

CITY OF SEATTLE
ORDINANCE 127240
COUNCIL BILL 120992

AN ORDINANCE granting Downtown Seattle Association permission to install, maintain, and operate interactive media kiosks in public places located in the Metropolitan Improvement District and in other participating Business Improvement Areas, for a 16.5-year term, renewable for one successive 13.5-year term; specifying the conditions under which this permit is granted; suspending and superseding Sections 15.12.010, 23.55.001-23.55.003, 23.55.005, 23.55.008, 23.55.014, 23.55.015, 23.55.022, 23.55.024, 23.55.028, 23.55.030, 23.55.034, and 23.55.036 of the Seattle Municipal Code to the extent inconsistent; providing for the acceptance of the permit and conditions; and authorizing the Mayor to execute a Memorandum of Understanding with Downtown Seattle Association.

WHEREAS, Downtown Seattle Association (DSA) is a 501(c)(4) non-profit membership organization duly incorporated and registered to do business in Washington, whose primary area of concern is the downtown area defined as the Metropolitan Improvement District (MID); and

WHEREAS, DSA's purpose is to promote, advance, and stimulate civic, business, commercial, and residential interests and general welfare in Downtown and to encourage, promote, and stimulate change and advances for the general improvement and welfare of Downtown; and

WHEREAS, DSA exists to acquaint and inform the public as to its objectives and to stimulate public opinion and reaction to these ends by providing information and other civic, educational, commercial, industrial, social, and public features as will encourage, foster, and stimulate these purposes; to encourage, foster, and stimulate commerce, trade, finance, and professional interests; and encourage, foster, and stimulate change and advances for the general improvement and welfare of the downtown area and adjoining areas; and

1 WHEREAS, The City of Seattle (“City”) and DSA are both interested in the potential benefit to
2 the public that will result from the deployment of interactive media kiosks (“Kiosks”);
3 and

4 WHEREAS, DSA has determined that Kiosks can be used in a variety of ways to enhance city
5 communication, commerce, entertainment, educational, and civic affairs and that their
6 installation, deployment, and operation in selected parts of the city will benefit the city as
7 a whole and has actively engaged with vendors of kiosks to better understand how the use
8 of such technology will meet the needs of Seattle’s downtown residents, visitors, and
9 tourists; and

10 WHEREAS, the City and DSA believe that Kiosks will play a role in the revitalization of the
11 downtown core, as well as in other commercial areas across the city; and

12 WHEREAS, DSA has actively engaged a third-party vendor (“Vendor”) of Kiosk technology to
13 provide static and digital content such as wayfinding, public service, safety
14 announcements, and commercial advertising; and

15 WHEREAS, DSA maintains that Kiosks’ installation, deployment, and operation in Downtown
16 and other participating Business Improvement Areas (BIAs) across the city will provide
17 benefits to the public; and

18 WHEREAS, the Kiosks will further the City’s interest in equity by providing free Wi-Fi hubs
19 throughout Downtown and in participating BIAs, benefiting those who may not be able to
20 afford these services; and

21 WHEREAS, the Kiosks will also serve a public safety function by providing a 911 call function
22 to allow the public to seek police, fire, and emergency medical help; and

1 WHEREAS, DSA will contract with the Vendor for the Kiosks, and the City agrees to have the
2 Kiosks deployed on City rights-of-way in the MID and other participating BIA
3 boundaries; and

4 WHEREAS, revenues generated by Kiosks and collected by the City would be dedicated to
5 general government purposes, which could include public safety, community
6 investments, and maintenance activities in and around the right-of-way; and

7 WHEREAS, the City and DSA have prepared a Memorandum of Understanding (MOU) that
8 becomes effective contingent upon the City passing legislation granting permission for
9 DSA to install the Kiosks on City rights-of-way; and

10 WHEREAS, the Seattle City Council adopted Resolution 32170 providing conceptual approval
11 for the Kiosks, and DSA has met the obligations described in this resolution; and

12 WHEREAS, the adoption of this ordinance is the culmination of the approval process for the
13 Kiosks to legally occupy the right-of-way, and the adopted ordinance is considered to be
14 the permit; NOW, THEREFORE,

15 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

16 Section 1. **Permission.** Subject to the terms and conditions of this ordinance, The City of
17 Seattle (“City”) grants permission (also referred to in this ordinance as a permit) to the
18 Downtown Seattle Association (DSA), and its successors and assigns as approved by the
19 Director of the Seattle Department of Transportation (“Director”) according to Section 19 of this
20 ordinance (the party named above and each such approved successor and assign is referred to as
21 the “Permittee”) to install, maintain, and operate up to 80 interactive media kiosks (“Kiosks”) in
22 rights-of-way located in the Metropolitan Improvement District (MID) boundary and in other
23 participating Business Improvement Areas (BIAs). This ordinance suspends and supersedes the

1 following sections of the Seattle Municipal Code for purposes of the permission granted by this
2 ordinance to the extent those sections are inconsistent with that permission: Sections 15.12.010,
3 23.55.001-23.55.003 (intent and scope of sign provisions and prohibited signs), 23.55.005 (video
4 display methods), 23.55.008 (signs near intersections or driveways), 23.55.014 (off-premises
5 signs), 23.55.015 (sign kiosks and community bulletin boards), 23.55.022 (signs in multifamily
6 zones), 23.55.024 (signs in residential commercial [RC] zones), 23.55.028 (signs in NC1 and
7 NC2 zones), 23.55.030 (signs in NC3, C1, C2 and SM zones), 23.55.034 (signs in downtown
8 zones), and 23.55.036 (signs in IB, IC, IG1 and IG2 zones).

9 Deployment 1 will consist of 30 Kiosks located in the MID. Deployment 2 will include
10 30 additional Kiosks in the MID and 20 Kiosks in other participating BIAs. The other
11 participating BIAs are Ballard, SODO, University District, and West Seattle. Kiosks shall not be
12 located in areas outside the MID or the participating BIAs. The Permittee shall not be authorized
13 to commence Deployment 2 without receiving written approval to proceed from the City.

14 The City acknowledges that the Permittee has entered a contract with a third-party vendor
15 (“Vendor”) to install, operate, and maintain the Kiosks. Notwithstanding that a Vendor will
16 install, operate, and maintain the Kiosks under a contract with the Permittee, the Permittee shall
17 be exclusively responsible for complying with all the terms and conditions of this term permit,
18 except that participating BIAs will bear secondary responsibilities for maintaining the Kiosks.

19 Section 2. **Participating BIAs.** The Permittee may install, maintain, and operate Kiosks
20 in participating BIAs. The participating BIAs are Ballard, SODO, University District, and West
21 Seattle. Before any Kiosks are located in one of these BIAs, the BIA shall notify the City in
22 writing on a form provided by the City that it will join the permit as an “Additional Permittee”
23 and as an Additional Permittee, accept secondary responsibilities for maintaining the Kiosks.

1 Only the listed BIAs may join as an Additional Permittee. Either the Permittee, BIA, Vendor, or
2 their third-party contractor may apply for site specific installation permits; however, the City will
3 require proof that the BIA has identified and approves of any Kiosk located in its boundary.

4 Section 3. **Term.** The permission granted to the Permittee is for a term of 16.5 years
5 starting on the effective date of this ordinance and ending at 11:59 p.m. on the last day of the
6 16.5 years. The Permittee may apply to renew the permit no later than one year before the then-
7 existing term expires. The City Council may renew the permit once for a successive 13.5-year
8 term, subject to the right of the City to not renew the permit at the end of the then-existing term
9 and require the removal of the Kiosks, or to revise by ordinance any of the terms and conditions
10 of the permission granted by this ordinance. At the sole discretion of the City, the City may
11 decide not to renew the permit at the expiration of a term. The total term of the permission,
12 including renewals, shall not exceed 30 years. Any new application would be subject to the fees
13 and criteria in place at the time of the new application. If the Memorandum of Understanding
14 (MOU) between the City and the Permittee terminates, then the Permission granted by this
15 ordinance shall automatically terminate. Notwithstanding the termination of the permission, the
16 Permittee shall remain bound by all of its obligations under this ordinance, including but not
17 limited to Sections 12, 19, 21, 22, and 27 of this ordinance, until the Director has issued a
18 certification that the Permittee has fulfilled any removal and restoration obligations in Section 6
19 of this ordinance.

20 Section 4. **Protection of utilities.** The permission granted is subject to the Permittee
21 bearing the expense of any protection, support, or relocation of existing utilities deemed
22 necessary by the owners of the utilities, and the Permittee being responsible for any damage to
23 the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of

any or all of the Kiosks and for any direct or consequential damages that may result from any damage to utilities or interruption in service caused by any of the foregoing.

