

Attachment B –

CITY OF SAN JOSE TERM SHEET FOR DIGITAL WAYFINDING KIOSK PROGRAM

A. General Terms

1. **Independent Contractor:** The [SELECTED PARTNER] has complete control over its operations and employees and is an independent contractor. The [SELECTED PARTNER] is not an agent or employee of the City. The [SELECTED PARTNER] does not represent or act as the City's agent or employee. The [SELECTED PARTNER] does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.
2. **Subcontracts:** If a subcontractor has been approved in writing by the City, the [SELECTED PARTNER] is solely responsible for selecting, managing and compensating the subcontractor. The [SELECTED PARTNER] will place in each subcontract indemnity obligations in favor of the City in the exact form and substance of those contained in this Agreement.
3. **Standard of Performance:** The [SELECTED PARTNER] represents that it possesses the training, licenses and permits needed to perform the scope of services described in this Agreement ("Services"). The [SELECTED PARTNER] represents that its performance of the Services will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.
4. **Indemnification:**
 - a. [SELECTED PARTNER] shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted arising out of or related to damages or injuries to any person or property, including injury to [SELECTED PARTNER]'s officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or any acts or omissions of [SELECTED PARTNER], and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that [SELECTED PARTNER]'s duty to indemnify and hold CITY harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents.
 - b. [SELECTED PARTNER] agrees to save and hold the City and its elected officials, officers, employees, agents, and representatives free and harmless of and from any loss, liability, expense, suit or claim for

damages in connection with any actual or alleged infringement of any patent, trademark or copyright, or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of [SELECTED PARTNER] or connected with this Agreement.

- c. [SELECTED PARTNER] agrees to indemnify, defend, and hold harmless the City and its elected officials, officers, employees, agents, and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged views expressed in any advertising content, and their purported or actual reflection of the views of the City of San José, excluding, for the avoidance of doubt, any content displayed at the election of the City.
 - d. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this Indemnification section. If the CITY elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, [SELECTED PARTNER] shall pay the CITY for all costs related thereto, including, without limitation, attorneys' fees and costs. The [SELECTED PARTNER]'s indemnity obligations survive the expiration or earlier termination of the Agreement.
5. **Liens:** In the event any notice or claim of lien is asserted against the property or interest of the CITY on account of or arising from any work done by or for [SELECTED PARTNER], or any person claiming by, through or under [SELECTED PARTNER], or for improvements or work, the cost of which is the responsibility of [SELECTED PARTNER], [SELECTED PARTNER] shall satisfy and discharge such claim or lien or have such notice or claim of lien cancelled and discharged within thirty (30) days after written notice to [SELECTED PARTNER] by CITY at the sole cost and expense of [SELECTED PARTNER]. CITY shall not liable for any services, labor, material, or equipment furnished or to be furnished to [SELECTED PARTNER] or [SELECTED PARTNER]'s contractors upon credit and no mechanic's or other lien for any services, labor, material, or equipment shall attach to or affect the property or interest of the CITY. Nothing in this Agreement shall be deemed or construed in any way to constitute CITY's consent or request, express or implied, by inference or otherwise, to any contractor, subcontractor, professional, laborer, equipment, or material supplier for the performance of any service or labor or the furnishing of any material or equipment for the benefit of CITY of the property.
6. **Insurance.** [SELECTED PARTNER] shall maintain, at its sole cost and expense and for the full Term of the Agreement including any renewal or extension, a minimum of the insurance coverage as defined in Attachment C, Insurance

Requirements. Coverage maintained shall include but not be limited to Commercial General Liability Insurance, Commercial Automobile Liability Insurance, Worker's Compensation Coverage, and Contractor's Pollution Liability Insurance. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. [SELECTED PARTNER] agrees to provide CITY with a copy of said policies, certificates and/or endorsements .

