

## AGREEMENT

This Agreement (“Agreement”) is entered into as the effective date of the final execution below (“Effective Date”) by and between the City of Aurora (“Aurora” or “City”) located at 44 E Downer Place, Aurora, IL 60505 and Smart City Media, LLC of 54 West 40th St., New York, New York 10018 (“SCM”).

### RECITALS

- (i) WHEREAS, SCM’s mission is to help make cities smarter, safer and better connected by using its proprietary CityPost smart media platform to deliver helpful location-based information through a public-facing network powered by accessible Wi-Fi, curated “Smart” outdoor interactive screens (“Digital Kiosks”), mobile beacons and an easy-to-use mobile application; This platform is a union between the strategic resources in Aurora and the citizens, who act both as inputs and real users and drivers of the platform
- (ii) WHEREAS, Aurora wishes to implement a program of up to eight (8) Digital Outdoor Kiosks and affiliated infrastructure (the “Program”);
- (iii) WHEREAS, the parties acknowledge that SCM’s contributions will add value to Aurora and wish to commemorate their mutual understanding relative to the terms and conditions on which SCM will contribute to and be compensated for its services to the collaboration agreement.
- (iv) NOW, THEREFORE, FOR GOOD AND ADEQUATE CONSIDERATION, the receipt of which is hereby acknowledged, Aurora and SCM agree as follows:

### ARTICLE I-SCM RESPONSIBILITIES

1.1. SCM will provide, through its CityPost brand, a digital smart media channel that broadcasts “Aurora” focused content to Digital Kiosks, CityPost’s mobile application and SCM Wi-Fi hotspots. Aurora hereby acknowledges and agrees that, under the scope of this Agreement, it will not pursue or engage with any competing digital smart media channel provider or concept comparable to the services and products provided by SCM during the term of this Agreement within 250’ of a SCM deployed kiosk so long as SCM is not in default under the terms of this Agreement.

1.2. SCM will develop partnerships and build ecosystems to provide the systems required to launch, manage and monetize a successful digital smart media channel. SCM will also augment citizen engagement by deploying mobile beacons throughout key strategic Aurora locations (both public and private, with all appropriate approvals and permissions) and will analyze data and provide Aurora with periodic reports of relevant information, oversee advertising sales and use its best efforts to expand the system’s footprint after the Program sites are launched to increase public engagement and monetization.

1.3. SCM shall provide local curation of content and advertising to ensure content and advertising are in compliance with the following provisions:

- a) Local curated content will consist of City directed content that was determined to be of interest to residents and visitors.
- b) Content containing any of the following characteristics shall not be permitted:
  - Obscene or indecent;

- Discriminatory;
  - Religious;
  - Political content promoting or opposing a political party; the election of any candidate or group of candidates for federal, state or local government offices; and initiatives, referendums and other ballot measures.
- c) Advertising that depicts or promotes the following products, services or other materials shall not be permitted:
- Tobacco products;
  - Firearms, including advertising promoting or soliciting the sale, rental, distribution or availability of firearms or firearms-related products;
  - Adult entertainment or establishments including, but not limited to, adult book or video stores, adult internet sites, adult telephone services, and adult escort services;
  - False or misleading material that the advertiser knows or should know is false, fraudulent, misleading, deceptive, or would constitute a tort of defamation or invasion of privacy;
  - Illegal activity including any advertising that promotes any activity or product that is illegal under federal, state or local law; or any advertising that contains material that is an infringement of copyright, trademark, or is otherwise unlawful or illegal;
  - Profanity and violence, including advertising that contains any profane language or portrays images or descriptions of graphic violence, or intentional infliction of pain or violent action towards or upon a person or animal.

For purposes of this Section 1.3, the term “advertising” or “content” shall mean any printed matter, audio or electronic display including words, pictures, photographs, symbols, graphics or visual images, in connection with the promotion or solicitation of sale or use of a product or services.

Aurora shall reserve the right to review all requests for advertisement on the kiosks and to reject any advertisement not in conformity with the policy outlined herein above.

1.4. SCM’s responsibilities with respect to hardware required for its services are as follows:

- a) To facilitate involvement of, or serve as, the funding party, which will retain title to all hardware utilized in creating and maintaining the digital smart media channel (defined as kiosk, mobile app and in the future a web site).
- b) To manage third party development and delivery of hardware.
- c) To deploy hardware that contains graphic skins that can be community-specific in design and color. All kiosk wraps will be approved by Aurora prior to fabrication or installation.