Section 5. **Removal for public use or for cause.** The permission granted is subject to use of the street right-of-way or other public place (collectively, public place) by the City and the public for travel, utility purposes, and other public uses or benefits. The City expressly reserves the right to deny renewal, or terminate the permission at any time before expiration of the initial term or any renewal term, and require the Permittee to remove any or all Kiosks or any part thereof or installation on the public place, at the Permittee's sole cost and expense if:

A. The Director determines that the space occupied by the Kiosk is necessary for any public use or benefit or that any Kiosk interferes with any public use or benefit;

B. The Director determines that any term or condition of this ordinance has been violated, and the violation has not been corrected by the Permittee by the compliance date after a written request by the City to correct the violation unless a notice to correct is not required due to an immediate threat to the health or safety of the public; or

C. The Permittee or Vendor ceases as a corporate entity or files for federal bankruptcy.

Section 6. **Permittee's obligation to remove and restore.** If the permission granted is not renewed at the expiration of a term, or if the permission expires without an application for a new permission being granted, or if the City terminates the permission, then within 90 days after the expiration or termination of the permission, or before any earlier date stated in an ordinance or order requiring removal of the Kiosks, the Permittee shall, at its own expense, remove the Kiosks and all of the Permittee's equipment and property from the public place and replace and restore all portions of the public place that may have been disturbed for any part of the Kiosks in as good condition for public use as existed before installing the Kiosks, and in at least as good

1 condition in all respects as the abutting portions of the public place as required by Seattle
2 Department of Transportation (SDOT) right-of-way restoration standards.

3 Failure to remove the Kiosks as required by this section is a violation of Chapter 15.90 of
4 the Seattle Municipal Code (SMC) or successor provision; however, applicability of Chapter
5 15.90 does not eliminate any remedies available to the City under this ordinance or any other
6 authority. If the Permittee does not timely fulfill its obligations under this section, the City may
7 in its sole discretion remove the Kiosks and restore the public place at the Permittee's expense
8 and collect such expense in any manner provided by law.

9 Upon the Permittee's completing the removal and restoration in accordance with this
10 section, or upon the City completing the removal and restoration and the Permittee's payment to
11 the City for the City's removal and restoration costs, the Director shall issue a certification that
12 the Permittee has fulfilled its removal and restoration obligations under this ordinance. Upon
13 prior notice to the Permittee and entry of written findings that it is in the public interest, the
14 Director may, in the Director's sole discretion, conditionally or absolutely excuse the Permittee
15 from compliance with all or any of the Permittee's obligations under this section.

16 Section 7. **Repair, reconstruction, or relocation.** The Kiosks shall remain the exclusive
17 responsibility of the Permittee, and the Permittee shall maintain the Kiosks in good and safe
18 condition for the protection of the public, maintaining the Kiosks free of graffiti, and promptly
19 repairing any vandalism and inoperable or broken Kiosks. The Permittee states Kiosks are
20 manufactured for a ten-year lifespan. The Permittee shall update and upgrade hardware parts as
21 needed on an ongoing basis over the life of the Kiosk. Kiosks shall be equipped with a default
22 mechanism that automatically freezes the sign display or makes the sign display turn off and
23 remain blank if a malfunction occurs. The Kiosks shall have exterior branding which displays the

1 name of Permittee and any applicable Vendor. In addition to such exterior branding, the Kiosk
2 dashboard will display contact information for Permittee and any applicable Vendor to give the
3 public the opportunity to report maintenance issues.

4 The Permittee shall not reconstruct, repair, or relocate Kiosks except in strict accordance
5 with plans and specifications approved by the Director. The Director may, in the Director's
6 judgment, order Kiosks to be reconstructed, repaired, or relocated at the Permittee's cost and
7 expense because of the deterioration or unsafe condition of any or all of the Kiosks; the
8 installation, construction, reconstruction, maintenance, operation, or repair of any municipally-
9 owned public utility or transportation-related facility; or for any other cause.

10 Section 8. **Prohibited locations.** Kiosks are prohibited in:

11 A. The Shoreline District as defined in SMC Section 23.60A.010;

12 B. Landmark Districts, Historic Districts, and Special Review Districts (SMC Title 25,
13 and Chapter 23.66);

14 C. The Seattle Center Sign Overlay District (Part 4 of SMC Chapter 23.55);

15 D. Park drive or boulevard as defined in SMC subsection 15.02.046.B;

16 E. Right-of-way on the same block face as a City-owned park, playground, or community
17 center, except if, after consultation with Seattle Parks and Recreation, it is determined by the
18 Superintendent that the Kiosk does not conflict with or distract from existing park, playground,
19 or community center signs, elements, or infrastructure; and

20 F. Any right-of-way in the City except as permitted by this term permit in the MID and
21 other participating BIAs.

Section 9. Siting standards.

A. Kiosks shall be sited to:

1. Meet standards and clearances required by the Right-of-Way Improvements Manual, Streets Illustrated, or successor rule, with additional restrictions listed in this term permit.

2. Provide clearance from signalized, stop, yield, and uncontrolled intersections based on distance to achieve stopping sight distance for vehicles and bicycles. Minimum clearances, which are based on street characteristics, including lane widths, curb radii, objects that may impede sight lines, and if the Kiosk is proposed on the approach or far-side (leaving) intersection, and if the Kiosks are on the left or right side of the road, are set forth in Attachment B in the Director's Report for Resolution 32170. The minimum clearances set forth in that attachment may be modified by the SDOT Traffic Engineer or designee in consideration of pedestrian and traffic management.

3. Be located in the furniture zone of the sidewalk unless otherwise approved by SDOT.

4. Locate no more than one Kiosk per block face as defined in SMC Section 15.02.042; up to two Kiosks per block face may be installed if the block face exceeds 400 feet in length.

5. Provide an unobstructed pedestrian clear zone the width required by the Right-of-Way Improvements Manual, Streets Illustrated, or successor rule; and an unobstructed 3-foot-wide pedestrian straight path as defined in Section 15.02.046 within the designated pedestrian clear zone that extends 25 feet from the Kiosk along the block face.

6. Comply with the Americans with Disabilities Act and all applicable accessibility requirements.

7. Comply with SMC Section 23.55.042 and the Highway Advertising Control Act/Scenic Vistas Act under chapter 47.42 RCW.

B. Kiosks shall not be sited:

1. Within 180 feet from any high-collision intersections, which are defined as intersections with ten or more vehicle collisions per year, or five or more collisions involving pedestrians or bicyclists per year.

2. On streets with speed limits greater than 25 mph.

3. On a block face adjacent to a shared lane marked with “sharrows” to indicate that bikes and vehicles should share the travel way or a block face with a bicycle facility that does not have a separation between the bike facility and the nearest general-purpose lane with a minimum 18-inch lateral buffer with on-pavement hatched marking and/or a physical feature such as a parking lane, flexible delineator posts, planters, or other raised feature.

4. Within 152 feet of areas where a driver’s attention needs to be elevated, including but not limited to mid-block unsignalized crosswalks.

5. Within 50 feet of horizontal curves, lane-drops or additions, and merge/weave areas.

6. On streets with grades greater than eight percent.

7. Adjacent to bus zones, commercial vehicle or truck loading zones, shuttle or charter bus zones, music venue zones, or designated food vehicle or vending zones.

1 8. Adjacent to designated accessible spaces. During site specific installation
2 application review, SDOT will work with the applicant to make sure Kiosks would not preclude
3 accessible parking spaces or loading zones SDOT may install along streets in the future.

4 9. In a manner that interferes with operations at passenger loading zones, layover
5 zones, car share, or other special zones, as determined by SDOT during site specific installation
6 application review.

7 10. In a manner that inhibits the operation, maintenance, or functionality of any
8 utilities or street fixtures, or the health of any street trees. Asset and utility owners will be routed
9 applications during site specific installation application review to determine appropriate
10 clearances to apply. Street tree pruning and excavation within the dripline of a street tree is
11 subject to approval by SDOT Urban Forestry. Street trees shall not be removed to accommodate
12 Kiosk installation.

13 11. In a manner that impedes motorist or bicyclist sight lines to traffic control
14 devices or regulatory signage.

15 12. In front of other permitted uses authorized in SMC Chapter 15.04, including
16 but not limited to parklets, sidewalk cafes, or curb space cafes, unless SDOT determines there is
17 adequate pedestrian clear zone available.

18 13. Directly opposite a building entrance or a street-facing ground floor dwelling
19 unit.

20 14. Within 20 feet of a driveway or alley.

21 15. When a Kiosk proposed on the same block face as an existing or proposed
22 Seamless Seattle sign, no closer than 100 feet from an existing or planned Seamless Seattle

1 area/map sign and no closer than 50 feet from an existing or planned Seamless Seattle
2 nudge/directional sign.