7. **Amendment.** The Parties may amend this Agreement from time to time to address changes deemed necessary by the Parties to address operational needs. All amendments to this Agreement shall be in writing and signed by both Parties. Except as otherwise specifically provided in this Agreement, only nonmaterial Amendments to the Agreement which do not materially change the scope of the Agreement, increase CITY's financial responsibility, or impose additional liability on CITY, may be executed without approval of the CITY Council
8. **Jurisdiction and Venue.** The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The venue for any suit or proceeding concerning this Agreement shall be in the County of Santa Clara, State of California.
9. **Public Records Requests.** Information contained in this Agreement and reports and other documents required by this Agreement are public records subject to disclosure unless a specific exemption in the California Public Records Act (CPRA) applies. The CITY may protect confidential and proprietary information provided by [SELECTED PARTNER] only to the extent permitted by law. The CITY shall not be liable to [SELECTED PARTNER] for any damage or injury arising out of the CITY's failure to notify [SELECTED PARTNER] of a CRPA request or the CITY's disclosure of [SELECTED PARTNER]'s information, and such failure shall not be a default under this Agreement.
10. **Conflict of Interest:** The [SELECTED PARTNER] represents that it is familiar with the local, state and federal conflict of interest laws and agrees to comply with those laws in performing this Agreement. The [SELECTED PARTNER] certifies that, as of the date it executed this Agreement, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The [SELECTED PARTNER] will avoid all conflicts of interest or appearances of conflicts of interest in performing the Agreement. The [SELECTED PARTNER] is obligated to determine if the manner in which it performs any part of this Agreement results in a conflict of interest or an

appearance of a conflict of interest, and will promptly notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.

11. **Nondiscrimination.** [SELECTED PARTNER] shall not discriminate on the basis of race, gender, gender identity, gender expression, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. [SELECTED PARTNER] shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. [SELECTED PARTNER] understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between [SELECTED PARTNER] and any subcontractors, vendors, and suppliers shall contain this language.

12. Wage Theft Prevention.

- a. **Compliance with Wage and Hour Laws.** [SELECTED PARTNER], and any subcontractor performing work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, the San José Living Wage Policy, the San José Prevailing Wage Policy, and the San José Minimum Wage Ordinance.
- b. **Final Judgments, Decisions, and Orders.** For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, the City of San José Office of Equality Assurance, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.
- c. **Prior Judgments against [SELECTED PARTNER] and/or its Subcontractors.** BY SIGNING THIS AGREEMENT, [SELECTED PARTNER] AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS RELATING TO WAGE AND HOUR LAWS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING AS TO THE [SELECTED PARTNER] AND ITS SUBCONTRACTOR(S) – IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT. [SELECTED PARTNER] FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH ANY SUCH JUDGMENTS, DECISIONS OR ORDERS – OR HAS REACHED AGREEMENT

WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

- d. **Termination of Subcontractor.** The [SELECTED PARTNER] must terminate a listed subcontractor if requested by the City based on the subcontractor's failure to comply with the City's Wage Theft Policy.
- e. **Subcontractors Not Listed.** Before contracting with a subcontractor not listed during the procurement process, the [SELECTED PARTNER] will require the subcontractor to complete a Wage Theft Disclosure Certification Form provided by the City's Office of Equality Assurance through their website at <https://www.sanjoseca.gov/home/showdocument?id=64354>. [SELECTED PARTNER] must provide the completed certification form to request use of any subcontractor. [SELECTED PARTNER] must obtain pre-approval from the City's designated project manager and the Office of Equality Assurance prior to executing any subcontract.
 - 1. The [SELECTED PARTNER] cannot use any subcontractor that does not comply with the City's Wage Theft Policy for the five-year period prior to submittal of the request to use the subcontractor.
 - 2. The [SELECTED PARTNER] must include a provision in each subcontract allowing the [SELECTED PARTNER] to terminate the subcontract based on the subcontractor's noncompliance with any wage or hour law or the City's Wage Theft Policy. The [SELECTED PARTNER] must terminate a subcontractor if requested by the City based on the subcontractor's noncompliance with any wage or hour law or the City's Wage Theft Policy.
- f. **Occurrence or Discovery of Wage Theft.** If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that [SELECTED PARTNER] or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or [SELECTED PARTNER] learns of such a judgment, decision, or order that was not previously disclosed, [SELECTED PARTNER] shall inform the Office of Equality Assurance, no more than 15 days after the judgment, decision or order becomes final or of learning of the final judgment, decision, or order. [SELECTED PARTNER] and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order and shall provide the City's Office of Equality Assurance with documentary evidence of compliance with the

final judgment, decision, or order within five days of satisfying the final judgment, decision, or order. The City reserves the right to require [SELECTED PARTNER] to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