- d) To install and deploy up to eight (8) outdoor kiosk units in locations that are mutually agreed upon in Aurora. If desired, SCM will work with Aurora in planning and implementing future deployment phases and to help to define expansion opportunities within Aurora. Installations will begin approximately twenty (20) weeks following the contract signing by both parties as long as there are no extensive delays in obtaining final permits (longer than four (4) weeks).
- e) To comply with all permitting rules, regulations and insurance requirements of Aurora and/or other third parties for the placement of objects in the public right-of-way.
- f) To provide public Wi-Fi at kiosk locations where technically feasible.
- g) To support IOT (“Internet of Things”) sensor deployments to assist and supplement Aurora Smart City initiatives.
- h) To provide appropriate insurance coverage pursuant to paragraph 8.7.
- i) To support, fund and manage local third party maintenance companies to clean and repair kiosks on a scheduled basis.
- j) To replace any screens or components that has been damaged and is no longer operational.
- k) To deploy mobile beacons in key strategic locations with broadcasts that complies with Aurora’s standards.

1.5. SCM’s responsibilities with respect to the development and maintenance of Smart Media (software and content) are as follows:

- a) To develop and manage all content on the kiosk screen, and manage a local media/content /creative design operation for this purpose (kiosks shall be interactive, and include unique content, and not just advertising). SCM shall allocate on each kiosk approximately 60 percent of the total screen time available in any given 24 hour period to city and local small business content. Small independent businesses (defined as twenty five (25) employees or less) will get equivalent access to the daytime and evening time slots that are most viewed by the public as larger businesses.
- b) To develop and manage the CityPost mobile application.
- c) To store all data collected from digital kiosks and mobile applications and provide said data to the City of Aurora as a co-owner of this data (including, but not limited to, metrics, reports and video streams), and to provide all data collected by hardware, software and mobile applications to Aurora at no cost and on a regular basis (collectively, such data shall be referred to as the “Collected Data”). SCM hereby certifies that it will not (and it will cause its employees, agents, sub-contractors and other third party used in connection with the Program not to), utilize or monetize any such Collected Data without the express prior written consent of Aurora.
- d) To work with media sales teams to sell advertising inventory to corporate sponsors as well as local businesses and service providers.

- e) To maintain all software associated with the digital smart media channel platform, retaining ownership of all software that has been specifically developed and designed for its broadcasts in Aurora.
- f) To provide public safety communications including amber alerts.
- g) To provide ADA-approved accessibility, and interactive multilingual content for tourists and residents in over a dozen languages.
- h) As part of the master hardware listing referenced in Section 1.4 above, SCM shall identify whether each software or mobile application component is capable of collecting Personally Identifiable Information (“PII”) on any user. SCM shall limit the collection of PII to the maximum extent possible while still achieving the kiosks’ intended operation. Any PII that is collected as part of normal operation shall be discarded at the earliest possible date following its original intended use. SCM hereby certifies that it will not (and it will cause its employees, agents, subcontractors and other third party used in connection with the Program not to), utilize or monetize any such PII without the express prior written consent of Aurora.
- i) To immediately notify Aurora of any unauthorized breach or disclosure of Collected Data and/or PII by SCM, its employees, agents, sub-contractors or other third parties used in connection with the Program and to work with Aurora to diminish the impact of such disclosure and/or remedy the situation.
- j) To provide industry-standard cyber security protections, firewalls, Anti-Virus, remote monitoring, and “remote shutdown” access of the kiosks.

1.6. SCM may use sub-contractors and other third parties under the Agreement to perform SCM’s services under this Agreement provided, however, that SCM shall be fully liable for any and all actions of such sub-contractors and third parties and, provided, further, that SCM shall cause its sub-contractors and third parties to comply with all the terms, conditions and obligations of SCM under this Agreement. SCM shall notify Aurora of all sub-contractors or third parties used in providing SCM services under this Agreement. Aurora shall, at its discretion, have the right to object to or request the removal of, any sub-contractor or third party providing SCM services under the Agreement by providing notice to SCM and SCM hereby agrees to abide by Aurora’s decision.

## **ARTICLE II-AURORA RESPONSIBILITIES**

2.1. Aurora’s responsibilities with respect to installation and maintenance of a digital smart media channel that broadcasts Aurora-focused content are as follows:

- a) To assist SCM in identifying and securing all kiosk placement locations and to use its best efforts in working with SCM and Aurora for all required permits or licenses for the placement of objects in the public right-of way.
- b) To provide advice to SCM on obtaining power and internet connectivity for the Program, which agreements and cost of power consumption used, electrical and network connectivity, and all other costs arising from the Program shall be solely the responsibility of SCM.
- c) To provide SCM input on acquiring network corporate sponsorships.

