

C7 BI A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AMENDMENT NO. 3 TO THE AGREEMENT BETWEEN THE CITY AND IKE SMART CITY, LLC (IKE), PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2022-040-KB, TO DESIGN, MANUFACTURE, INSTALL, MAINTAIN, AND OPERATE INTERACTIVE DIGITAL MEDIA KIOSKS, IN ORDER TO MAKE THE AGREEMENT CONSISTENT WITH SECTION 2.2.4.8(E)(3) OF THE MIAMI BEACH RESILIENCY CODE IN THE EVENT ONE OR MORE APPROVALS BY THE CITY'S LAND USE BOARDS FOR THE KIOSKS ARE APPEALED, AND TO PERMIT IKE TO REQUEST A LIFTING OF THE STAY PENDING APPEAL SUBJECT TO IKE'S STRICT COMPLIANCE WITH THE REQUIREMENTS AND SAFEGUARDS IN SECTION 2.2.4.8(E)(3) OF THE RESILIENCY CODE.

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Commissioner Kristen Rosen Gonzalez

DATE: June 26, 2024

TITLE: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AMENDMENT NO. 3 TO THE AGREEMENT BETWEEN THE CITY AND IKE SMART CITY, LLC (IKE), PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2022-040-KB, TO DESIGN, MANUFACTURE, INSTALL, MAINTAIN, AND OPERATE INTERACTIVE DIGITAL MEDIA KIOSKS, IN ORDER TO MAKE THE AGREEMENT CONSISTENT WITH SECTION 2.2.4.8(E)(3) OF THE MIAMI BEACH RESILIENCY CODE IN THE EVENT ONE OR MORE APPROVALS BY THE CITY'S LAND USE BOARDS FOR THE KIOSKS ARE APPEALED, AND TO PERMIT IKE TO REQUEST A LIFTING OF THE STAY PENDING APPEAL SUBJECT TO IKE'S STRICT COMPLIANCE WITH THE REQUIREMENTS AND SAFEGUARDS IN SECTION 2.2.4.8(E)(3) OF THE RESILIENCY CODE.

ANALYSIS

Please place on the June 26, 2024, City Commission consent agenda a resolution to approve the attached Amendment No. 3 to the City's Agreement with IKE Smart City.

Amendment No. 3 is necessary to ensure the timely implementation of the kiosk program and receipt of the substantial revenue and public benefits related to the program. The Agreement currently provides that prior to IKE installing its kiosks, an appeal of a development approval and/or order for the kiosks must be final. An appeal of this nature could take 2 to 3 years to resolve and result in significant delay to the implementation of the program. Amendment No. 3 amends the Agreement to provide that if IKE complies with the requirements of Section 2.2.4.8(e)(3) of the Miami Beach Resiliency Code, IKE can proceed with installation of the kiosks while an appeal is pending. The City is entitled to timely receive the benefit of its bargain under the Agreement, and this Amendment No. 3 ensures that will happen. Amendment No. 3 is in the best interest of the City.

Moreover, IKE Smart City has already made a good faith \$1,000,000 payment to the City and it would be unfair and inequitable for its project to be delayed by an appeal where the Resiliency Code provides a robust process that protects the interests of the City, appellant, and appellee, while still allowing the project to move forward.

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

Yes

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? Yes

If so, specify the name of lobbyist(s) and principal(s): Rafael Andrade, Esq., and Michael Larkin, Esq., on behalf of IKE Smart City, LLC

Department

City Attorney

Sponsor(s)

Commissioner Kristen Rosen Gonzalez

Co-sponsor(s)

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AMENDMENT NO. 3 TO THE AGREEMENT BETWEEN THE CITY AND IKE SMART CITY, LLC (IKE), PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2022-040-KB, TO DESIGN, MANUFACTURE, INSTALL, MAINTAIN, AND OPERATE INTERACTIVE DIGITAL MEDIA KIOSKS, IN ORDER TO MAKE THE AGREEMENT CONSISTENT WITH SECTION 2.2.4.8(e)(3) OF THE MIAMI BEACH RESILIENCY CODE IN THE EVENT ONE OR MORE APPROVALS BY THE CITY'S LAND USE BOARDS FOR THE KIOSKS ARE APPEALED, AND TO PERMIT IKE TO REQUEST A LIFTING OF THE STAY PENDING APPEAL SUBJECT TO IKE'S STRICT COMPLIANCE WITH THE REQUIREMENTS AND SAFEGUARDS IN SECTION 2.2.4.8(e)(3) OF THE RESILIENCY CODE.