- g. **Satisfaction by [SELECTED PARTNER].** The [SELECTED PARTNER] must promptly satisfy and comply with a final wage judgement, order, or other determination against it. The [SELECTED PARTNER] must provide the City's Office of Equality Assurance with documentary evidence that it satisfied and complied with the final wage judgement, order, or other determination within five calendar days of doing so.
- h. **Satisfaction by Subcontractor.** The [SELECTED PARTNER] must include appropriate provisions in each subcontract requiring the subcontractor to do the following: (a) promptly satisfy and comply with a final wage judgement, order, or other determination against it and (b) provide the [SELECTED PARTNER] and the City's Office of Equality Assurance with documentary evidence that it satisfied and complied with the final wage judgement, order or other determination within five calendar days of doing so.
- i. **City's Right to Withhold Payment.** The City has the right to withhold any moneys owing the [SELECTED PARTNER] in the amount of the final wage judgment against the [SELECTED PARTNER] or a subcontractor.
- j. **Material Breach.** Failure to comply with any part of this Section [WAGE THEFT SECTION NUMBER] constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.
- k. **Notice.** Notice provided to the Office of Equality Assurance as required under this Section [WAGE THEFT SECTION NUMBER] shall be addressed to: Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San José, CA 95113. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

13. Termination.

- a. **Termination for Failure to Pay.** CITY reserves the right to terminate the Agreement in the event of [SELECTED PARTNER]'s failure to pay any money owed within five (5) days of notice thereof, or failure to cure any curable default or breach within thirty (30) days of legal notice thereof (or such longer period as may reasonably be required, provided [SELECTED

- PARTNER] is diligently pursuing the cure).
- b. **Termination for Non-Operation.** CITY reserves the right to terminate the Agreement if: (i) [SELECTED PARTNER] fails to maintain Kiosks in operational condition and kiosk displays remain non-operational for thirty (30) or more consecutive days for reasons within [SELECTED PARTNER]'s control; or (ii) an Event of Bankruptcy occurs with respect to [SELECTED PARTNER] and [SELECTED PARTNER] fails to provide written notice to the CITY within five (5) business days of such event. For purposes of this section, "Event of Bankruptcy" includes the filing of a voluntary or involuntary bankruptcy petition, an assignment for the benefit of creditors, or the appointment of a receiver or trustee, where an involuntary petition is not dismissed within sixty (60) days of filing.
 - c. **Other Grounds for Termination.** The CITY further reserves the right to terminate the Agreement for: failure to maintain required licenses, permits, or approvals; failure to comply with applicable laws and regulations; failure to satisfy revenue-sharing or other financial obligations; material breach of any provision of the Agreement; or public necessity, public convenience, or municipal purposes as determined by the City.
 - d. **Termination for Improper Consideration.** CITY may, by written notice to [SELECTED PARTNER], immediately terminate the right of [SELECTED PARTNER] to proceed under this Agreement if it is found that consideration, in any form, was offered or given by [SELECTED PARTNER], either directly or through an intermediary, to any CITY officer, employee or agent with the intent of securing the Agreement or securing favorable treatment with respect to the award, amendment for extension of the Agreement or the making of any determinations with respect to [SELECTED PARTNER]'s performance pursuant to the Agreement. In the event of such termination, CITY shall be entitled to pursue the same remedies against [SELECTED PARTNER] as it could pursue in the event of default by [SELECTED PARTNER].

[SELECTED PARTNER] shall immediately report any attempt by a CITY officer or employee to solicit such improper consideration. The report shall be made to the CITY's Director of Office of Employee Relations. Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

14. **Limitation on Liability.** The CITY shall not be liable for any act or omission to the extent not attributable to its personnel. Notwithstanding anything in the Agreement to the contrary, in no event shall the CITY's cumulative liability for direct damages to [SELECTED PARTNER], whether in contract or in tort, exceed the amount of [Minimum Annual Guarantee] or [Annual Revenue Share] actually

received by the CITY under the Agreement. Furthermore, notwithstanding anything in the Agreement to the contrary, in no event shall the CITY be liable for any indirect, special, consequential, incidental, or punitive damages or lost profits, however caused, which are incurred by [SELECTED PARTNER], its employees, subcontractors, and/or agents, or any third party, arising out of or in connection with the Agreement or the performance or breach thereof, even if [SELECTED PARTNER] has been advised of the claim or potential claim or of the possibility of such damages. CITY shall have no liability whatsoever for interruptions or defects in website links from CITY websites to the [SELECTED PARTNER]'s website, except if caused by CITY's willful misconduct and resulting in injury to the [SELECTED PARTNER] website. Except as otherwise specified herein, each party shall have all rights and remedies available at law or in equity in the event of an uncured Default by the other party.

