

EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM: NEW CONTRACT

CMS #

(To be filled in by department)

Contract #

41900037

(To be filled in by Auditor)

CONTRACTOR NAME: IKE Smart City LLC

Subject of Contract: Franchise Agreement

This contract package contains:	Attached	Waiver Attached	Not Required
3 Original Contracts (Department, Vital Record and Vendor) in folders			
*The Vital Record contract MUST be in a folder.			
*Optional: In lieu of folders, Department and Vendor copies may be assembled with an Acco-fastener.			
1. Franchise Agreement <i>M Wood</i>	x		
2. Scope of Services (Exhibit A @ boilerplate)	☐		
3. Payment Provisions (Exhibit B @ boilerplate)	☐		
4. Evidence of Competitive Solicitation OR Waiver by CM or by Council Resolution <i>Council Approval</i>	☐	☐	x
5. CERTIFICATIONS			
a. Workforce Composition (businesses with 5 or more employees)	☐	☐	x
b. Nuclear Free Berkeley Disclosure	☐		x
c. Oppressive States Disclosure (Exception: Community-based, non-profit organizations)	☐	☐	x
d. Certification of Compliance with Living Wage Ordinance (LWO): use current form on web*	☐	☐	x
e. Certification of Compliance with Equal Benefits Ordinance: use current form on web*	☐	☐	x
f. Community Agency: Certification of Anti-Lobbying	☐	☐	x
g. Community Agency: Certification of Drug-Free Workplace	☐	☐	x
6. Insurance Certificate/s AND Endorsement/s OR Insurance Waiver/s (originals/not copies)	x	☐	☐
7. Authorizing Council Resolution # <i>Ordinance No 7,626-N.S. 9/25/18</i>	x		☐
8. Consultant Contracts: Form 700, Statement of Economic Interests	☐		x
9. Federally Funded Project Requirement: Debarment status printout	☐		x

Berkeley Business License # BL 010056

Contract Amount \$ _____

Requisition # _____ (Hard copy attached)

Council Approved Amount \$ _____

Budget Code _____

Was there any advance payment? No ☐ Yes ☐ **If Yes, Advanced Amount \$** _____

If Yes, Purchase Order # _____

Routing and signatures:

All elements of the contract package, including information provided above, have been reviewed for completeness and accuracy and evidenced by the following signatures (Project Manager please print name):

1. <u>Kieron Slaughter</u> Project Manager (PRINT NAME)	<u>OED</u> & Department	<u>2490</u> Phone No.	<u>May 9, 2019</u> Date
2. <u>Felicia Graham</u> Department Administrative Officer/Accounting			<u>5/9/19</u> Date
3. <u>[Signature]</u> Department Head			<u>6/19/19</u> Date
4. <u>[Signature]</u> Contract Administrator			<u>6/17/19</u> Date
5. <u>[Signature]</u> Budget Manager			Date

Routing continues to the following persons, who sign directly on the contract:

6. **City Manager** (Will not sign unless all signatures and dates appear above)

* For current vendor forms, go to City of Berkeley website: <http://www.cityofberkeley.info/ContentDisplay.aspx?id=5418>

City of Berkeley
Contract Amendment Data Transmittal
(To be completed by Project Manager)

7. **City Auditor** (Initial *BL*)
REGISTRANT ONLY

8. **City Clerk:** CMS Login _____ Destruct _____ Review _____

IKE SMART CITY LLC FRANCHISE AGREEMENT

THIS agreement is made and entered into this _____ day of _____, 2019 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. 7626-N.S. 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. 7626-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 Three Thousand Dollars (\$3,000), 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.
 - 1. Before Grantee may submit an application for a permit under Berkeley Municipal Code Chapter 16.12 for installation of any kiosks, the City shall host two (2) community meetings in each commercial district where kiosks are proposed to be installed. Such meetings shall be held at least one (1) month apart in time, with broad noticing to the surrounding community, neighborhood organizations, business associations, and other potentially affected stakeholders. At the community meetings, a list of proposed locations for the kiosks, as well as a map showing the proposed locations shall be presented. All proposed locations in a commercial district shall be presented simultaneously.
 - 2. After community meetings have been held, the City Manager shall submit to the City Council a consent item setting forth all locations proposed for installation of kiosks, including the community outreach that was conducted, community responses that were received, and recommendations for locations based upon that outreach and responses.
 - 3. The City Council may approve, modify or deny the proposed location(s). For any approved location(s), Grantee may proceed to apply for permits for such location(s) under Chapter 16.12.
 - 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. Before the City Council may entertain a request by the public for 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. Grantee may activate and use pedestrian counting equipment that is limited to reading MAC addresses from cellular phones within a specified radius, because such addresses are anonymous.