- d) To provide SCM access to data that is deemed to be “open data” (i.e., data that is owned by Aurora or data that is publicly available by third party organizations) for use in connection with the Program. Examples could include 311, community services, demographic information, etc.
- e) To provide SCM any needed access to additional digital information Aurora deems of value for use with the Program that may not initially be considered “open data”.
- f) To provide SCM marketing and communication advice and support for the Program.
- g) To appoint a primary contact person at Aurora for questions and/or issues related to the Program; provided, however, that any time and/or services provided by Aurora or its employees under this Agreement shall be at the sole and exclusive discretion of Aurora.
- h) To help in coordinating efforts with other related private or public groups or interested parties (to be defined by Aurora).
- i) To support overall CityPost expansion plans within the Aurora metro area, with the understanding that any such expansion would require a new agreement or amendment to this Agreement.
- j) Should Aurora or any other governmental jurisdiction require a Digital Kiosk to be moved from the right-of-way location for construction or some unforeseen circumstance for a temporary period (defined as four (4) weeks or less), Aurora shall inform SCM and SCM shall have the Digital Kiosk removed within the time frame provided by Aurora, stored temporarily and reinstalled. Should, however, the need to modify and/or change location(s) be deemed to be longer than four (4) weeks, Aurora will collaborate with SCM to find a replacement location that is comparable in terms of pedestrian traffic.
- k) SCM and Aurora hereby acknowledge and agree that Aurora is not required to provide any financial resources to the Program. SCM shall be liable for all costs and expense associated with the Program. Any site improvements (conduits, handholds, cabling, etc.) made by the City in preparation for the install of the kiosks remain the property of the City and shall not be considered in the reduction of net revenues owed to the City under the Agreement.

### **ARTICLE III-ADVERTISING REVENUE**

3.1. SCM will provide Aurora or related entities designated by Aurora with twenty-five percent (25%) of the “net operating revenue” derived from the kiosk network throughout the term of this Agreement including any extensions associated with this agreement. Revenue share payments to the City of Aurora will commence six (6) months from the date of a minimum five (5) kiosk installations. For purposes of this provision, the term “net operating revenue” shall be arrived at after deducting media sales commissions from the gross revenue amount and operating expenses which include cost of hardware purchase, installation, maintenance, including refresh cost, connectivity and insurance. SCM is required to provide detailed accounting with documentation of all maintenance and repair costs. Each quarter following the “turn up” of the first SCM kiosk and regardless of whether or not a payment is made to the City, SCM shall provide sufficient financial documentation which clearly details the income and operating expenses related to advertising revenue and overall system maintenance. Aurora may request and SCM shall provide such

additional information as reasonable necessary to confirm the accuracy of the payment or the expenses. Payments shall be made no later than thirty (30) days following the end of each calendar quarter.

Parties agree that SCM will develop pricing models for small independent businesses and present to the city for final approvals. Pricing for large businesses or national companies will be determined by SCM. It is understood that as the kiosk program progresses there is the potential for price increases and additional advertising campaign options beyond initial program offerings.

a) Parties agree to the following initial pricing for small independent businesses:

Campaign Length	# Screens	# of Ads Shown	Cost
12 Weeks	16	181,440	\$ 95 per week
8 Weeks	16	120,960	\$110 per week
4 Weeks	16	60,480	\$125 per week

\*approximately \$0.08 cents per showing

b) Any further adjustments to pricing for small independent businesses shall be mutually agreed to by the parties.

#### ARTICLE IV-TERM AND TERMINATION

4.1. This Agreement shall commence as of the date of the final execution below, which shall be considered the Effective Date, and, unless terminated pursuant to the terms of this Agreement, shall continue on for five (5) years (the “Initial Term”). Thereafter, SCM may elect to renew this agreement for an additional five (5) year term with at least ninety (90) days’ notice given to the end of the initial term, but no more than one hundred eighty (180) days. Unless otherwise terminated pursuant to the terms of this MoU, SCM and the City may mutually agree to renew this Agreement for additional terms as the parties decide.