3 Section 10. **Kiosk design and operation standards.** Kiosks shall:

4 A. Be no greater than 8.25 feet tall, 3.15 feet wide, and 1.04 feet deep. The maximum
5 sign display shall be 13 square feet per side. Kiosk foundations shall be fully below grade, and
6 the Kiosk shall be flush with the surrounding surface unless otherwise approved by SDOT.

7 B. Be in conformance with and complementary to the SDOT Seamless Seattle program.
8 This shall include alignment with the map type and colors, iconography, naming conventions,
9 and languages defined by the Seamless Seattle visual standards.

10 C. Be authorized for static and moving displays, with motion defined as “Media displays
11 that include digital animation, streaming video, or images that move or give the appearance of
12 movement. This definition applies to both static and animated media. Media displays alternate
13 through a series of eight media displays (a content loop), with each display shown for ten
14 seconds (dwell time). After each ten-second display, the screen transitions with a brief black
15 screen lasting half a second before continuing to the next media display. Media displays may
16 consist of public service announcements, advertisements, or invitations for people to engage with
17 the Kiosk.”

18 D. Not display light of such intensity that interferes with the effectiveness of an official
19 traffic sign, signal, or device or causes glare or otherwise impairs the vision of the driver.

20 E. Not exceed 500 nits (candela per square meter) maximum brightness level between
21 dusk and dawn. The maximum level of brightness during daytime hours shall be 5,000 nits.
22 Kiosks shall have a sensor or other device that automatically determines the ambient illumination
23 and is programmed to automatically dim according to ambient light conditions and adjust

1 between daylight and nighttime hours, or that can be adjusted to comply with the nit levels
2 above. Kiosks shall comply with SDOT Director’s Rule 1-2010, or as superseded. SDOT may
3 direct the Permittee to reduce brightness levels or otherwise address lighting complaints at
4 locations based on complaint history.

5 Any Kiosks in the public place shall not:

6 A. Emit sensory output such as audio or smell. The Kiosks may use a two-way speaker to
7 communicate with 211, 311, or 911 operators.

8 B. Attempt or appear to attempt to direct the movement of traffic or interfere with,
9 imitate, or resemble any official traffic sign, signal, stop sign, pedestrian or bicycle signal, or
10 other traffic device.

11 C. Have flashing or strobe effects.

12 D. Have any connection or sequential messaging between any two or more Kiosks that
13 are adjacent to each other or visible from one location to another. Each Kiosk content slide shall
14 be independent of subsequent or previous Kiosk content slide.

15 Section 11. **Content.** The Kiosks shall display public information or other content of
16 general interest to the public, including, but not limited to, wayfinding; transportation
17 information; public safety and health information; historical and local information; public art;
18 promotion of local arts, culture, and community events; community messaging coordinated with
19 local non-profits, neighborhood organizations, and City departments; and public service
20 information (“Public Content”). At minimum, each Kiosk will rotate a total of eight content
21 slides, each with equal duration. At minimum, Public Content will be displayed on one out of
22 every eight slides plus any other unsold content inventory, except when a user has engaged with
23 the touch screens on the Kiosk. Public Content shall equal a minimum of 25 percent of total

1 screen time when the touch screens are not engaged with a user on an annual basis. The City
2 may, in exigent circumstances, such as natural disasters, public safety emergencies, or other
3 unforeseen or disruptive circumstances, require additional messaging that exceeds the one out of
4 eight slides rotation. The Permittee shall not unreasonably withhold its authorization from such
5 City requests. Public Content messaging shall be distributed evenly across Kiosks within the
6 MID and BIA boundaries. Except for City-provided public information and content, the
7 Permittee will solely oversee and manage the content of all other information that may be
8 displayed on Kiosks. Kiosks shall not display images that mimic or include a traffic control
9 device such as a traffic signal, stop sign, or pedestrian or bicycle signal. The Kiosks shall comply
10 with the latest version of the Web Content Accessibility Guidelines (WCAG) at the AA level or
11 greater. All Kiosk content is in the sole custody of the Permittee.

12 Section 12. **Failure to correct unsafe condition.** After written notice to the Permittee
13 and failure of the Permittee to correct an unsafe condition within the time stated in the notice, the
14 Director may order any or all Kiosks removed at the Permittee's expense if the Director deems
15 that any or all Kiosks have become unsafe or creates a risk of injury to the public. If there is an
16 immediate threat to the health or safety of the public, a notice to correct is not required.

17 Section 13. **Continuing obligations.** Notwithstanding the termination or expiration of the
18 permission granted, or removal of the Kiosks, the Permittee shall remain bound by all of its
19 obligations under this ordinance until the Director has issued a certification that the Permittee has
20 fulfilled any removal and restoration obligation established by the City, or the Seattle City
21 Council passes a new ordinance to renew the permission granted and/or establish a new term.
22 Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by

the obligations in Sections 13 and 28 of this ordinance and shall remain liable for any unpaid fees assessed under Sections 20 and 22 of this ordinance.

Section 14. **Release, hold harmless, indemnification, and duty to defend.** The Permittee and Vendor, by accepting the terms of this ordinance, releases the City, its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description arising out of or by reason of the Kiosks, or this ordinance, including but not limited to claims resulting from injury, damage, or loss to the Permittee or the Permittee's property.

The Permittee and Vendor agree to at all times defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only damages that may result from the sole negligence of the City, that may accrue to, be asserted by, or be suffered by any person or property including, without limitation, damage, death or injury to members of the public or to the Permittee's or Vendor's officers, agents, employees, contractors, invitees, tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

A. The existence, condition, construction, reconstruction, modification, maintenance, operation, use, or removal of the Kiosks or any portion thereof, or the use, occupation, or restoration of the public place or any portion thereof by the Permittee, Vendor, or any other person or entity;

B. Anything that has been done or may at any time be done by the Permittee or Vendor by reason of this ordinance; or

1 C. The Permittee or Vendor failing or refusing to strictly comply with every provision of
2 this ordinance; or arising out of or by reason of the Kiosks, or this ordinance in any other way.

3 If any suit, action, or claim of the nature described above is filed, instituted, or begun
4 against the City, the Permittee or Vendor shall upon notice from the City defend the City, with
5 counsel acceptable to the City, at the sole cost and expense of the Permittee or Vendor, and if a
6 judgment is rendered against the City in any suit or action, the Permittee or Vendor shall fully
7 satisfy the judgment within 90 days after the action or suit has been finally determined, if
8 determined adversely to the City. If it is determined by a court of competent jurisdiction that
9 RCW 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or
10 result from the concurrent negligence of the City, its agents, contractors, or employees, and the
11 Permittee or Vendor, their agents, contractors, or employees, this indemnity provision shall be
12 valid and enforceable only to the extent of the negligence of the Permittee or Vendor or the
13 Permittee's or Vendor's agents, contractors, or employees.

14 Section 15. **Insurance.** Permittee shall obtain and thereafter maintain continuously
15 throughout the term of this permit, at no expense to the City, the insurance described in this
16 section. Acceptable proof of coverage shall be sent to the City at the address in the Permit.
17 Failure of Permittee to fully comply with the insurance requirements will be considered a
18 material breach of the Permit. The insurance shall protect the City from any and all claims and
19 risks in connection with any activity performed by Vendor by virtue of this Permit or any use
20 and occupancy of the property authorized by this permit.

21 The required coverages and limits of liability shall be:

22 Commercial General Liability (GCL) insurance, including:

23 Premises/Operations Liability

Products/Completed Operations

Personal/Advertising Injury

Contractual Liability

Independent Contractors Liability

Stop Gap/Employers Contingent Liability

The following minimum limits of liability shall be:

Combined Single Limit (CSL) Bodily Injury and Property Damage

\$1,000,000 each Occurrence

\$3,000,000 aggregate

\$1,000,000 each Offense Personal and Advertising Injury

\$100,000 Fire Damage Legal

Stop Gap/Employers Liability

\$1,000,000 Each Accident

\$1,000,000 Disease — Each Employee

\$1,000,000 personal property

Minimum limits may be satisfied by a single primary limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including but not limited to additional insured status for the City.

Business Automobile Liability. A policy of Business Automobile Liability, including coverage for owned, non-owned, leased, or hired vehicles as applicable. Minimum limit of liability shall be \$1,000,000 CSL each occurrence.

1 Excess Insurance. A policy in excess of the Commercial General Liability and Business
2 Automobile Liability policies that will provide a total minimum limit of insurance of \$2,000,000
3 each occurrence and in the aggregate where applicable. The excess policy must be at least as
4 broad as the primary policies. The policy must include Active shooter/Terrorism coverage.
5 Permittee will maintain a minimum of \$3,000,000 for a combined total CGL and
6 Excess/umbrella coverage.