15. Miscellaneous:

- a. **Gifts Prohibited.** The [SELECTED PARTNER] is prohibited from offering a City officer or designated employee any gift in violation of Chapter 12.08 of the San José Municipal Code. A violation of this prohibition is a material breach.
- b. **Disqualification of Former Employees.** The [SELECTED PARTNER] is prohibited from using (either directly or indirectly) any former City officer or designated employee to provide services to the City connected with his/her former duties or official responsibilities if doing so would violate Chapter 12.10 San José Municipal Code. A violation of this prohibition is a material breach.
- c. **Waiver of a Violation.** The City's waiver of any violation of the Agreement by the [SELECTED PARTNER] is not a waiver of any other violation by the [SELECTED PARTNER].
 1. **Acceptance of Services Not a Waiver.** The City's acceptance of any Service or deliverable is not a waiver or release of any professional duty of care applicable to such Service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of the Agreement.
- d. **Compliance with Laws.** [SELECTED PARTNER] shall maintain full compliance with all applicable municipal, county, state and federal laws and regulations, at its own cost, including but not limited to the California Environmental Quality Act (CEQA), American with Disabilities Act (ADA), California Outdoor Advertising Act, California Labor Code prevailing wage requirements, and the City of San José Municipal Code and any applicable Council Policies. Such requirements include but are not limited to: California Building Code; applicable utility, environmental, and

public safety regulations; and applicable City Council Policies. Proposers shall identify any areas in which their proposal conflicts with the City of San José Municipal Code or any other relevant laws.

- e. **Business Tax.** The [SELECTED PARTNER] represents that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.
- f. **Assignability.** Except to the extent this Agreement authorizes the [SELECTED PARTNER] to use subcontractors, the [SELECTED PARTNER] cannot assign any part of this Agreement without the Director's prior written consent. In determining whether to consent, the Director can consider, among other factors, the assignee's ability to meet the standards and requirements applicable to the procurement of the Agreement.
- g. **Processing Costs.** The Director can require the [SELECTED PARTNER] to pay the City's reasonable costs of reviewing the proposed assignment and preparing any documents in connection therewith.
- h. **Voidability.** The Director, at the Director's discretion, can void the Agreement if a violation of this provision occurs.
- i. **Governing Law.** California law governs the Agreement's construction and performance.

16. **Survival of Provisions.** If a court finds any part of this Agreement unenforceable, all other parts will remain enforceable.

17. **Headings.** The section and exhibit headings are for convenience only and are not to be used for interpreting the Agreement.

18. **Counterparts.** This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

B. Wayfinding System Requirements.

1. **Wayfinding Kiosks Program Establishment Costs.** [SELECTED PARTNER] shall, at no cost to the CITY, design, procure, fabricate, construct, and install (or cause to be fabricated, constructed, and installed), operate, maintain, and subject to the terms of this Agreement decommission and remove the Kiosks and associated equipment of the type and meeting the specifications as agreed upon as part of the solicitation, [SELECTED PARTNER] shall be responsible for all activities necessary to deploy the Program, including but not limited to: site evaluation and feasibility analysis; utility coordination;

preparation of plans and specifications; permit applications and permit acquisition; construction and installation; inspection coordination; and site restoration and repair associated with installation activities. [SELECTED PARTNER] shall be responsible for preparation of any and all plans and specifications for same, shall be responsible for obtaining all required governmental approvals and compliance with all applicable laws and regulations, and shall absorb all costs associated with CITY staff time dedicated to the procurement, planning, and implementation of the Kiosk program, including but not limited to CITY staff time invested in the generation of the initial Request for Proposals for this program, project coordination, review of submittals, permitting, site assessments, and ongoing program management.

