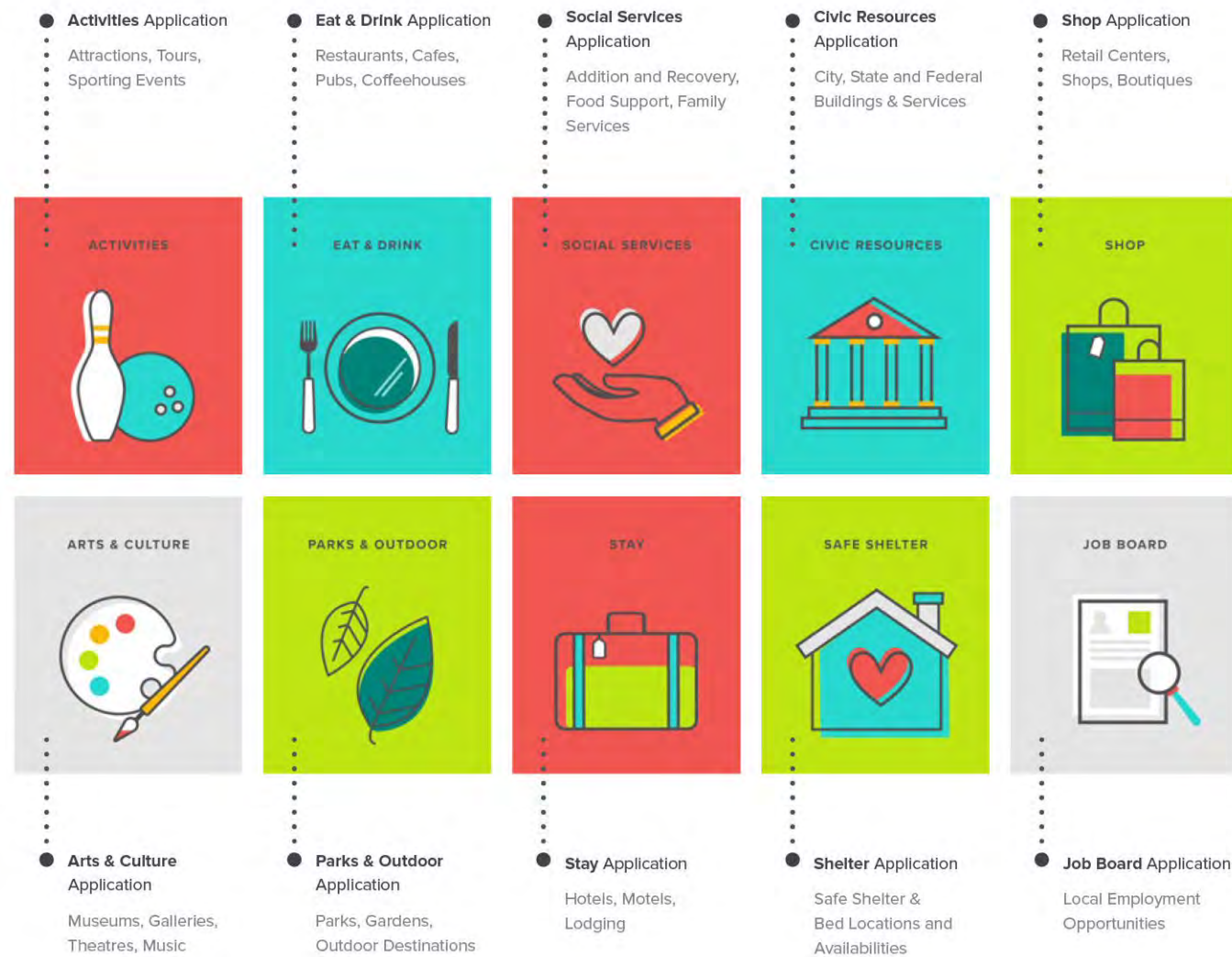
Local Job Listings & Employment Opportunities



Law Enforcement, Financial Aid, Municipal Services

Directories & Business Listings

Directories are a function within eight of the IKE applications — Eat & Drink, Play, Shop, Stay, Social Services, Shelter, Job Board, and Civic Resources. This feature was designed to display relevant, location-aware business listings such as restaurants and bars for “Eat & Drink,” hotels for “Stay,” and retail businesses for “Shop.” Inclusion in the Directories listings is free for area businesses, organizations, and destinations, providing them with valuable placement and promotion through the IKE platform.



DIRECTORY CARDS

Destinations and resources within Directory listings are displayed in Directory Cards that deliver the detailed information a user needs, all in one place. Each Directory Card provides a destination description, contact details, wayfinding information, and available coupons.

Data Auto-Population

FACTUAL

Factual & Facebook are 3rd party APIs that pull location-related data. Companies like Uber, Amazon, and Apple Maps use this data because it is reliable and neutral (companies cannot filter their data to the top by paying.)