7 Cyber Liability Insurance. Permittee will maintain a minimum of \$500,000 per
8 occurrence in Cyber Liability coverage.

9 Workers' Compensation. As respects the state of Washington, Permittee shall secure its
10 liability for industrial injury to the respective entity's employees in accordance with the
11 provisions of Title 51 RCW. Permittee, with respect to the City only, waives its immunity under
12 Title 51 RCW, Industrial Insurance.

13 No Limitations of Liability. The limits of insurance coverage specified herein are
14 minimum limits of insurance coverage only and shall not be deemed to limit the liability of
15 Permittee's insurer except as respects the stated limit of liability of each policy. Where required
16 to be an additional insured, the City shall be so for the full limits of insurance coverage held by
17 Permittee, whether such limits are primary, excess, contingent, or otherwise. Any limitations of
18 insurance liability shall have no effect on Permittee's obligation to indemnify the City.

19 Changes in Insurance Requirements. The City shall have the right to periodically review
20 the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss
21 exposures and shall have the right to require an increase in such coverages and/or limits upon 90
22 days prior written notice to Permittee. Should Permittee, despite its best efforts, be unable to
23 maintain any required insurance coverage or limit of liability due to deteriorating insurance

1 market conditions, it may upon 30 days prior written notice request a waiver of any insurance
2 requirement, which request shall not be unreasonably denied.

3 Additional Insured. Except for Worker's Compensation (above), all applicable liability
4 insurance policies (CGL and Auto) shall be endorsed to include both the City, its officers,
5 elected officials, employees, agents, and volunteers as additional insured for primary and non-
6 contributory limits of liability subject to a severability of interest clause. As respects CGL, the
7 City must be an additional insured by means of either an appropriate additional insured
8 endorsement to the Policy or appropriate policy wording. Vendor shall provide evidence of such
9 insurance prior to approval of this Permit.

10 Deductibles. If any insurance provided under this Permit contains a deductible in excess
11 of \$50,000, Permittee or the entity providing the insurance shall:

12 A. Disclose such amount.

13 B. Be responsible for payment of any claim equal to or less than the deductible amount.

14 The City reserves the right to approve any deductible in excess of \$50,000 by evaluating
15 risk bearing capacity of the entity who shall provide necessary financial reports and information.

16 Conditions. The insurer shall be rated A-: V or higher in the A.M. Best's Key Rating
17 Guide and licensed to do business in the State of Washington or be filed as surplus line by a
18 Washington surplus line broker.

19 The insurance policy or policies and endorsements thereto shall:

20 A. Be subject to approval by the City as to company, form, and coverage; and

21 B. Provide that the City shall receive written notice of cancellation accompanied by the
22 actual reason therefore, which must be actually delivered or mailed 45 days prior to the effective

1 date of the cancellation (except ten days prior to the effective date of the cancellation as respects
2 nonpayment of premiums) per RCW 48.18.290.

3 Adjustment of Claims. Permittee shall provide for the prompt and efficient handling of all
4 claims for bodily injury, property damage, or theft arising out of the activities of Permittee and
5 subcontractors under this Permit.

6 Evidence of Insurance. Certificates of Insurance on ACORD or other forms will not be
7 accepted as sole evidence of insurance. Evidence of insurance shall be demonstrated by
8 submitting a copy of the duly executed declarations pages of the policy(ies), the endorsement
9 forms list, and the additional insured endorsement(s). The declarations pages shall clearly show
10 the insurer, policy effective dates, policy number, policy limits, and named insured. Reference to
11 premiums may be blacked out. A binder shall be accepted as temporary proof of insurance
12 pending delivery of the actual policy(ies).

13 All policies shall be maintained by Permittee for a period of three years after each annual
14 permit renewal and shall be made available for City inspection if requested.

15 At the option of the City, Permittee may be required to submit a full and certified copy of
16 the insurance policy(ies).

17 Subcontractors. Permittee shall include all subcontractors performing any work included
18 under this contract as an insured under its policies or shall furnish separate evidence of insurance
19 as stated above for each subcontractor. All coverage for subcontractors shall be subject to all the
20 requirements stated herein and applicable to their profession.

21 Within 60 days after the effective date of this ordinance, the Permittee shall provide to
22 the City, or cause to be provided, certification of insurance coverage including an actual copy of
23 the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement

1 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to
2 SDOT at an address as the Director may specify in writing from time to time. The Permittee shall
3 provide a certified complete copy of the insurance policy to the City promptly upon request.

4 If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager
5 may be submitted in lieu of the insurance coverage certification required by this ordinance, if
6 approved in writing by the City's Risk Manager. The letter of certification must provide all
7 information required by the City's Risk Manager and document, to the satisfaction of the City's
8 Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in
9 force. After a self-insurance certification is approved, the City may from time to time
10 subsequently require updated or additional information. The approved self-insured Permittee
11 must provide 30 days' prior notice of any cancellation or material adverse financial condition of
12 its self-insurance program. The City may at any time revoke approval of self-insurance and
13 require the Permittee to obtain and maintain insurance as specified in this ordinance.

14 If the Permittee assigns or transfers the permission granted by this ordinance, the
15 Permittee shall maintain in effect the insurance required under this section until the Director has
16 approved the assignment or transfer pursuant to Section 19 of this ordinance.

17 Permittee shall include all subcontractors as insureds under its policies, or require
18 subcontractors to carry applicable insurance policies and name the City as an additional insured.

19 Section 16. **Third-party contract provisions.** The Permittee shall submit to the Director
20 a copy of all contracts that the Permittee enters into with the Vendor for the Kiosks. The contract
21 shall include provisions that the Vendor:

22 A. Obtain liability insurance naming the City as additional insured in an amount and form
23 approved by the City's Risk Manager according to Section 15 of this ordinance;

1 B. Provide the Director with an annual certificate of insurance; and

2 C. Indemnify the City, in a form approved by the City, against all claims or damages
3 arising from the use of the Kiosks or any other equipment the vendor provides under contract
4 with the Permittee.

5 Provisions of the contract that address compensation may be redacted. All required
6 documents shall be submitted by the Permittee to the Director within 60 days of the date the
7 Permittee signs a contract with the Vendor.

8 The Permittee shall notify the City in writing if a new Vendor will operate the Kiosks.
9 The Permittee shall not change Vendors without the consent of the City, which cannot be
10 unreasonably withheld. The Director may approve in writing the change to a successor Vendor
11 only if the successor Vendor provides the information listed in this section. Upon the Director's
12 written approval of the successor Vendor, the rights and obligations conferred by this ordinance
13 to the original Vendor shall be conferred on the successor Vendor.

14 Section 17. **Performance bond.** Before applying for any site-specific installation permit,
15 the Permittee's Vendor shall deliver to the Director for filing with the City Clerk a sufficient
16 bond executed by a surety company authorized and qualified to do business in the State of
17 Washington in the amount \$300,000 for the Kiosks in Deployment 1, conditioned with a
18 requirement that the Permittee shall comply with every provision of this ordinance and with
19 every order the Director issues under this ordinance. The Permittee shall ensure that the bond
20 remains in effect until the Director has issued a certification that the Permittee has fulfilled its
21 removal and restoration obligations under Section 6 of this ordinance. An irrevocable letter of
22 credit approved by the Director in consultation with the City Attorney's Office may be
23 substituted for the bond. If the Permittee assigns or transfers the permission granted by this

1 ordinance, the Permittee shall maintain in effect the bond or letter of credit required under this
2 section until the Director has approved the assignment or transfer pursuant to Section 18 of this
3 ordinance.

4 Before commencing Deployment 2, the Director will reassess the surety bond
5 requirements. Before applying for any site-specific installation permit for Deployment 2, the
6 Permittee's Vendor shall deliver to the Director for filing with the City Clerk a second bond
7 meeting the same requirements listed above in the amount determined to be sufficient by SDOT
8 as reasonably determined at that time for the additional deployment.

9 Section 18. **Adjustment of insurance and bond requirements.** The Director may adjust
10 minimum liability insurance levels and surety bond requirements during the term of this
11 permission. If the Director determines that an adjustment is necessary to fully protect the
12 interests of the City, the Director shall notify the Permittee of the basis for the adjustment and the
13 new requirements in writing. The Permittee shall, within 60 days of the date of the notice,
14 provide proof of the adjusted insurance and surety bond levels to the Director.