L. Phased deployment.

Grantee shall conduct a phased deployment of kiosks such that after the first phase of fifteen (15) units are installed no additional units may be installed for six (6) months. The second phase may include up to sixteen (16) kiosks.

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, at Grantee's request, 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

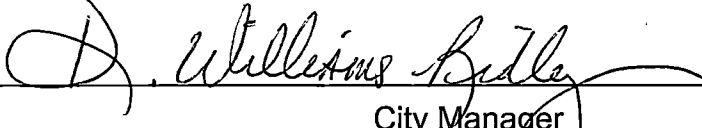
Grantee may not assign this Agreement without the prior written consent of the City, except that Grantee may assign its right to any money due or to become due hereunder.

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:

Rose Hansen

DEPUTY

City CLERK

Approved as to Form:

Michael Woy

Deputy City Attorney

GRANTEE

Pete Scotland

Grantee Representative Name (printed or typed)

By: Pete Scotland

Signature

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

Tax Identification No. _____

Berkeley Business License No BL-010056

Incorporated: Yes _____ No X

Certified Woman Business Enterprise: Yes _____ No X

Certified Minority Business Enterprise: Yes _____ No X

If yes, state ethnicity: _____

Certified Disadvantaged Business Enterprise: Yes _____ No X



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/8/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Overmyer Hall Associates 1600 W. Lane Ave., Suite 200 Columbus OH 43221	CONTACT NAME: Karen Obetz PHONE (A/C, No, Ext): 614-453-4400 FAX (A/C, No): 614-453-9360 E-MAIL ADDRESS: ohacertificates@oh-ins.com
INSURED IKE Smart City, LLC Orange Barrel Media, LLC 250 N Hartford Ave Columbus OH 43222	INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Insurance Company of the Midwest INSURER B: CNA INSURER C: INSURER D: INSURER E: INSURER F:
ORANBAR-01	NAIC # 37478 35289

COVERAGES**CERTIFICATE NUMBER:** 684983662**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER ☐ POLICY ☒ PROJECT ☐ LOC ☐ OTHER	☒ Y ☒ Y	33UUNAS7938	1/1/2019	1/1/2020	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 S
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	☐ Y ☐ Y	33UUNAS7938	1/1/2019	1/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) S BODILY INJURY (Per accident) S PROPERTY DAMAGE (Per accident) S S
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$10,000	☒ Y ☒ Y	33RHUAS7806	1/1/2019	1/1/2020	EACH OCCURRENCE \$7,000,000 AGGREGATE \$7,000,000 S
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ☒ ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	☐ Y ☐ N ☐ N/A	33UUNAS7938	1/1/2019	1/1/2020	PER STATUTE ☒ OTHER OH Stop Gap E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
B	☒ Professional Liability	☐ Y ☐ N	4025451963-03	1/1/2019	1/1/2020	Each Wrongful Act 3,000,000 Aggregate 3,000,000 Deductible 10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Berkeley and its commissioners, directors, officers, representatives, agents and employees are Additional Insured per attached General Liability Blanket Additional Insured endorsement HG 0001 09 16. Umbrella follows form the Additional Insured provision. Subject to signed written contract. General Liability coverage is Primary & Non-Contributory to Additional Insured per attached form HG-0001 09 16, when required by written contract. Waiver of Subrogation applies in favor of Additional Insured with respects to General Liability per attached form, HG 0001 09 16, when required by written contract. Umbrella follows form the Waiver of Subrogation provision. Subject to policy terms, conditions, and exclusions.

CERTIFICATE HOLDER**CANCELLATION**

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

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that

"volunteer worker" as a consequence of Paragraph (1)(a) above;

- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (1)(b) above; or

- (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services:

- (a) Subparagraphs (1)(a), (1)(b) and (1)(c) above do not apply to any "employee" or "volunteer worker" providing first aid services; and

- (b) Subparagraph (1)(d) above does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

e. Unnamed Subsidiary

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which such insured is also a named insured under another policy or would be a named insured under such policy but for its termination or the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Sub-paragraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

(1) Any person(s) or organization(s) from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

(2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

c. Lessors Of Land Or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

With respect to the insurance afforded these additional insureds the following additional exclusions apply:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to lease that land; or
2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or

omissions of those acting on your behalf:

(1) In connection with your premises; or

(2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

e. Permits Issued By State Or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

Any other person or organization who is not an additional insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations;

(2) In connection with your premises owned by or rented to you; or

(3) In connection with "your work" and included within the "products-completed operations hazard", but only if

(a) The written contract or agreement requires you to provide such coverage to such additional insured; and

(b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

However:

(1) The insurance afforded to such additional insured only applies to the extent permitted by law; and

(2) If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

The limits of insurance that apply to additional insureds is described in Section III - Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section IV - Commercial General Liability Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. General Aggregate Limit

The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage B.

3. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Personal And Advertising Injury Limit

Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Each Occurrence Limit

Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Damage To Premises Rented To You Limit

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

7. Medical Expense Limit

Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

8. How Limits Apply To Additional Insureds

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- a. The limits of insurance specified in the written contract or written agreement; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insureds Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or the additional insured is a partnership;

- (3) Any manager, if you or the additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or the additional insured is a corporation;
- (5) Any trustee, if you or the additional insured is a trust; or
- (6) Any elected or appointed official, if you or the additional insured is a political subdivision or public entity.

This duty applies separately to you and any additional insured.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion j. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

(6) When You Are Added As An Additional Insured To Other Insurance

Any other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

Any other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement, or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium

computation, and send us copies at such times as we may request.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and
- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business that exist at the inception date of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NOTICE OF CANCELLATION OR NON-RENEWAL TO
DESIGNATED PERSON(S) OR ORGANIZATION(S) OTHER
THAN THE NAMED INSURED**

This policy is subject to the following conditions.

SCHEDULE	
Number of Days Notice <u>30</u>	
Name of Person(s) or Organization(s)	Mailing Address
Office of Economic Development City of Berkeley	2180 Milvia Street 5th Floor Berkeley, CA 94704

If this policy is cancelled or non-renewed, we agree that the person(s) or organization(s) listed in the Schedule above will be notified at least:

- 10 days before the effective date of cancellation if we cancel for non-payment of premium; or
- The number of days shown in the Schedule above before the effective date of cancellation or non-renewal if we cancel or non-renew for any other reason.

In no event, however, will notice of cancellation or non-renewal be less than the minimum number of days required by the jurisdiction to which this endorsement applies. Also, please note that failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

If notice is mailed, proof of mailing to the address shown in the Schedule above will be sufficient proof of notice.

ORDINANCE NO. 7,626-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 15 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 15 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.

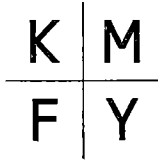
At a regular meeting of the Council of the City of Berkeley held on September 25, 2018, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Abstain: Davila.

Absent: None.



Kooperman | Mentel | Ferguson | Yaross

100 S. 4th Street, Suite 100 Columbus, Ohio 43215 Phone 614.344.4800 Fax 614.344.4801 kmfyalaw.com

Via Certified Mail

June 12, 2019

City of Berkeley
2180 Milvia St., 4th Floor
Berkeley, CA 94704
Attn: Michael Woo and Kieron Slaughter

RE: Confirmation that IKE Smart City, LLC has No Employees in California

Dear Mr. Woo and Mr. Slaughter:

As counsel for IKE Smart City, LLC ("IKE"), I am writing to confirm that IKE does not have any employees who reside in the state of California, and therefore IKE does not maintain any workers' compensation policies under California law. Please contact me if you have any questions regarding this matter.

Sincerely,

Lesley Armour, Esq
Counsel for IKE Smart City, LLC

Cc: Jibran Shermohammed (jibran@orangebarrelmedia.com)



**Bureau of Workers'
Compensation**

30 W. Spring St.
Columbus, OH 43215-2256

Governor John R. Kasich
Administrator/CEO Sarah D. Morrison

www.bwc.ohio.gov
1-800-644-6292

Informational Memorandum to State-Fund Employers

This memorandum contains information about an employer's workers' compensation coverage from the Ohio Bureau of Workers' Compensation (BWC). Please keep in mind that there are extensive rules and laws governing workers' compensation in Ohio. This memorandum only provides a brief overview of coverage issues for a state-fund employer.

Unlike some states, Ohio does not issue individual policies of coverage. Instead, Ohio's statutes list all of the provisions of coverage and govern how BWC must handle your policy. Ohio Revised Code Chapters 4121 and 4123, and corresponding chapters of the Ohio Administrative Code, contain these provisions.

BWC issues a certificate of coverage to an employer that pays premiums, and the employer must post the certificate in plain view. If an employee suffers an injury in the course of, and arising out of, his or her employment and proper jurisdiction for the claim is in Ohio, then BWC has authority to pay medical benefits (including medications) and compensation to the injured worker.

Compensation payable to an injured worker includes, but is not limited to, payments where a worker:

- Is totally disabled from work on a temporary basis;
- Is unable to find employment because of medical restrictions or who finds employment paying less than what the worker was earning at the time of injury;
- Is permanently unable to perform sustained work activity for pay; or
- Has a permanent partial disability.

An injured worker's dependents may also be entitled to compensation where the injured worker dies as the result of a work injury or the allowed conditions in a claim.