EAT & DRINK

ACTIVITIES

SHOP

ARTS & CULTURE

PARKS & OUTDOOR

STAY

SOCIAL SERVICES

CIVIC RESOURCES

SHELTER

ROADIFY

Roadify is a 3rd party API that aggregates and distributes real time transit arrivals, schedules and service alerts.

GET AROUND

ISC & Visit Berkeley Collaboration

EXTERNAL DATA SOURCES

We are able to integrate with existing data sources via API, external URL iframe, or CSV upload for the following applications:

EVENTS

JOB BOARD

311

SURVEY SAYS

EMERGENCY MESSAGES

CUSTOM DESIGN/MESSAGING

The following applicaitons would be a collaboration between ISC and Visit Berkeley to create custom creative and messaging.

PHOTO BOOTH

ARCADE

POSTERS

AD LOOP

Deployment & Installation Logistics Overview

Consent Vote to Allow Off Premises Signage in the ROW – June 26

- Site Selection - in progress now thru June 26
- Due Diligence – example, determine feasibility of each location based on electrical connection, sidewalk width (etc.)
- ISC has already engaged various consultants on this project
- Construction Documents Completed
- Permit Documents Completed – Construction & Electrical
- Utility Permits Submitted to Assistant City Manager of Public Works
- Electrical Trade Permit submitted to Building and Safety Department
- Construction Work commences – Excavation, Trenching, Conduit, Concrete (etc.)



IKE Placement Technical Requirements

Once optimal locations are identified, IKE Smart City will work with the Department of Public Works, Local Utility providers, and civil engineer to finalize locations based on the following technical criteria.

SETBACKS

- Place the IKE as close to the street curb as local code allows, and a minimum of 24" from street face for standard 6" high curb (increase setback for zero curb to protect IKE unit)
- Ensure IKE placement falls outside of sight triangles required by Traffic Engineering.

OBSTRUCTIONS

- Locate IKE to avoid encroaching on clearances required for existing obstructions such as curb ramps, street trees, power poles, fire hydrants, fire department connections, parking meters, and street lights.
- Locate IKE so existing obstructions and sidewalk improvements do not block visibility.

ACCESSIBILITY

- Comply with ADA and applicable code requirements for accessible side approach and maneuvering. Very minor regrading immediately adjacent to IKE may be feasible as part of installation scope but locations on sloped sites are not desirable.
- Maintain 48" path of travel adjacent to IKE per applicable codes.

POWER

- Power should be available at a reasonable distance away from the public grid. Connections to private power sources are not acceptable.
- Typical IKE requires either (A) two 30 amp circuits (60 amps total) 110V single phase power, or (B) one 50 amp circuit (50 amps total) 110V single phase power. Power requirements may vary based on local customization of IKE unit.

DATA

- Fiber connection is preferred where feasible. Cellular antenna can be used if required. Effective of some IKE features may be reduced over wireless connection.

UTILITY AND USE CONFLICTS

- Verify no easements are in place that could impact IKE placement such as utility easements or plans for future street widening.
- Location (and footing excavation) to avoid existing underground utilities, as indicated in utility company and Department of Public Works maps.
- IKE should be sited to avoid impacting existing storm water drainage. IKE should not be located above storm water infrastructure such as storm water lines, catch basins, and manholes.

Thank you



Pete Scantland

pscantland@IKEsmartcity.com
250 N Hartford, Columbus, OH 43222
614.294.4898

Steve Jaffe

sjafe@IKEsmartcity.com
250 N Hartford, Columbus, OH 43222
702.499.7082

Chris Greene

cgreene@IKEsmartcity.com
250 N Hartford, Columbus, OH 43222
917.757.0660

IKEsmartcity.com



IKEsmartcity.com

Attachment 5

Exhibit A

Scope of Services Amendment with Visit Berkeley and City of Berkeley

The Scope of Services shall be amended to include the following paragraph:

V. REVENUE – Visit Berkeley may retain 25%, or up to \$100,000, of any annual revenue it receives under any contract for the installation and/or operation of kiosks under paragraph III, clause 4 of this Scope of Services, and shall remit the remainder of such revenue to the City within 30 days of receiving it.

NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

IKE SMART CITY KIOSKS FRANCHISE HEARING

The City of Berkeley is proposing a wayfinding kiosks system at no public cost for capitol work, operations and maintenance, to be launched in Berkeley in 2018. The wayfinding kiosks system will provide 24-hour information about events, attractions, public service announcements, real time public transportation information and more through a network of at least 31 kiosks in Berkeley on public sidewalks and other public property, for an indeterminate period, but no less than 25 years, which may be extended upon mutual consent. The system will be administered by IKE Smart City LLC and Visit Berkeley.