15 Section 19. **Consent for and conditions of assignment or transfer.** The permission
16 granted by this ordinance shall not be assignable or transferable without the consent of the City,
17 which cannot be unreasonably withheld. The Director may approve assignment or transfer of the
18 permission granted by this ordinance to a successor entity only if the successor or assignee has
19 provided, at the time of the assignment or transfer, the bond and certification of insurance
20 coverage required under this ordinance; has a signed Memorandum of Understanding with the
21 City; and has paid any fees due under Sections 20 and 22 of this ordinance. Upon the Director's
22 approval of an assignment or transfer, the rights and obligations conferred on the Permittee by
23 this ordinance shall be conferred on the successors and assigns. Any person or entity seeking

1 approval for an assignment or transfer of the permission granted by this ordinance shall provide
2 the Director with a description of the current and anticipated use of the Kiosks.

3 Section 20. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or
4 successor provision, pay the City the amounts charged by the City to inspect the Kiosks during
5 construction, reconstruction, repair, annual safety inspections, and at other times deemed
6 necessary by the City. An inspection or approval of the Kiosks by the City shall not be construed
7 as a representation, warranty, or assurance to the Permittee or any other person as to the safety,
8 soundness, or condition of the Kiosks. Any failure by the City to require correction of any defect
9 or condition shall not in any way limit the responsibility or liability of the Permittee. The
10 Permittee shall pay the City the amounts charged by the City to review the reports required by
11 Section 21 of this ordinance.

12 Section 21. **Reporting.** The Permittee shall submit to the Director, or to SDOT at an
13 address specified by the Director, an annual report that:

14 A. Describes new Kiosks installed during the year, including information on public
15 benefit elements associated with the installation;

16 B. Describes the physical condition and provides photo documentation of all the Kiosks
17 and any public benefit elements maintained by the Permittee;

18 C. Quantifies how revenues have been used by the Permittee to enhance the public realm;

19 D. Quantifies public art use of Kiosks by providing a summary of artists showcased on
20 Kiosks over the past year, including information on the artist's physical location and if they are a
21 person of color;

1 E. Describes any damages, repairs made throughout the year, or possible repairs still
2 needed to any element of the Kiosks as well as to any public benefit elements maintained by the
3 Permittee;

4 F. Describes all active repairs and establishes a timeframe for making repairs;

5 G. Quantifies and summarizes each complaint received during the prior year and
6 identifies the response or resolution and turn-around time for response or resolution;

7 H. Includes bi-annual evaluations for Kiosk compliance with operational standards,
8 including but not limited to brightness levels, and certifies signs are compliant with the standards
9 in this term permit;

10 I. Includes data on the number and type of collisions on the same block face as the Kiosks
11 on a biennial basis; and

12 J. Provides the status of all public realm improvements completed, with the location of
13 each.

14 A report meeting the foregoing requirements shall be submitted 30 days following the
15 expiration of the first year of the term; subsequent reports shall be submitted annually 30 days
16 following the anniversary date of the term year. If there is a natural disaster or other event that
17 may have damaged the Kiosks, the Director may require that additional reports be submitted by a
18 date established by the Director. The Permittee has the duty of inspecting and maintaining the
19 Kiosks. The responsibility to submit reports periodically or as required by the Director does not
20 waive or alter any of the Permittee's other obligations under this ordinance. The receipt of any
21 reports by the Director shall not create any duties on the part of the Director. Any failure by the
22 Director to require a report, or to require action after receiving any report, shall not waive or

1 limit the Permittee's obligations. The Permittee shall pay any City costs associated with review
2 of and follow up from the report.

3 Section 22. **Annual fee.** For Deployment 1, beginning on the effective date of this
4 ordinance the Permittee shall pay an Issuance Fee and Occupation Fee of \$13,320.13, and
5 annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices
6 issued by the Director, an Annual Renewal Fee, and an Annual Use and Occupation Fee for the
7 privileges granted by this ordinance for the Kiosks. For Deployment 2, the City shall use the
8 kiosk locations and determine the Annual Use and Occupation Fee. All Street Use fees are
9 subject to change based on Consumer Price Index for the Seattle-Tacoma-Bellevue Area.

10 The Permittee shall pay any other applicable fees, including fees for reviewing
11 applications to renew the permit after expiration of the first term. All payments shall be made to
12 the City Finance Director for credit to the Transportation Fund.

13 Section 23. **Compliance with City standards and other laws.** Kiosks shall be sited in
14 compliance with all applicable federal, state, county, and City laws, regulations, rules, and
15 standards unless otherwise authorized by this term permit, including Section 1 of this ordinance
16 which authorizes a use in the right-of-way that would not otherwise conform to certain sections
17 of SMC Chapter 23.55 (Sign Code). The Kiosks shall obtain all necessary City permits for
18 installing, removing, maintaining, or relocating any Kiosk and pay all related City permit fees,
19 including but not limited to electrical or construction permits from the Seattle Department of
20 Construction and Inspections, service connections from Seattle City Light, and Street Use
21 permits. Kiosk site-specific installation permits shall be required for all installation, removal, or
22 relocation. Maintenance activities may require Street Use permits depending upon the extent of
23 work.

1 Section 24. **Notification and outreach requirements.** The Permittee shall follow the
2 SDOT Street Use notification requirements when applying for site-specific installation permits,
3 including posting notification at the proposed location. The Permittee shall also perform public
4 outreach and notification prior to or at the time of submittal for the site-specific installation
5 permits, including, but not limited to, written notification to street level businesses, public
6 entities, and residences within a 100-foot radius of the proposed location and on the adjacent and
7 opposing block face of the proposed Kiosk location. To the extent residences within the 100-foot
8 radius are managed by a property manager, the required notice may be provided to the property
9 manager only. Permittee shall notify in writing relevant stakeholders in the MID and
10 participating BIAs of the proposed Kiosk locations. Stakeholders include but are not limited to
11 neighborhood councils, business associations, boards, commissions, and other neighborhood
12 groups. The posting and written notifications shall include contact information for the Permittee
13 and the site-specific application number.

14 Section 25. **Collection of data.** The Permittee and Vendor are prohibited from collecting
15 and retaining any MAC or IP addresses or any personally identifiable information from the
16 public, other than in connection with a Kiosk's free Wi-Fi functionality and then only to the
17 extent a Wi-Fi user expressly provides consent. The Permittee and Vendor shall not deploy any
18 video camera recording. The Permittee and Vendor shall not deploy any still photography
19 functionality other than the photo booth feature that, solely when activated by a user, will take a
20 picture of the user that can be retrieved by the user. The Permittee and Vendor shall not retain
21 such images for any other use.

1 **Section 26. Notice.**

2 All notices shall be made in writing and mailed to:

3 Seattle Department of Transportation
4 Attention: Street Use Division
5 PO Box 34996
6 Seattle WA, 98124-4996

7
8 Downtown Seattle Association
9 1800 7th Avenue, Suite 900
10 Seattle WA 98101

11
12 **Section 27. Acceptance of terms and conditions.** The Permittee shall not commence
13 installation of the Kiosks before providing evidence of insurance coverage required by Section
14 15 of this ordinance and the bond as required by Section 17 of this ordinance. Applying for a
15 Street Use permit to install a Kiosk constitutes the Permittee's acceptance of the terms of this
16 ordinance.

17 **Section 28. Obligations bind subsequent Permittees.** The obligations and conditions
18 imposed on the Permittee by this ordinance bind the Permittees' heirs, successors, and assigns
19 regardless of whether the Director has approved an assignment or transfer of the permission
20 granted by this ordinance.

21 **Section 29. Public benefit mitigation.** The Permittee agrees to provide public benefit
22 mitigation with every Kiosk installation that includes:

23 A. Identifying and removing redundant, damaged, poorly located, and temporary items
24 on the same block face prioritizing the area within 25 feet of the Kiosk. The Permittee shall
25 confirm ownership and entitlement or permitting restrictions associated with the items and any
26 removal or relocation shall comply with any restrictions associated with the items. After review
27 and approval by SDOT, the Permittee shall remove, or if feasible relocate the items at the
28 Permittee's sole cost and subject to separate permits as required.

1 B. The Permittee shall also install either hanging flowers baskets, bike racks, a mural, a
2 signal box art wrap, or other similar installation the number of which will be determined by
3 SDOT and the Permittee (“public benefit”) based on the opportunities for public benefit that
4 exist on the same block face of the Kiosk. The Permittee will identify which of these public
5 benefits to install and SDOT will either approve or reject the public benefit in good faith using
6 its reasonable judgement, based on the type of public benefit installation proposed by the
7 Permittee and the specific public benefit opportunities that exist on the specific block face. If
8 SDOT rejects the proposed public benefit proposal, SDOT will take reasonable efforts to work
9 with the Permittee on an alternative public benefit for the block face where the public benefit
10 was rejected. Installation of the public benefits will occur no later than 90 days after the
11 completion of each Kiosk installation. If the Permittee installs a bike rack, it may be transferred
12 to SDOT for maintenance upon installation per SDOT Director’s Rule 01-2020 or maintained
13 under a long-term Street Use permit as determined by SDOT. All other installations shall be
14 owned and maintained by the Permittee or the Vendor.