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

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

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

WHEREAS, on June 28, 2023, the City Commission, by a vote of 5/7th, adopted Resolution No. 2023-32627, approving the essential business terms for an Agreement with IKE, pursuant to the RFP, to Design, Manufacture, Install, Maintain, and Operate Interactive Digital Media Kiosks with the following amendments: (1) the installation of any additional kiosks, exceeding the original fifteen, shall be subject to approval by the City Commission; and (2) the maintenance standards for the kiosks shall include the requirement that the kiosk be maintained in "like-new condition" throughout the term of the Agreement; and

WHEREAS, on July 28, 2023, the City and IKE executed an Agreement pursuant to the RFP (the "Agreement"); and

WHEREAS, on September 13, 2023, the Mayor and City Commission of the City of Miami Beach adopted Resolution No. 2023-32759, authorizing the City to enter into a Memorandum of Understanding (MOU) with the Florida Department of Transportation (FDOT) for the installation, operation, and maintenance of IKE kiosks which would be placed on various FDOT rights-of-way pursuant to the Agreement; and further, authorizing the City Manager and City Clerk to execute Amendment No. 1 to the IKE Agreement, to allow IKE to assume the City's responsibilities under the MOU with FDOT, and require IKE to indemnify the City; and

WHEREAS, on December 13, 2023, the Mayor and City Commission adopted Resolution No. 2023-32863, authorizing the City Manager to negotiate and execute Amendment No. 2 to the Agreement between the City and IKE; said amendment (1) granting the City, for its convenience, the right to require IKE to relocate any IKE kiosk, with IKE bearing any and all relocation costs; and (2) requiring that mail notices associated with the approval of IKE kiosk locations by the Design Review Board or Historic Preservation Board be sent citywide at IKE's sole cost; and

WHEREAS, the Mayor and City Commission now desire to amend the Agreement, consistent with Section 2.2.4.8(e)(3) of the Miami Beach Resiliency Code, in the event one or more approvals by the City's land use boards for the kiosks are appealed, and to permit IKE to request a lifting of the stay pending appeal subject to IKE's strict compliance with the requirements and safeguards set forth in Section 2.2.4.8(e)(3) of the Resiliency Code; and

WHEREAS, in order to lift the stay pending appeal, Section 2.2.4.8(e)(3) requires that an applicant (i) execute a hold harmless and indemnity agreement with the City, (ii) comply with the strict conditions of the underlying land use board approval, (iii) restore the property to its previous condition in the event the land use board decision is reversed, and (iv) lastly, the Code provides that no final certificate of occupancy (CO) or certificate of completion (CC) shall be issued until the final resolution of the appeal.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby authorize the City Manager to negotiate and execute Amendment No. 3 to the Agreement between the City and IKE Smart City, LLC (IKE), pursuant to Request for Proposals (RFP) No. 2022-040-KB, to Design, Manufacture, Install, Maintain, and Operate Interactive Digital Media Kiosks, in order to make the Agreement consistent with Section 2.2.4.8(e)(3) of the Miami Beach Resiliency Code in the event one or more approvals by the City's land use boards for the kiosks are appealed, and to permit IKE to request a lifting of the stay pending appeal subject to IKE's strict compliance with the requirements and safeguards in Section 2.2.4.8(e)(3) of the Resiliency Code.

PASSED and ADOPTED this _____ day of _____, 2024.

ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

6/18/2024

Date

NK

**AMENDMENT NO. 3 TO AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH
AND
IKE SMART CITY, LLC
TO DESIGN, MANUFACTURE, INSTALL, OPERATE AND MAINTAIN INTERACTIVE
DIGITAL MEDIA KIOSKS, PURSUANT TO REQUEST FOR PROPOSALS NO. 2022-0404-KB**

This Amendment No. 3 (“Amendment”) to the Agreement, dated July 28, 2023 (Agreement), by and between the City of Miami Beach, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (the “City”), and IKE Smart City, LLC, a Delaware limited liability company, having its principal place of business at 250 N. Hartford Avenue, Columbus, Ohio 43222, Attention: Chief Financial (“Company”), is entered into this ____ day of _____, 20____.