2. **Wayfinding Kiosks.** [SELECTED PARTNER] shall comply with all applicable federal, state and local accessibility requirements, including but not limited to the current California Building Code, Title 24 (Chapter 11B), the ADA, and the current Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, where applicable to Kiosks. This requirement applies to all design, functionality, and user interaction elements of the Kiosks. The Kiosks shall offer multi-lingual display support, and shall contain the following services and applications in the defined languages:
 - a. Wayfinding, including multimodal mapping to destinations, businesses and other points of interest, which shall be presented as interactive, touch-enabled maps with pedestrian routing, points of interest, transit connections, and accessibility routes;
 - b. Real-time arrival and departure information for bus, light rail, and other transit services all accessed from an interactive map to enhance and promote mobility;
 - c. Events, including event and activity listing for the CITY and other community organizations;
 - d. No surveillance technology may be incorporated into the Kiosks.
3. **Placement of Equipment.** [SELECTED PARTNER] shall locate the Kiosks and associated equipment within each individual Kiosk Site **generally** in accordance with a Site Plan to be developed and approved by CITY for that Kiosk Site. [SELECTED PARTNER] shall not materially deviate from the approved Site Plan without the prior written consent of the CITY.
4. **Kiosk Signage Screen and Display Parameters.**
 - a. Kiosk screens shall meet the relevant requirements in the San José Municipal Code, including but not limited to SJMC 23.02.905.

- b. Anywhere there may be residential uses abutting the property line of a right of way where a kiosk will be placed and the kiosk is visible from residential units, technology shall be applied so that the screen does not to create glare on windows of residential units. This may include additional dimming after 10:00 PM and/or installation of screening or other technology to limit glare.
 - c. Kiosk screens shall be completely shut off from the hours of 3:00 AM and 6:00 AM daily.
 - d. All improvements and equipment shall be designed, constructed, and maintained in accordance with all applicable federal, state and local laws, rules and regulations, including, but not limited to the ADA. A certified access specialist (CASP) shall certify compliance at the design phase and upon installation, at the Proposer's sole cost.
- 5. **Public Interest Content.** [SELECTED PARTNER] Kiosks will contain public interest content including, but not limited to wayfinding, time, temperature, weather, emergency alerts, downtown community resources and activations occurring within the Downtown Strategy Boundary, and display of the menu of interactive public services available (Public Interest Content) by the kiosk to users for at least 51% of the time on an annual basis, free Wi-Fi services, and emergency messaging on the screens. The Proposer shall provide the opportunity for a total visual takeover of kiosk screens located within a designated perimeter of certain specified large-scale events or conferences.
- 6. **Emergency Messages.** In the event of a declared local, state, or federal emergency, or upon the issuance of an emergency alert or public safety notification by the CITY or any authorized governmental agency, the CITY shall have the right to require the [SELECTED PARTNER] to immediately suspend all commercial advertising content on any or all Kiosk displays and replace such content with CITY-designated public service announcements, emergency alerts, evacuation instructions, or other public safety messaging, for the duration of the emergency or as otherwise directed by the CITY. The [SELECTED PARTNER] shall implement any such suspension within two (2) hours of written or verbal notice from the CITY's authorized representative. The [SELECTED PARTNER] shall not be entitled to any compensation or credit for advertising revenue lost during any period in which commercial content is suspended pursuant to this Section. [SELECTED PARTNER] shall cooperate fully with the CITY and applicable emergency management agencies in the deployment of emergency messaging.
- 7. **Data Ownership and Digital Privacy Policy.** The CITY retains full ownership of all data collected from/by the Kiosks, including any

derivative data. Prior to activation of first Kiosk, [SELECTED PARTNER] must provide CITY with a document that outlines the data access process and control mechanisms in place, ensuring full compliance with the CITY's Digital Privacy Policy, as may be amended from time to time. CITY staff shall provide written approval of the data access process and control mechanisms document prior to the first Kiosk being activated. [SELECTED PARTNER] may not use the data, a subset of the data, and/or a summary of the data, or, cause or permit the data, a subset and/or a summary thereof, to be used by any third party, outside the scope of the Agreement without the express written consent of the City. [SELECTED PARTNER] shall not resell any data it gains access to in the course of doing business for the City or in any way share or convey this information to another party or use it for any other purpose but to provide the contracted products and services specified in this Agreement. [SELECTED PARTNER] shall provide City with a copy of the data in a mutually agreed upon format at regular intervals and at such additional times as the City deems appropriate. [SELECTED PARTNER] warrants that throughout all operational and maintenance activities the accuracy of the data will be preserved. As of the date of execution of this Agreement, CITY's Digital Privacy Policy may be viewed at <https://www.sanjoseca.gov/home/showpublisheddocument/80514/638464641111870000>

