

ORDINANCE NUMBER O- 21707 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 08 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A CORPORATE PARTNERSHIP AGREEMENT AMONG THE CITY OF SAN DIEGO, DOWNTOWN SAN DIEGO PARTNERSHIP, INC., AND IKE SMART CITY, LLC FOR THE FINANCING, IMPLEMENTATION, MANAGEMENT, AND OPERATION OF A DIGITAL WAYFINDING SYSTEM WITH CITY MARKETING RIGHTS AND BENEFITS, AUTHORIZING A LIMITED EXCEPTION TO THE SIGNAGE AND OFF-PREMISES MESSAGING REGULATIONS CONTAINED IN CHAPTER 14, ARTICLE 2, DIVISION 12 OF THE SAN DIEGO MUNICIPAL CODE, AUTHORIZING A LIMITED EXCEPTION TO THE AUTOMATIC CHANGING COPY REGULATIONS CONTAINED IN CHAPTER 14, ARTICLE 1, DIVISION 11 OF THE SAN DIEGO MUNICIPAL CODE, AND APPROVING RELATED ACTIONS.

WHEREAS, the City of San Diego (City) administers the Corporate Partnership Program, which generates revenue to fund existing and additional facilities, projects, programs, and activities through marketing partnerships between the City and corporations or other business entities that will provide money or in-kind goods and services to the City in exchange for access to the commercial marketing potential associated with the City; and

WHEREAS, in October 2021, the City issued a Request for Sponsorships (RFS) under the Corporate Partnership Program to identify a corporate partner interested in working with the City to develop a wayfinding program based upon the following goals: provide information to the public regarding wayfinding, storm warnings, emergency updates, information on homeless services, and bus schedules; improve navigation solutions for a range of travel types; guide residents and visitors to destinations, retailers, restaurants, hotels, parks, facilities, services and other businesses and attractions; promote diverse mobility solutions, such as walking, bicycling,

use of mass transit and other non-vehicular modes of transportation; and provide helpful context and useful information while adhering to principles of environmental sustainability and equitable access; and

WHEREAS, the RFS sought proposals for a wayfinding program that would share revenue with the City; and

WHEREAS, Downtown San Diego Partnership, Inc. (DSDP) is a nonprofit organization that provides varied services to downtown San Diego urban neighborhoods, including sanitation and public safety services, and also serves as the managing organization for several special programs including the Clean & Safe Program; and

WHEREAS, Ike Smart City, LLC is an Ohio limited liability company that specializes in the design, development, manufacture, and operation of public wayfinding programs and systems for municipalities and other entities; and

WHEREAS, Ike Smart City, LLC and DSDP (collectively, IKE) jointly proposed a wayfinding program for the installation, maintenance, and operation of wayfinding kiosks that will include advertising displays to generate funding to support the program; and

WHEREAS, the City and IKE negotiated that certain Corporate Partnership Agreement Among the City and IKE for the Financing, Implementation, Management, and Operation of a Digital Wayfinding System with City Marketing Rights and Benefits (Agreement), a copy of which is included in the docket materials accompanying this Ordinance; and

WHEREAS, the Agreement allows the installation and operation of up to 50 wayfinding kiosks in downtown San Diego, with the ability of the City and IKE to agree to increase the

amount by 25 additional kiosks, for a term of ten years with one five-year option that can be mutually exercised in writing by the parties; and

WHEREAS, the Agreement grants IKE the right to install wayfinding kiosks in the public right-of-way after outreach to the public and City approval of site locations and encroachment removal conditions; and

WHEREAS, under the Agreement, no kiosks may be located on a parcel containing a designated historical resource or located within a designated historical district including the Gaslamp Quarter Planned District; and

WHEREAS, the Agreement requires IKE to pay an annual fee of \$16,000 per kiosk in year one, \$18,000 per kiosk in year two, \$20,000 per kiosk in years three through ten, and \$22,000 per kiosk in years 11 through 15 during any extended term, or 45 percent of annual net revenue earned from the sale of advertisements on the kiosks, whichever is greater (Public Benefit Revenue); and

WHEREAS, the Agreement states that the annual Public Benefit Revenue will be allocated between the City (65 percent) and DSDP (35 percent); and

WHEREAS, San Diego Municipal Code (Municipal Code) sections 142.1206(a)(1), 142.1210(a), and 142.1210(b)(5)(A) prohibit signs in the public right-of-way and signs with off-premises messages, and Municipal Code sections 141.1105(c) and 141.1105(d) regulate signs with automatic changing copy; and

WHEREAS, Chapter 12, Article 9, Division 7 of the Municipal Code requires permits for structures in the public right-of-way; and

WHEREAS, the Agreement contains provisions to limit and control the size, amount, and type of advertising at each wayfinding kiosk to promote the City's important interests while preserving and improving the City's safety and aesthetics; and

WHEREAS, as discussed in the City staff report dated June 28, 2023 (Staff Report), wayfinding kiosks carry out the City's public safety interests by including kinetic lighting on the pedestrian side of the kiosks to promote awareness and vibrancy, a call button to access emergency services or the 24-hour Clean and Safe Hotline, and public access to real-time emergency alerts and information on a wide range of topics, in a number of languages, including information on how to access social services and public safety resources; and

WHEREAS, the Agreement requires IKE to maintain the kiosks in a manner that supports the City's interest in aesthetics, allows the City to control the size, quantity, location, and type of kiosks, and limits kiosks to an initial batch of 50 located in a part of downtown San Diego where pedestrian activity is common; and