4.2. After the Effective Date and subject to Section 4.4, this Agreement may be terminated (i) by written notice of either party (the “Non-Breaching Party”), but only if the other party breaches any provision of this Agreement and fails to cure such breach within sixty (60) days following delivery of written notice from the Non-Breaching Party specifying the breach in sufficient detail to permit the Breaching Party to cure such breach. For purposes for this Section 4.2, SCM shall not be considered to be in breach of this Agreement in the event of a Force Majeure (as defined in Section 4.4).

4.3. Upon termination of this Agreement for breach: (i) SCM shall be required to remove all hardware and equipment within thirty (30) days of such termination and return sites to their pre-installation state to the extent requested by the City, (ii) SCM shall provide Aurora a final accounting of all advertising sales and expenses up to the date of termination; (iii) SCM shall pay Aurora any amounts due for advertising revenue under Section 3.1 up to the date of the termination; (iv) SCM shall provide Aurora any and all copies of Collected Data up through the date of termination; (v) the provisions set forth with respect to the use of PII and Collected Data shall survive and remain in full force and effect after the termination of this Agreement.

Upon termination of this contract for any reason including the end of the five year term and any extensions, prior to the removal of any kiosks from their installed locations, the City shall be presented in writing with

drawings and other relevant documentation of any infrastructure installed in the field for supporting the kiosk and the City shall respond in writing with an indication of any infrastructure it requires SCM leave intact for the City's future use. Removal of the kiosks at the end of the term shall be at Smart City Media's expense.

4.4. In no event shall SCM be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, or governmental involvement or regulations that prevent SCM from fully deploying an operation system within twelve (12) month from the date of this Agreement (each, a "Force Majeure"); it being understood that SCM shall use reasonable efforts which are consistent with accepted practices in its industry to resume performance as soon as practicable under the circumstances.

#### **ARTICLE V-ANNUAL AND PERIODIC REVIEWS**

5.1. On or before March 1 of each calendar year, SCM shall provide to Aurora financial reports for the immediate prior calendar year, as well as metric reports monitoring the usage and efficacy of the Program. SCM shall allocate resources and will be available to Aurora for reporting to the Aurora Board of Directors regarding the Program's finances and performance for the immediate prior calendar year.

#### **ARTICLE VI-GOVERNANCE**

6.1. In connection with the direct performance of this Agreement, SCM shall ensure that personnel actions with reference to such matters as recruiting, hiring, compensation, benefits, transfers, promotions, layoffs, recall from layoffs, training, education, and social and recreation programs for all SCM employees and sub-contractors shall be administered without regard to race, sex, sexual orientation and gender identity, marital status, religion, age 40 and over, color, national origin, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker. In this regard, SCM shall comply with all applicable laws prohibiting discrimination based on race, sex, sexual orientation and gender identity, marital status, religion, age 40 and over, color, race, national origin, disability or because the individual is a smoker or nonsmoker.

#### **ARTICLE VII-REPRESENTATION OF PARTIES**

Each party hereby represents and warrants to the other party that:

7.1. The execution, delivery and performance by such party of this Agreement does not and will not breach or violate any of the provisions of, and will not result in default by such party under, any agreement, instrument or document to which such party is a party or by which it is bound;

7.2. The execution, delivery and performance by such party of this Agreement:

- a) has been duly authorized by all requisite corporate actions (if applicable),
- b) does not and will not violate or conflict with the articles of incorporation, by-laws (as applicable) or other organizational documents (if applicable) of such party, or any judgement, degree, order, law or other governmental requirement binding on such party, and

- c) does not and will not breach or violate any of the provisions of, and will not result in default by such party under, any other agreement, instrument or document to which it is a party or by which it is bound;
3. No notice to consent or approval of any governmental body or authority or other third-party of any kind whatsoever is required in connection with the execution, delivery or performance by such party of this Agreement, with the exception of any approvals required by Aurora and other third-parties at the Train Station locations such as Burlington Northern & Santa Fe (BNSF) and Metra;
  4. This Agreement is a legal, valid and binding obligations of such party, enforceable against such party in accordance with the terms hereof and thereof, except as enforceability may be limited by bankruptcy or other similar laws affecting the rights of creditors generally or by general principles of equity;
  5. There is no pending or threatened action or proceeding against or affecting such party before any court, governmental agency, or arbiter which may, in any case or in the aggregate, materially and adversely affect the ability of such party to perform its obligations under this Agreement; and
  6. That SCM is an independent Contractor and is not to be considered an employee or affiliate of Aurora, or assume any right, privilege or duties of an employee or affiliated entity.