8. **Artificial Intelligence ("AI") Policy.** All AI usage associated with the [SELECTED PARTNER] Kiosks must comply with the CITY's AI Policy, as may be amended from time to time. Prior to activation of first Kiosk, [SELECTED PARTNER] must provide CITY a list of all AI functions and components integrated into Kiosk features or operations, and descriptions of the function, mechanism and security measures taken over those AI functions and components, where and as requested by CITY staff. CITY staff shall provide written approval of the AI functions and components document prior to the first Kiosk being activated. As of the date of execution of this Agreement, CITY's AI Policy may be viewed at <https://www.sanjoseca.gov/home/showpublisheddocument/112981/639051958909400000>

C. Kiosk Site Selection

1. **Kiosk Site Analysis.** [SELECTED PARTNER] shall conduct an analysis to identify potential locations for Kiosks. The analysis shall assess the feasibility and accessibility of the location. No Kiosk shall be located where there is a reasonable possibility that the Kiosk will have a significant effect on the environment due to unusual circumstances, in a designated, precisely mapped and officially adopted pursuant to law, environmentally sensitive area; along a highway officially designated as a state scenic highway, on a designated hazardous waste site included on any list compiled pursuant to Government

Code section 65962.5, or so as to cause a substantial adverse change in the significance of a historical resource. Kiosks will not be permitted in single family residentially zoned areas and must comply with the Location Criteria as defined further in the agreement.

2. Permits.

- a. [SELECTED PARTNER], at its sole cost and expense, shall use commercially reasonable efforts to obtain all permits, approvals and agreements necessary to allow construction and operation of the Kiosk, including any permits from the California Department of Transportation (if applicable) and any other governmental entities (collectively, the “Permits”), such Permits including, but not limited to:
 - i. the Encroachment Permit having an effective term at least as long as the Term, including any renewal, extension or modification thereof;
 - ii. environmental review required by the California Environmental Quality Act, including any mitigation requirements; and
 - iii. all necessary permits and approvals from the City, including building and electrical permits, as determined by the City, in its sole discretion.
- b. The City shall cooperate with [SELECTED PARTNER]’s reasonable requests in connection with [SELECTED PARTNER]’s efforts to obtain the Permits, provided, the City shall not be obligated to incur any costs associated with such cooperation, nor to expend a level of effort beyond that which is typically available to all applicants to the City. Nothing herein shall restrict or restrain the City’s exercise of its discretion in the issuance of any Permits or waive, reduce or modify the City’s legislative, administrative, land use, and police powers to require permits and approvals in accordance with the City’s Council Policy 6-4, the San José Municipal Code and Zoning Ordinance for the Kiosk; or to require inspections of construction in connection with such efforts.
- c. Third Party Easement. [SELECTED PARTNER] acknowledges that third parties, including utility companies such as PG&E, may have certain easement rights over the Property that may interfere with [SELECTED PARTNER]’s ability to construct and operate the Kiosk. The City makes no representation regarding the easement or whether the placement of the Kiosk interferes with third party easement rights. To the extent that [SELECTED PARTNER] needs consent of a third party to construct the Kiosk, it shall be [SELECTED PARTNER]’s sole responsibility to obtain such consent and to provide a copy of any such proposed terms of consent to the CITY for review and approval, which approval shall not be unreasonably withheld.

3. Kiosk Site. [SELECTED PARTNER] shall obtain CITY approval of the General

Location and Specific Location and secure an Encroachment Permit prior to installing a Kiosk.

- a. **General Location.** [SELECTED PARTNER] will conduct site visits and shall photograph and plot identified potential Kiosk General Locations and submit the proposed General Location of each Kiosk to the CITY. CITY will review and approve or deny the proposed General Location within 30 days. CITY may deny a proposed location if it notified [SELECTED PARTNER] in writing within the 30 day review period and specifies any of the following grounds for denial:
 - i. a specific health, safety, or aesthetic impact caused by the proposed location; or
 - ii. the proposed location will conflict with existing improvements, property interests, agreements, or other rights, or
 - iii. the proposed location will conflict with a planned public or private improvement, or
 - iv. the proposed location will conflict with applicable laws or regulations, or
 - v. the CITY lacks the authority to approve Kiosk installation at that location, or
 - vi. the information provided regarding the proposed location is not detailed enough for the CITY to make a determination regarding approval.
 - vii. The CITY may request additional information from [SELECTED PARTNER] regarding the proposed location. The CITY may extend the 30 day review period to analyze the proposed location by notifying [SELECTED PARTNER] in writing.
- b. **Specific Location.** After approval of the General Location, [SELECTED PARTNER] will conduct further due diligence and submit engineered plans, construction permit documentation, and Encroachment Permit for the Specific Location for each Kiosk within the approved General Location sufficient to demonstrate compliance with the agreed upon Location Criteria. CITY will review and approve the Specific Location and applicable Encroachment Permit within 30 days. CITY staff may deny a proposed specific location if it notifies [SELECTED PARTNER] within the 30 day review period, in writing, of an inconsistency with the Location Criteria.
- c. **Location Utility Services.** [SELECTED PARTNER] shall be responsible for ordering, obtaining, and paying for all utilities and service and installation charges required under this Agreement, subject to applicable approvals and permits. Utilities include, but are not limited to, hardline and cellular connectivity, electrical service, and all internet services. This includes electrical service, cellular connectivity, telecommunications services, internet services, data services,