RECITALS

WHEREAS, on July 28, 2023, the City and the Company executed the Agreement pursuant to Resolution No. 2022-32422; and

WHEREAS, on September 13, 2023, the Mayor and City Commission of the City of Miami Beach adopted Resolution No. 2023-32759, authorizing the City to enter into a Memorandum of Understanding (MOU) with the Florida Department of Transportation (FDOT) for the installation, operation, and maintenance of IKE Kiosks (as defined in the Agreement) which would be placed on various FDOT rights-of-way pursuant to the Agreement; and

WHEREAS, the City and Company have also Executed Amendment No. 1 to the Agreement; said amendment requiring Company to indemnify the City in connection with the City’s obligations under the MOU; and

WHEREAS, on December 13, 2023, the Mayor and City Commission of the City of Miami Beach adopted Resolution No. 2023-32863, approving Amendment No. 2 to the Agreement, (1) granting the City, for its convenience, the right to require Company to relocate any IKE kiosk, with Company bearing any and all Relocation Costs; and (2) requiring that mail notices associated with the approval of an IKE Kiosk Location by the Design Review Board or Historic Preservation Board be sent citywide at Company’s sole cost, which Amendment No. 2 has been executed; and

WHEREAS, this Amendment No. 3 makes the Agreement consistent with Section 2.2.4.8(e)(3) of the Miami Beach Resiliency Code in the event that one or more approvals and/or orders of any of the City’s land use boards regarding the IKE Kiosks are appealed.

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

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS.

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

A. Section 5 (IKE Kiosks/Locations) of the Agreement is hereby amended to read as follows:

a. An IKE Kiosk. The City, in its proprietary capacity, hereby approves the conceptual plan/design as to the type of IKE Kiosk which is attached as **Exhibit B-1** hereto. Any modifications to **Exhibit B-1** must be approved, in writing, by the City Manager prior to such changes being implemented. Notwithstanding the foregoing, the City and Company hereby acknowledge and agree that the City's approval as to the type of IKE Kiosk is given by the City solely in its proprietary capacity and not in its regulatory capacity. Notwithstanding such proprietary City approval, Company acknowledges and agrees that the type of IKE Kiosk and its installation at one of the proposed Locations may trigger and require review and approval by one (or more) of the City's land use boards. Accordingly, in such circumstances, Company shall be required, at its sole cost and expense, to obtain any and all required ~~final, non-appealable~~ development approvals and/or orders for such IKE Kiosks, prior to implementation of said IKE Kiosks in those Locations. In addition to any notice required by the City Code in connection with Company's application to the Design Review Board or Historic Preservation Board (individually referred to herein as a "City Board" or collectively as the "City Boards") for an IKE Kiosk Location, Company agrees to mail citywide a courtesy notice of any public hearing before the City Boards at Company's sole cost ("Courtesy Notice"). The City acknowledges that the Courtesy Notice, incorporated herein by reference and attached hereto as **Composite Exhibit D** for the ~~March 12th and April 2nd~~ March 12, 2024, and April 2, 2024 City Boards, complies with the Courtesy Notice requirements, and further agrees that by Company providing a similar affidavit, a copy of the notice sent, and the postage statement related to each mailer, similar to the documentation attached hereto as **Composite Exhibit D**, shall be deemed sufficient to have complied with the Courtesy Notice requirement. Notwithstanding the foregoing upon the request of the City's Planning Department or any City Board, Company shall provide any additional back-up documentation or information in connection with the Courtesy Notice requirement. Within thirty (30) days following the Effective Date, Company shall provide the City with (i) a virtual demonstration of the content management system software for the IKE Kiosks, (ii) an on-site demonstration of an operational IKE Kiosks located within the City of Miami, and (iii) three (3) paint samples to the City Manager. The City Manager shall have fifteen (15) days following receipt of the aforementioned paint samples in which to notify Company of the paint sample it approves for the color of the IKE Kiosks, subject to Company securing the requisite regulatory approvals for the selection. Upon receipt of the City Manager paint selection, **Exhibit B-1** shall be updated to incorporate the same. If the City fails to respond to Company's attempts to coordinate the virtual demonstration or the on-site demonstration and as a result thereof the demonstrations do not occur within the aforementioned 30-day period, the same shall not be deemed to be a default of this Agreement by Company. Notwithstanding any provision of this Agreement to the contrary, in the event one or more development approvals and/or orders of any of the City Boards regarding IKE Kiosks are appealed, the Company shall be permitted, during the pendency of any such appeal(s), to pursue all permits for, and upon obtaining such permits proceed with the installation and operation of, the IKE Kiosks, provided that the Company satisfies the requirements for the lifting of a stay pending appeal set forth in Section 2.2.4.8(e)(3) of the Miami Beach Resiliency Code. Company acknowledges and agrees that the

automatic stay pending appeal of a City Board approval can only be lifted upon Company's strict compliance with the provisions of Section 2.2.4.8(e)(3) of the Resiliency Code.

3. RATIFICATION.

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

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH

ATTEST:

By: _____
Rafael E. Granado, City Clerk

**Rickelle Williams
Interim City Manager**

Date

FOR THE COMPANY:

IKE SMART CITY, LLC

ATTEST:

By: _____

Print Name and Title

Print Name and Title

Date

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Handwritten Signature] 06/17/24

City Attorney *[Handwritten Initials]* Date