15 C. In addition to subsections 29.A and 29.B of this ordinance, the Vendor shall conduct
16 trash and debris removal within a 15-foot radius of each Kiosk when installed. This trash and
17 debris removal will continue following Kiosk installation as part of regularly scheduled Kiosk
18 maintenance for the duration of the term permit.

19 D. Alternative public benefit may be approved on a case-by-case basis where there is a
20 proposed project or approved City plan where the Permittee can support implementation and as
21 jointly agreed by the Permittee and SDOT.

22 Section 30. The Mayor or designee is authorized to execute a Memorandum of
23 Understanding in the form attached to this ordinance as Attachment 1, with such amendments

1 and modifications that the Mayor determines necessary and convenient to carry out the purposes
2 of this ordinance.

3 Section 31. The General Fund shall receive all revenues to the City agreed upon under the
4 Memorandum of Understanding. The City Council anticipates that proposed appropriations for
5 revenues to the City agreed upon under the Memorandum of Understanding will support
6 activation and improvements in neighborhood business areas citywide.

7 Section 32. **Severability.** The provisions of this ordinance are declared to be separate and
8 severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of
9 this ordinance, or the invalidity of its application to any person or circumstance, does not affect
10 the validity of the remainder of this ordinance or the validity of its application to other persons or
11 circumstances.

12 Section 33. **Section titles.** Section titles are for convenient reference only and do not
13 modify or limit the text of a section.

Section 34. This ordinance shall take effect as provided by Seattle Municipal Code
Sections 1.04.020 and 1.04.070.

Passed by the City Council the 24th day of June, 2025,
and signed by me in open session in authentication of its passage this 24th day of
June, 2025.



President _____ of the City Council

☒ Approved / ☐ returned unsigned / ☐ vetoed this 1st day of July, 2025.



Bruce A. Harrell, Mayor

Filed by me this 1st day of July, 2025.



Scheereen Dedman, City Clerk

(Seal)

Attachments:
Attachment 1 – Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this ____ day of _____, 2025 (the "Effective Date"), by and between the CITY OF SEATTLE, a Washington municipal corporation ("City") the DOWNTOWN SEATTLE ASSOCIATION, a Washington non-profit organization ("DSA").

RECITALS

WHEREAS, DSA is a 501(c)(4) non-profit membership organization duly incorporated and registered to do business in Washington whose primary area of concern is the downtown area defined as the Metropolitan Improvement District ("MID"); and

WHEREAS, DSA exists to promote, advance and stimulate civic, business, commercial and residential interests and general welfare in the downtown area and adjoining areas; to acquaint and inform the public as to its objectives and to stimulate public opinion and reaction to these ends by providing information and other civic educational, commercial, industrial, social and public features as will foster, encourage and stimulate these purposes; to encourage, foster and stimulate commerce, trade, finance and professional interests and encourage, promote and stimulate change and advances for the general improvement and welfare of the downtown area and adjoining areas; and

WHEREAS, City and DSA are both interested in the potential benefit to the public that will result from the deployment of interactive media kiosk ("Kiosks"), technology consisting of hardware installed in public areas and related software that together provide static and digital content such as wayfinding, public service and safety announcements and commercial advertising, along with communication technology such as WIFI radio and emergency service calling; and

WHEREAS, DSA has determined that Kiosks can be used in a variety of ways to enhance City communication, commerce, entertainment, educational and civic affairs and that their installation, deployment, and operation in selected parts of the City will benefit the City as a whole and has actively engaged with vendors of Kiosks to better understand how the use of such technology will meet the needs of Seattle's downtown residents, visitors, and tourists; and

WHEREAS, the City and DSA believe that Kiosks will play a role in the revitalization of the downtown core, as well as in other commercial areas across the City; and

WHEREAS, the City will host six games of the FIFA World Cup in summer 2026; and

WHEREAS, the City and DSA have determined that Kiosks will play a valuable role in helping the projected hundreds of thousands of visitors during the FIFA World Cup with wayfinding, information, and other services; and

WHEREAS, the City and DSA intend that Kiosks will further the City's interest in equity by providing free Wi-Fi hubs throughout the downtown core benefiting those who may not be able to afford such services currently; and

WHEREAS, the City and DSA intend that Kiosks will also serve a public safety function by providing a 911 call function to allow community members the ability to seek police, fire, and emergency medical help; and

WHEREAS, the City and DSA jointly intend for revenues obtained via Kiosks to be dedicated to services that improve public safety, including providing a more welcoming environment for pedestrians, workers, residents, and tourists; and

WHEREAS, Ratepayer Advisory Boards (“Boards”) for each of the City Business Improvement Areas (“BIAs”) have submitted a letter indicating support for installing one or more Kiosks in its individual area of concern; and

WHEREAS, DSA may address issues outside the downtown area where they may affect the businesses and residents within downtown; and

WHEREAS, DSA has applied for a programmatic term permit to allow the Kiosks to be placed in the public right-of-way and the Seattle City Council passed Ordinance XXXXXX authorizing this use of the public right-of-way;

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

1. Incorporation of Background Information.

The Recitals, and all definitions set out therein, are hereby incorporated and made a part of this MOU.

2. Collaboration of Parties.

The parties agree to work collaboratively, as outlined in this MOU, to advance the interests of both parties in matters relating to the deployment and operation of Kiosks in Seattle.

3. Term.

The “Operational Date” shall mean the date that is the earlier of: (a) the date upon which the thirtieth (30th) Kiosk has been installed and is operational (here meaning capable of displaying content); and (b) the date that is eighteen (18) months from the Effective Date of this agreement.

The term of this MOU, and the rights and obligations of the parties set forth herein, shall begin on the Effective Date and continue for an initial term ending on the fifteenth anniversary of the Operational Date (the “Initial Term”) or as otherwise established by Ordinance XXXXXX. If Ordinance XXXXXX establishes a different term than this MOU, the term established by Ordinance XXXXXX shall control. The Initial Term may be renewed pursuant to term permit Ordinance XXXXXX and SMC 15.65.071.

The MOU automatically expires unless DSA requests an extension the permission granted under term permit Ordinance XXXXXX.

4. Selection of Kiosks and Vendor Management

DSA shall be solely responsible for Kiosk siting, installation, operations, maintenance, and removal pursuant to this MOU consistent with Ordinance XXXXXX and the SDOT Permits (defined in Section 5) and subject to approval by the City under Sections 5 and 6 of this MOU. To carry out this responsibility, DSA will select, contract with, and manage the vendor or vendors that will install, operate and maintain Kiosks (individually, each vendor is a “Kiosk Vendor”). DSA may delegate via contract certain operational and management duties to the Kiosk Vendor. Any such delegation will not limit DSA’s responsibility to oversee Kiosk siting, operations and management, waive or assign any DSA duties under this MOU, or serve as a novation of this MOU.

5. Installation and Operations of Kiosks

- a. **Early Conceptual Plan Submittal.** At least thirty days prior to applying for the installation of any Device, DSA will provide to the Mayor’s office a high-level conceptual plan showing possible locations that are being considered for the Devices. The Mayor’s office or its designee is encouraged, but not required, to provide comment on the conceptual plan if there are any concerns. Such early review is intended to be high-level, and non-binding. Such review shall not substitute for SDOT’s subsequent regulatory permit review. The Mayor’s office shall conduct its screening review of the proposed locations within thirty (30) days following receipt thereof. If the Mayor’s office does not object to the proposed Device locations within such 30-day period, DSA can proceed to the regulatory permit review for the proposed Device locations
- b. **Permitting.** DSA is responsible for obtaining all necessary permit or permits (“SDOT Permits”) from the Seattle Department of Transportation (“SDOT”), and any other City departments. Prior to installing any Kiosks, SDOT and other City departments will review and decide whether or not to grant in its sole regulatory discretion. If and when granted, DSA and Kiosk Vendor must comply with SDOT Permits’ and other City departments requirements and restrictions. Failure to comply with SDOT Permits’ and other City departments requirements, including requirements to indemnify the City and maintain specific insurance, will be a default under this MOU. If, after DSA provides all information requested by SDOT and other City departments and complies with all other SDOT and other City departments requests, SDOT or another City department declines to issue an SDOT Permit or other City department’s permits for any Kiosk or Kiosks, DSA is excused from the obligation to install such Kiosk(s). The City shall have no liability under this MOA, and it shall not be deemed a breach of this contract if SDOT or another City department in its regulatory capacity declines to issue an SDOT Permit, or other City permit or take any other regulatory action requested by DSA or contemplated by this MOU.