#### **ARTICLE VIII-GENERAL TERMS AND CONDITIONS**

8.1. The parties agree that if any clause or provision of this Agreement is declared to be invalid or unenforceable by a final decision of any court of competent jurisdiction, it is the intent of the parties that the remainder of the Agreement shall not be affected thereby. The parties shall amend this Agreement to replace such invalid or unenforceable clause or provision with a legal, valid and enforceable provision to affect the purposes of this Agreement.

8.2. SCM shall indemnify, hold harmless, and defend Aurora Government, its elected and appointed officials, officers, directors, managers, employees, agents, affiliates, successors and permittee assigns in interest from all claims, damages, losses and expenses including attorney's fees, arising out of or resulting, directly or indirectly, from SMC's (or SCM's sub-contractors or other third parties used to provide SCM services under this Agreement) performance or breach of the contract provided that such claim, damage, loss, or expense is: (i) attributable to personal injury, body injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (ii) not caused by the negligent act or omission or willful misconduct of Aurora or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

8.3. Notwithstanding anything to the contrary contained in this Agreement, no director, officer or employee of Aurora shall have any personal obligation or liability hereunder, and SCM shall not seek to assert any claim, or enforce any of its rights hereunder, against any Aurora director, officer or employee.

8.4. This Agreement supersedes all prior understandings and agreements of the parties and contains the entire agreement of the parties. This Agreement may not be amended except by a written amendment signed by both parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

8.5. This Agreement does not and shall not be deemed or construed to confer upon or grant to any third party or parties the right to claim damages or bring any suit, action or other proceeding against either Aurora or SCM because of any breach in this Agreement or because of any of the terms, covenants, agreements and conditions contained in this Agreement.

8.6. Each party covenants and agrees that it will not assign or transfer its rights, nor delegate any duties under this Agreement, either in whole or in part, without first obtaining the written consent of the other party, which shall not be reasonably withheld. Any attempt by either party to assign or transfer its rights or delegate its duties without such prior written consent shall not be binding on the other party and shall, at the option of the other party, immediately and automatically terminate this Agreement and all rights of the other party hereunder.

8.7. SCM shall maintain throughout the Term, and produce evidence upon execution of this Agreement and on an annual basis, of insurance coverage not less than the following:

- a) Workers' Compensation at the statutory requirement set by the State of Illinois;
- b) Disability Coverage at the statutory requirement set by the State of Illinois;
- c) General Liability/Property Damage at \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate bodily and property damage;
- d) Hired and non-owned Automobile liability at \$2,000,000.00 combined single-limit policy;
- e) Cyber Liability Insurance at \$1,000,000.00 for any one claim and in the aggregate, to include:
  - Security & Privacy Liability
  - Multimedia & Intellectual Property Liability
  - Technology Services
  - Miscellaneous Professional Services
  - Network Interruption and Recovery
  - Event Support Expenses
  - Privacy Regulation Defense & Penalties
  - Network Extortion
  - Electronic Theft, Computer Fraud & Telecommunications Fraud
  - Social Engineering Fraud
  - Reputational Damage
  - Notification Expense
  - PCI Fines; and
- f) Insurance on SCM's hardware and assets, as set forth in Section 1.4(i). Each such policy shall name Aurora, and each of their respective elected and appointed officials, officers, directors, managers, employees, agents, affiliates, successors and permitted assigns (collectively, the "Indemnified Party") as additional insured parties for general liability, property damage, automobile liability and cyber liability, and shall state that all such coverage shall be primary to any other insurance coverage held by the Indemnified Party. SCM will provide Aurora a Certificate of Insurance ("COI") naming each Indemnified Party separately within thirty (30) days of execution of this Agreement and SCM will provide for Aurora to receive sixty (60) days' notice in the event of termination, cancellation, or non-renewal of such policies.

8.8. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. All claims, actions, proceedings, and lawsuits brought in connection with, arising out of, related to, or seeking enforcement of this Agreement shall be brought in before a court of local jurisdiction in Aurora, Illinois.

8.9. This Agreement shall be binding on and inure to the benefit of the respective parties hereto and their successors and permitted assigns.

8.10. All acknowledgements, representations and warranties shall survive the execution of this Agreement.

8.11. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confirming or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

8.12. This Agreement may be executed in one or more counterparts, and all such counterparts shall constitute one single agreement, binding on the parties hereto. Facsimile or Email copies of this Agreement and the signatures hereto may be used with the same force and effect of the original. Electronic PDF file copies of this Agreement shall be enforceable as originals.

Signatures as follows:

**City of Aurora, Illinois**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: **Mayor**

**Smart City Media, LLC**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_