The City is holding a public hearing regarding whether to grant a 25-year franchise to IKE Smart City LLC (IKE), as operator of the wayfinding kiosks. A franchise is needed for IKE to provide for these services in Berkeley.

The hearing will be held on September 25, 2018 at 6:00 p.m. in the City Council Chambers, 2134 Martin Luther King, Jr. Way.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **September 13, 2018**.

For further information, please contact:

Kieron Slaughter, Community Development Project Coordinator at (510) 981-2490.

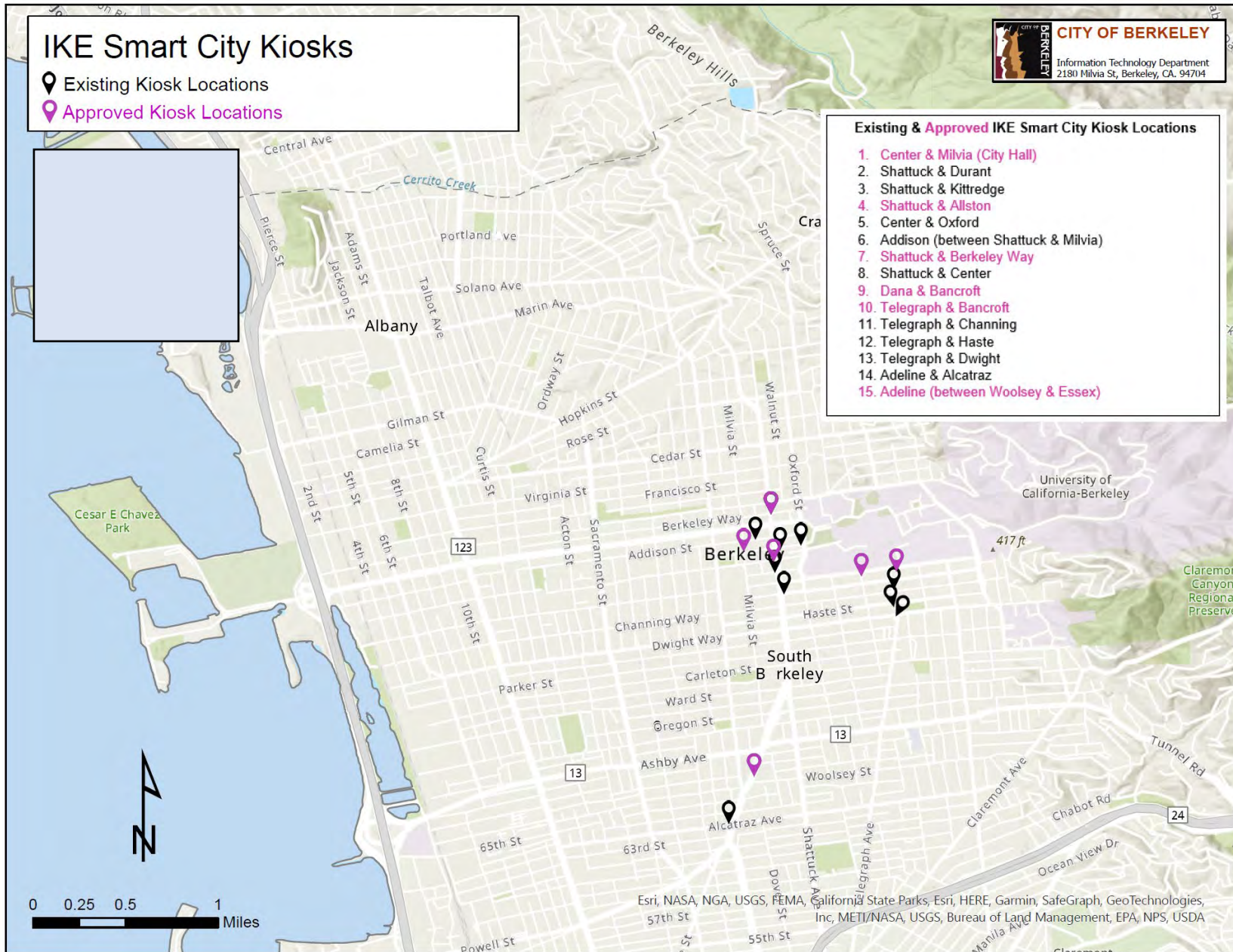
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: August 3, 2018 – The Berkeley Voice

Published pursuant to Berkeley Municipal Code Section 9.60.050

Attachment 3: IKE Smart City Kiosks, Existing and Entitled (Approved) Locations, Berkeley, CA, July 20, 2022



Attachment 4

Map: IKE Smart City Kiosks Phase Two Preliminary Proposed Locations, Berkeley, CA, July 21, 2022.