- c. **City Approval of Plan and Schedule.** DSA is responsible for creating installation plans, including Kiosk location, schedule for installation, and operational parameters. DSA will provide these plans to SDOT for review. In its proprietary capacity, the City's Representative will review these plans for consistency with this MOU in its sole discretion and will not unreasonably delay, deny, or condition approval. Such review will be in addition to and not substitute for SDOT's regulatory review.
- d. **Installation Responsibilities.** DSA bears the responsibility and all costs for Kiosk installation.
- e. **Repairs and Maintenance.** DSA directly, or through its Kiosk Vendor, will maintain the Kiosks in good working order and repair consistent with Ordinance XXXXXX for the Term, including as necessary, replacing non-functioning Kiosks or components of Kiosks. DSA will notify SDOT if the Kiosk fails to comply with the requirements of Ordinance XXXXXX or otherwise poses a risk to the health or safety of the public. DSA will further protect from damage or destruction all private and public property around or near the Kiosks consistent with Ordinance XXXXXX.
- f. **Upgrade.** DSA will no less frequently than monthly, deploy or cause to be deployed updates to the operating software for the Kiosks to ensure that such software remains reasonably up to date and functional for its purposes. Additionally, DSA will, from time to time, and no less frequently than once every five (5) years, upgrade or cause to be upgraded the internal networking and computing components of each Kiosk as necessary to maintain Kiosk performance, service and amenities in accordance with the best standards of the public information kiosk industry and consistent with kiosks serving other major metropolitan areas.

6. Number of Kiosks, Deployment Area, and Phases.

- a. DSA will install Kiosks on City rights-of-way in the "Deployment Area," which will consist of a "Primary Area" and an "Extension Area" at the City's option, both defined below.
- b. DSA will install Kiosks within City rights-of-way consistent with the terms described in Ordinance XXXXXX. If there are any inconsistencies between this MOU and Ordinance XXXXXX, the Primary and Extension Areas, conditions, and obligations described in Ordinance XXXXXXXX control.
- c. Phase I: Phase I will begin on the Commencement Date. The Deployment Area will initially consist of the Seattle downtown area consisting of MID and served by DSA ("Primary Area"). DSA, directly or through its Kiosk Vendor, will install and operate thirty (30) Kiosks within the Primary Area.
- d. Phase II: Phase II is an optional extension of Kiosk deployment. The City has the option any time during the Initial Term after the Operational Date at the City's sole discretion to direct DSA to install, or cause the installation, of up to fifty (50) additional Kiosks by providing written notice to DSA setting out the number of additional Kiosks to be installed and (where applicable) the BIA(s) in which they should be installed.

- i. Up to thirty (30) additional Kiosks may be installed in the Primary Area at the City's option.
 - ii. The City may, but need not, expand the Deployment Area into neighborhoods outside the Primary Area served by the BIA Boards of Ballard, U District, SODO, and West Seattle ("Extension Area"). DSA will install no more than twenty (20) Kiosks in the Extension Area.
 - iii. After receiving written direction to proceed and prior to placement of any Kiosks in the Extension Area, DSA will coordinate with the other specified BIA Boards, and confer with the City as appropriate, to determine suitable Kiosk locations consistent with Ordinance XXXXXX and the purposes of this MOA. After coordination and consultation, DSA will provide a list of Kiosk locations to the City under Section 5(b).
- e. In no event shall DSA install a Kiosk outside the Deployment Area.
 - f. The Kiosk locations, installation criteria, and number of Kiosks deployed within the Deployment Area will be subject to Ordinance XXXXXX, SDOT Permits, and any other City permits.
- Any subsequent applications for Kiosks beyond the 80 identified in Phase 1 and Phase 2 will require a new MOU and a separate term permit ordinance.

7. Utilities.

DSA will be responsible for obtaining and bearing the costs of the installation, including all permits, trenching and conduit installation, and ongoing use of all utilities. City will cooperate in good faith with DSA and the Kiosk Vendor to identify access points to the City's electrical distribution system to power the Devices, City and DSA (or its Kiosk Vendor, as applicable) will enter into a power agreement that establishes payment and/or reimbursement rates to the City as compensation for such electrical connections.

8. Public Content on Kiosks

The Kiosks shall display public information or other content of general interest and import to the public at large, including, but not limited to, wayfinding, transportation information, public safety and health information, historical and local information and public service information ("Public Content"). Public Content that is provided to DSA by the City for purposes of display on the Kiosks shall be displayed as determined and directed by the City. The parties agree to cooperate in good faith to reach consensus on the display of Public Content.

The Kiosks shall operate in two different modes: (1) interactive mode, when a user has engaged one of the two touchscreens located on the Kiosk and (2) passive mode, in which a Kiosk is not in use and the interactive touchscreens rotate through eight spots. During interactive mode, Public Content on each screen in interactive mode will occupy a minimum of sixty-six percent (66%) of the screen area (i.e., Public Content will occupy the entire useable active area) and the content displayed in the passive mode loop will be relocated to the top one-third (1/3rd) of the screen area. During passive mode, each screen of the Kiosks will display a rotational mix of commercial, arts and Public Content. Each Kiosk rotates a total of eight spots, each with an equal duration. Public Content will be displayed during passive mode ("City Passive Content") at no cost to DSA or the City on (a) one (1) out of every eight (8) spots at all times plus (b) any unsold

inventory. City Passive Content shall equal at a minimum 25% of total passive mode screen time on an annual basis. City and DSA shall work together in good faith to program such City Passive Content.

The City may request that the Kiosks provide additional messaging for exceptional circumstances such as special events (e.g., FIFA World Cup, as further described in Section 10), exigent circumstances (e.g., earthquakes, snow), public safety emergencies, or other unforeseeable circumstances. The City agrees that it shall limit its requests for additional messaging so as to maximize the availability of paid content, and the DSA agrees that it shall not unreasonably withhold its authorization for any such City requests for additional messaging.

9. Other Content on Kiosks.

During interactive mode, Other Content on the screen in interactive mode will occupy a maximum of thirty-four percent (34%) of the screen area.

10. World Cup Operations.

Certain Kiosks will be located within a geographical area subject to the Host City Agreement between the City and FIFA regarding the 2026 World Cup (“Host City Agreement”). Notwithstanding DSA’s general rights under Sections 8 and 9, City reserves the right to instruct DSA to limit the content on Kiosks within that area or otherwise subject to the Host City Agreement to content consistent with the Host City Agreement for the time period covered by the Host City Agreement, which extends beyond the period that World Cup games are actually held in the City; provided, that City agrees, to the extent reasonably practicable, to narrowly tailor any such instruction to match the final terms of the Host City Agreement with respect to any prohibited content categories or rights of first refusal or similar bargaining rights. DSA and its Vendor are responsible for complying with the terms of the Host City Agreement, as instructed by City, at their cost. The City shall not be required to pay or otherwise compensate either DSA or Kiosk Vendor for lost revenue in complying with this section or otherwise take steps that City determines to be necessary under the Host City Agreement.

Without limiting the foregoing, DSA acknowledges and agrees that under the Host City Agreement, FIFA has rights to acquire and/or restrict advertisements that will affect Kiosk operations during the World Cup event period.

Notwithstanding anything in this Section 10 to the contrary, City agrees to (a) provide advance notice as soon as reasonably practicable to DSA and Kiosk Vendor with respect to any covered areas where Kiosks are located with respect to any rights to acquire and/or restrict advertisements that will affect Kiosk operations and (b) treat Kiosks no worse than other out-of-home media assets that may fall under the restrictions set forth in the Host City Agreement. DSA and Kiosk Vendor acknowledge that City does not control which media assets FIFA may choose to restrict under the Host City Agreement.