Under Ohio's laws, there are no policy limits or cap on benefits so long as treatment and compensation arise from the allowed condition(s) in the claim. When disputed issues arise, the Ohio Industrial Commission, a separate state agency, will make a final administrative decision. If the BWC or the Industrial Commission allows a claim, then all medical bills and medications for conditions allowed in the claim, as well as compensation, will be paid pursuant to Ohio workers' compensation law. There are statutory limits that address the time within which a worker has to file a claim and how long a claim can remain active (See R.C. 4123.52, 4123.84 and 4123.85). Generally, a worker must file a claim within one year from the date he or she knew, or should have known, of the injury or within two years of disability due to an occupational disease. In addition, a claim can remain active for five years after the last date of payment of compensation or medical benefits.

Keep in mind that as an Ohio employer, you must comply with all Ohio worker's compensation laws and regulations. If you are unsure whether you fall under Ohio's jurisdiction, please call BWC's Legal Division at (614) 466-6600 to speak with an attorney. Also, please keep in mind that this memorandum addresses only basic issues related to state-fund employers. Employers who are self-insured must comply with many of these same laws, but are also subject to other statutes and rules. Please note this memorandum is for informational purposes only and does not constitute legal advice. If you have any questions about BWC, please contact us at the phone number listed above or online at www.bwc.ohio.gov.

Graham, Felicia

From: Slaughter, Kieron
Sent: Thursday, June 06, 2019 4:35 PM
To: Hamilton, Shari; 'Steve Jaffe'
Cc: Graham, Felicia; Woo, Michael
Subject: IKE Smart City LLC - Waiver of Subrogation Workers Comp
Attachments: Sample Endorsement_Waiver of Subrogation_Workers Comp.pdf

Hello Shari,

Steve Jaffe from IKE Smart City left a voicemail regarding your endorsement request and whether or not it applies to them. IKE doesn't have any employees based in California and their staff work for their parent company Orange Barrel Media which is based in Ohio. Steve can provide more information via email but if we need to discuss this on a quick phone call in order to clarify requirements it could be helpful. Shari, I know that your last day is quickly approaching so if there's someone else in your office that we should work with, please let us know.

Kieron Slaughter
Community Development Project Coordinator
Office of Economic Development
2180 Milvia Street, 5th Floor, Berkeley CA 94704
510-981-2490
kslaughter@cityofberkeley.info
[Apply for a Berkeley Small Business Loan Here!](#)

From: Hamilton, Shari
Sent: Friday, May 31, 2019 2:32 PM
To: Slaughter, Kieron <kslaughter@cityofberkeley.info>
Subject: RE: IKE Smart City LLC

The endorsement form will come from the Grantee's insurance agent and will look something like this. Key elements are: policy number to match the one on the insurance certificate; current policy term dates; City of Berkeley named in the schedule (or blanket per written contract); and wording that explicitly states that the company waives its right to recover from the City.

From: Slaughter, Kieron
Sent: Thursday, May 30, 2019 2:50 PM
To: Hamilton, Shari <SHamilton@cityofberkeley.info>
Subject: FW: IKE Smart City LLC

Hello Shari,

Felicia is out of the office. Can you provide a copy of the form that IKE needs to complete please. Thanks.

Kieron Slaughter
Community Development Project Coordinator
Office of Economic Development
2180 Milvia Street, 5th Floor, Berkeley CA 94704
510-981-2490
kslaughter@cityofberkeley.info
[Apply for a Berkeley Small Business Loan Here!](#)

From: Klein, Jordan
Sent: Wednesday, May 29, 2019 5:38 PM
To: Slaughter, Kieron <kslaughter@cityofberkeley.info>
Subject: FW: IKE Smart City LLC

Jordan Klein
Economic Development Manager
Office of Economic Development, City of Berkeley

2180 Milvia Street, Fifth Floor
Berkeley, CA 94704
Phone: (510) 981-7534
jklein@cityofberkeley.info
www.cityofberkeley.info/oed

From: Hamilton, Shari
Sent: Wednesday, May 29, 2019 5:23 PM
To: Klein, Jordan <JKlein@cityofberkeley.info>
Cc: Graham, Felicia <FGraham@cityofberkeley.info>
Subject: IKE Smart City LLC

Hi Jordan,
The contract is ready for final processing except for one minor detail. The agreement requires at Article 7.C.1 that the Grantee's worker's compensation policy contain a waiver of subrogation in favor of the City. The evidence of waiver, either by policy or endorsement is not included in the file. Can you please obtain it from the Grantee?
Thanks, Shari

RECEIVED
JUL 05 2019
CITY OF BERKELEY
CITY CLERK DEPARTMENT