and all associated infrastructure and service charges. All new utility connections associated with the Program shall be installed underground unless otherwise approved in writing by the City. No kiosk installation shall share, rely upon, or interconnect with City-owned electrical service, equipment, conduits, panels, meters, communications systems, or related infrastructure unless expressly approved in writing by the City.

4. **Relocation of Kiosk Site.** The CITY reserves the right to require the relocation of any kiosk at any time during the term of the Agreement due to construction, capital improvement projects, utility work, streetscape improvements, or other public works projects in or adjacent to the public right-of-way. The CITY shall provide [SELECTED PARTNER] with reasonable advance written notice of any required relocation, which shall be no less than thirty (30) days except in cases of emergency or unanticipated construction conditions requiring immediate action. [SELECTED PARTNER] shall be responsible for all costs associated with relocation, including removal, reinstallation, permitting, and site restoration, unless the relocation is required due to a CITY-initiated capital improvement project, in which case the parties shall negotiate in good faith regarding cost allocation. Any relocated Kiosk shall be placed at a mutually agreed-upon alternative location within the Downtown Strategy Boundary that complies with all applicable siting requirements as set forth in the Agreement. [SELECTED PARTNER] shall not be entitled to any reduction in revenue share or other compensation due on account of a temporary loss of revenue during a relocation period, except as the Parties may otherwise agree in writing.
5. **Removal upon Termination.** Upon expiration or termination of the Agreement for any reason, [SELECTED PARTNER] shall, at its sole cost and expense, remove all Kiosks, associated equipment, and related improvements from the public right-of-way and restore each site to its pre-installation condition, or to a condition otherwise acceptable to the CITY, within sixty (60) days of the effective date of expiration or termination. Such removal and restoration shall include, but not be limited to, removal of all foundations, conduit, and utility connections installed by [SELECTED PARTNER], and repair of any surface damage resulting from removal. [SELECTED PARTNER] shall also remove all proprietary software, systems, and equipment not retained by the City, and shall transfer, retain, or dispose of Program data as directed by the City and as provided in the Agreement. If [SELECTED PARTNER] fails to complete removal and restoration within the time required, the CITY may, at its sole discretion, perform or cause such work to be performed and recover all associated costs from [SELECTED PARTNER], including reasonable administrative costs.

If the Agreement is terminated as a result of [SELECTED PARTNER]'s bankruptcy, insolvency, or appointment of a receiver, and [SELECTED PARTNER] or its successor-in-interest fails to remove the Kiosks within the time required, the CITY shall have the right, but not the obligation, to retain, take possession of, or otherwise dispose of the Kiosks and associated equipment in its sole discretion, without liability to [SELECTED PARTNER]. In such event, [SELECTED PARTNER] shall not be entitled to any compensation or credit for the value of any retained or disposed equipment.

Notwithstanding the above, following the Term of this Agreement, the CITY may elect, at CITY's sole option, to take ownership of the Kiosks at no cost to CITY. If CITY terminates this Agreement prior to the expiration of the Term, CITY may also elect to take ownership of the Kiosks. If the CITY elects to retain the improvements, the [SELECTED PARTNER] must remove all trade fixtures and personal property upon termination or expiration of the Agreement without cost to the CITY or damage to the property or permit area.

[SELECTED PARTNER] shall be responsible for the proper disposal, recycling, or reuse of all removed equipment in compliance with applicable laws and regulations. At least sixty (60) days prior to expiration or termination, [SELECTED PARTNER] shall provide the CITY with a decommissioning plan addressing transition planning, continuity considerations, and the retention, transfer, or disposition of all Program data as directed by the CITY and as provided in the Agreement.