11. Revenue Share.

- A. DSA intends to enter agreements with Kiosk Vendors under which DSA will receive revenue based on advertising fees from Kiosks less the Kiosk Vendor's eligible expenses for installation, operations, and maintenance ("Revenue Share"). DSA anticipates that the thirty (30) Phase I Kiosks covered by this MOU in the Primary Area will generate approximately \$1.1 million in Revenue Share per year. DSA will deploy the Revenue Share under this Agreement for these purposes:
 - 1. funding public safety and capital improvements within the public realm and/or projects that benefit the general public which are located within the Primary Area or in locations otherwise approved in writing by the City; and
 - 2. remitting any portion to the City as provided in this MOU.
- B. DSA will retain 100% of the yearly Revenue Share up to \$1.1 million (the "Revenue Threshold") to be spent on public benefit purposes set out in subsection 11.A. and subject to such additional review and oversight as City may exercise over DSA and MID.
- C. All Revenue Share proceeds in excess of the Revenue Threshold for Phase I Kiosks in the Primary Area shall be paid by DSA to the City. All Revenue Share proceeds for Phase II Kiosks in the Primary Area shall be paid by DSA to the City. The City intends to deploy funds generated within the Primary Area for general City purposes to support activation and improvements in neighborhood business areas citywide.
- D. DSA will retain all Revenue Share proceeds in the Extension Area. DSA will deploy these funds within the BIA in which the Kiosks is located to carry out services consistent with the purposes of this MOU. DSA will coordinate with the Ratepayer Board(s) for the BIA in which the Kiosks to determine how to spend these funds and may, in DSA's discretion, contract directly with those Ratepayer Board(s) to carry out projects consistent with the public benefit purposes of this MOU.

12. Annual Reports.

By March 1 of each year during the term of this MOU, DSA shall provide the City a written report ("Annual Report") that includes an accounting of funds generated at the Kiosks, breakdown of funds generated by location (Primary Area versus Extension Area by BIA), Revenue Share funds received by DSA, and DSA's expenditures of Revenue Share, along with funds and accounting for the use of all funds during the prior calendar year. The Annual Report shall also include a summary of actual and projected expenditures during the past year for each element supported by Revenue Share and (separately) other DSA spending. The Annual Report shall provide a brief narrative summary describing the scope of services provided overall by the DSA and the additional services that were funded with the Revenue Share. The Annual Report is in addition to any reporting requirements specified in Ordinance XXXXXX.

13. Privacy

DSA and its Kiosk Vendor shall limit information from users that it collects or retains. In particular, DSA and its Kiosk Vendor will not:

- a. Collect nor retain any MAC or IP addresses or other identifying information from users or passersby who do not expressly provide their consent.
- b. Deploy any video camera recording functionality whatsoever.
- c. Deploy any still photography functionality whatsoever, other than a photo booth feature that, solely when activated by a user, will take a picture of the user that can be retrieved by the user via QR code, it being understood that neither DSA nor the Kiosk Vendor will retain such images for any other use and that the photo booth feature will not activate unless activated by a user.

14. Recordkeeping, Audits, Public Records Act.

DSA shall maintain and retain all records and other documents related to this MOU for a period of three years from the date of expiration of this MOU, except in cases where unresolved audit questions require retention for a longer period as determined by the City. These records shall be available at any time during normal business hours and as often as the City deems necessary. DSA shall permit the City or its designee to audit, examine and make excerpts or transcripts from such records. DSA acknowledges that the City is subject to Washington's Public Records Act RCW Chapter 42.56 ("Act") and documents related to or created pursuant to this MOU may be deemed "public records" under the Act. Upon being notified of the City of a public records request related to this MOA, DSA will make available to the City and/or requester all requested documents. If DSA believes any such requested material is not a "public record" under the Act or is otherwise non-disclosable, DSA may, at its sole expense and risk, seek an injunction in a court of competent jurisdiction barring the City from disclosing those documents or records.

15. Indemnification and Hold Harmless, Insurance.

1. Indemnification by DSA. Except as provided below, DSA agrees to indemnify, defend, and hold harmless the City, its officials, employees, agents, and representatives (collectively, the "City Indemnified Parties"), from any and all claims, actions, damages, losses, fines, costs, and expenses ("Losses") arising out of or related to DSA's activities and DSA's obligations in connection with this MOU. This indemnification will include, but not be limited to, any claims for personal injury, property damage, or other damages arising directly out of or in connection with DSA's activities and obligations for the Project.
2. Exceptions. Notwithstanding anything to the contrary in this Agreement, DSA is not obligated to indemnify, hold harmless, or defend the City Indemnified Parties against any claim (whether direct or indirect) to the extent such claim or corresponding Losses arise out of or result from the City's negligence or willful misconduct, including that of its employees.

3. **Indemnification Procedure.** The City will give DSA reasonably prompt written notice (a “Claim Notice”), as soon as practicable after the City becomes aware of any claim, of any Losses or discovery of facts on which the City intends to base a request for indemnification under this Agreement. Each Claim Notice must contain a description of the third-party claim and the nature and amount of the related Losses to the extent that the nature and amount of the Losses are known at the time. The City will furnish reasonably promptly to DSA copies of all papers and official documents received in respect of any Losses. All indemnification obligations in this Agreement are conditioned upon the City:
 - a. reasonably promptly delivering the Claim Notice and related documents under this Section 14; and
 - b. cooperating with DSA in the defense of any such claim or liability and any related settlement negotiations.
4. **Third-Party Insurance.** DSA will secure customary insurance, hold harmless, and indemnification provisions in its agreements with any third-party service providers or vendors engaged in fulfilling the obligations under this Agreement. In the event of a third-party claim that arises out of the third-party services, each Party will use good faith and reasonable efforts to enforce the applicable provisions of their contracts.
5. **No Liability to City.** No recommendations, approvals, or other actions under this MOU by the City, its elected officials, officers or employees will cause the City to bear any responsibility or liability for the design, construction or operation of the Kiosks or defects related thereto or any inadequacy or error therein or failure to comply with applicable law, ordinance, rule, or regulation. Approvals provided by the City under this MOU will not constitute an opinion or representation as to their adequacy for any purpose other than the City’s own purposes.

16. Termination, Default and Remedies.

- d. **Default.** A default which shall be a breach of the MOU shall occur if either party fails to comply with any term of this MOU and such failure is not cured within thirty (30) days after receipt of written notice from the non-breaching party of the same, or, if such failure to comply with any term of this MOU is of a nature that it cannot reasonably be cured within such thirty (30) day period, the breaching party shall have such additional time as is reasonably necessary in which to cure such failure but not to exceed sixty (60) days from the date of receipt of written notice of default.
- e. **Remedies.** If any breach of this MOU is not cured within the time period set forth in Section 15(a), above, the non-breaching party shall have the right to terminate this MOU and seek such other rights and remedies as may be available at law or in equity.

17. Force Majeure.

Neither party shall be liable to the other for any loss, damage, claim, delay or default arising during suspension of performance due to acts of God (including storm, fire, flood and earthquake), labor disturbances (including strikes, boycotts, lockouts, etc.) war, acts of terrorism, civil commotion, imposition of any future governmental law, ordinance, rule or regulation, any strike or work stoppage, or other cause beyond the control of such party; provided, however, that either party shall only be entitled to rely on this Section to the extent it uses its best efforts to resume performance under this MOU as soon as reasonably practicable after such occurrence. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen (15) calendar days) after it discovers the Force Majeure.

18. Notice.

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

19. Governing Law.

This MOU shall be governed by and construed by the laws of the State of Washington, exclusive of its conflict of law rules, and exclusive jurisdiction over any legal action arising out of or in connection with this MOU shall be in King County Superior Court.

20. Counterparts and Electronic Signatures.

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

21. Amendments

This MOU may not be amended, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver, or discharge is sought, except by mutual agreement of the parties.

22. Invalidity; Severability.

The invalidity of any one of the covenants, agreements, conditions or provisions of this MOU or any portion thereof shall not affect the remaining portions thereof or any part hereof and this MOU shall be amended to substitute a valid provision which reflects the intent of the parties as was set forth in the invalid provision.

23. No Joint Venture, Partnership, Agency.

This MOU may not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer-employee relationship between the City and DSA. Nor shall any provision be construed to give the City custody of any information or content that is in the custody of DSA or any other person or entity. Nor shall provision be construed to give the City a right to possess such information except as may be required by Washington's Public Records Act, RCW Chapter 42.56.

24. No Waiver.

The failure of any party to exercise any right hereunder, or to insist upon strict compliance by the other party, shall not constitute a waiver of either party's right to demand strict compliance with the terms and conditions of this MOU.

25. Survival.

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

26. Section Headings.

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

27. Usage of Terms.

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

28. Anti-Discrimination.

In providing services hereunder, DSA shall not discriminate on the basis of race, color, religion, sexual orientation, gender, ancestry, national origin, age, physical or mental capability, or marital status.

29. No Third-Party Beneficiaries.

This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided herein, no other person will be a direct or indirect beneficiary of or will have any direct or indirect case of action or claim in connection with this Agreement.

30. Term Permit Ordinance.

The Seattle City Council passed Ordinance XXXXXX authorizing a programmatic term permit for DSA to locate Kiosks in the public right-of-way. Ordinance XXXXXX details the terms, conditions, and obligations that DSA must abide by for this use. If there are any inconsistencies between this MOU and Ordinance XXXXXX, the terms, conditions, and obligations in Ordinance XXXXXX prevail.