WHEREAS, the Agreement allows the City to control the size and features of the kiosk screens, which will be smaller than the standard advertising signs the City currently allows for bus stop shelters and will not display flickering or strobe effects; and

WHEREAS, the Agreement requires all advertising displayed on kiosks to comply with the criteria currently applied to advertising on bus stop shelters and benches; and

WHEREAS, the Agreement requires City approval of the wayfinding kiosks, and the City may deny a proposed kiosk location due to a specific safety or aesthetic impact; and

WHEREAS, as discussed in the Staff Report, the wayfinding kiosks will improve and promote navigation solutions for a range of travel types, including walking, bicycling, use of

mass transit, and other non-vehicular modes of transportation, and will make downtown San Diego more visitor-friendly with detailed maps of strategic locations consistent with the City's Downtown Community Plan (City Downtown Community Plan, p. 5-26); and

WHEREAS, the Agreement furthers the walkability goals and policies of the City's General Plan (General Plan) by developing a city where walking is a viable travel choice, particularly for trips of less than one-half mile, fostering a safe and comfortable pedestrian environment, creating a complete, functional, and interconnected pedestrian network that is accessible to pedestrians of all abilities, and achieving greater walkability through pedestrian-friendly street, site, and building design (General Plan, Mobility Element, p. ME-6); and

WHEREAS, the Agreement supports the objectives of the General Plan to place pedestrian improvements in areas with land uses that promote pedestrian activities, increase walking as a means of transportation and recreation, and promote alternatives to automobile travel to contribute to the overall quality, vitality, and sense of community of neighborhoods (General Plan, Mobility Element, p. ME-7); and

WHEREAS, wayfinding kiosks also benefit the City's Climate Action Plan (Climate Action Plan) strategy of increasing commuter walking opportunities through pedestrian improvements, and promoting alternatives to automobile travel to reduce greenhouse gas emissions and air pollution (Climate Action Plan, Strategy 3, p. 55); and

WHEREAS, the Agreement imposes separate requirements related to the installation, maintenance, and removal of wayfinding kiosks in the public right-of-way consistent with the overall intent of the Municipal Code to protect public health, safety, and welfare, including a requirement to enter into a Public Improvement Maintenance Agreement with the City prior to installation of each kiosk; and

WHEREAS, the wayfinding program will provide a significant benefit to the public without expenditure of City funds; and

WHEREAS, City staff has determined that IKE's proposal meets the objectives of the Corporate Partnership Program and is otherwise in the best interests of the City; and

WHEREAS, on April 20, 2023, the City Planning Commission recommended the Council adopt an ordinance to provide limited exceptions to the Municipal Code for the Agreement; and

WHEREAS, the City published a notice of a public hearing concerning the adoption of this Ordinance at least 10 days prior to the hearing in a newspaper of general circulation in the City; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the information provided by City staff (including information provided by affected third parties and verified by City staff), with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego (Council), as follows:

Section 1. The Council approves the Agreement and authorizes and directs the Mayor or designee, on behalf of the City, to sign the Agreement and take all other reasonable actions that are necessary or appropriate to perform the City's obligations under the Agreement. A copy of the Agreement, when signed by all parties, shall be placed on file with the City Clerk as Document No. OO- 21707.

Section 2. The Chief Financial Officer is authorized to accept IKE's payment of the Public Benefit Revenue, to the extent allocable to the City under the Agreement, and deposit this revenue into the General Fund.

Section 3. Based on the information contained in this Ordinance and the Staff Report, the Council finds that the Agreement promotes a substantial governmental interest greater than the City's interest in safety and aesthetics and that the wayfinding program does not affect the City's safety and aesthetic concerns.

Section 4. Based on the information contained in this Ordinance and the Staff Report, the Council finds the wayfinding kiosks proposed for use in the Agreement are exempt from the requirements in Municipal Code sections 142.1206(a)(1), 142.1210(a), and 142.1210(b)(5)(A), related to the placement of kiosks in the public right-of-way and the use of signs containing off-premises messages, under the terms and conditions set forth in the Agreement.

Section 5. Based on the information contained in this Ordinance and the Staff Report, the Council finds the wayfinding kiosks proposed for use in the Agreement are exempt from the requirements in Municipal Code sections 141.1105(c) and 141.1105(d), related to signs with automatic changing copy, under the terms and conditions set forth in the Agreement.

Section 6. Based on the information contained in this Ordinance and the Staff Report, the Council finds the wayfinding kiosks proposed for use in the Agreement are exempt from the permit requirements in Chapter 12, Article 9, Division 7 of the Municipal Code, related to structures in the public right-of-way, under the terms and conditions set forth in the Agreement.

Section 7. A full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 8. This Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By Kevin Reisch /for  
William W. Witt  
Deputy City Attorney

WWW:jdf  
06/29/2023  
Or.Dept: Econ.Dev.  
Doc. No.: 3345028

I certify that the foregoing ordinance was passed by the Council of the City of San Diego, at this meeting of AUG 01 2023

DIANA J.S. FUENTES  
City Clerk

By Kristell Medina  
Deputy City Clerk

Approved: 8/1/23  
(date)

Todd Gloria  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on AUG 01 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 08 2023.

AUTHENTICATED BY:

TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES  
City Clerk of The City of San Diego, California.

By *Kristee Medina*, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on JUL 17 2023, and on AUG 08 2023.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

DIANA J.S. FUENTES  
City Clerk of The City of San Diego, California.

By *Kristee Medina*, Deputy

Office of the City Clerk, San Diego, California
21707
Ordinance Number O-_____