

**NORTH CAROLINA
GLOBAL ENCROACHMENT AGREEMENT
GUILFORD COUNTY**

THIS AGREEMENT made and entered into this the 31st day of May, 2018, by and between the **CITY OF GREENSBORO**, a municipal corporation of the State of North Carolina as “Grantor” and **SMART CITY MEDIA, LLC** of 54 West 40th Street, New York, NY as “Grantee,” together the “Party” or “Parties”.

WITNESSETH:

THAT WHEREAS, the Grantor owns certain street rights-of-way located in Greensboro, North Carolina, and Grantee has requested permission to encroach upon the rights-of-way in order to install smart media platform(s) (hereinafter referred to as “kiosk” or “encroachment”);

WHEREAS, the approximate measurements of the kiosk(s) is 1’ foot in depth and 8’7” in height and 3’ feet in width and is set forth in detail on the attached drawing as Exhibit A;

WHEREAS, the kiosks will use proprietary smart media platforms to deliver location-based information through a public-facing network powered by interaction Smart Signs, mobile beacons, and a mobile application;

WHEREAS, Grantee agrees to maintain the encroachment in a safe condition and agrees to hold the City of Greensboro harmless from any and all loss to persons or property resulting from the location of the encroachment in the rights-of-way;

WHEREAS, Grantee shall pay Grantor twenty-five percent (25%) of the net advertising revenue derived from the operation of the kiosks annually throughout the term of this Agreement;

WHEREAS, Grantee shall allow Grantor to provide input and/or content of Grantor’s choosing free of charge;

WHEREAS, Grantor through City Charter 4.128 (c) permits encroachment on City sidewalks if, in the opinion of the Council, such encroachment will neither cause a public nuisance nor unreasonably interfere with the use of the streets and sidewalks by the public in compliance with applicable sign ordinances;

NOW, THEREFORE, IT IS AGREED that the Grantor hereby grants to the Grantee the limited right and privilege to encroach on the rights-of-way of the Grantor within the above defined limits upon the following conditions:

1. The Grantee guarantees that the encroachment(s) will neither cause a public nuisance nor unreasonably interfere with the use of the public streets and private streets and sidewalks by the public.
2. The encroachment(s) shall occupy space in Grantor's right-of-way and shall have the dimensions as set out in Exhibit A attached hereto.
3. Grantee agrees to the following:
 - a. The funding, acquisition, maintenance, and operation of the encroachment(s) shall be the sole responsibility of Grantee.
 - b. Grantee will retain title to all hardware and the use of any locations utilized in creating and maintaining the digital smart media channel.
 - c. To install and deploy a minimum of ten (10) kiosk units in select well-trafficked outdoor locations as mutually agreed upon by the Grantor and the Grantee.
 - d. Grantee shall place kiosks in Grantor's right-of-way and if permission granted place kiosks on public property.
 - e. Grantee agrees that this is a nonexclusive encroachment agreement although Grantee shall maintain an exclusive right regarding the placement of digital kiosk within a 300 foot radius of each kiosk placement.
 - f. Grantee shall provide free public Wi-Fi at all kiosk locations that contains a connectivity infrastructure adequate to support a public Wi-Fi channel
 - g. To allow, where appropriate, placement of small cell technology on Grantee's hardware and to follow any laws or regulations (such as obtaining a small cell franchise agreement) for management of that program.
 - h. Grantee shall replace any screen that has been damaged or is no longer operational within ten (10) calendar days and shall maintain a minimum of one (1) unit in storage for each SKU.
 - i. Grantee shall develop and manage all content on the digital kiosk screen and manage a local media/content/creative design operation for this purpose.
 - j. Grantee will 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 the Grantors right-of-way.
 - k. Grantee shall deploy mobile beacon and shall obtain approvals from all interested parties before any such deployment. A beacon, through the use of low energy Bluetooth technology, allows mobile apps (running on iOS and Android devices) to understand their position on a micro-local scale, and deliver hyper-contextual content to users based on location.
 - l. Grantee shall allow Grantor to provide content free of charge.
 - m. Grantee will analyze data and provide Grantor with periodic reports at least quarterly each calendar year of relevant information.
 - n. Grantee shall pay Grantor twenty-five percent (25%) of the net advertising revenue derived from the operation of the kiosks annually throughout the term of this Agreement. Net advertising revenue shall be determined after deducting the cost of installation, hardware insurance, maintenance, internet connectivity, power of the kiosks, and advertising sales commissions.

4. Grantor agrees to the following:
 - a. To assist Grantee in identifying and securing all kiosk placement locations and to use its best efforts in working with the Grantee and Grantor for all required permits or licenses for the placement of objects in the public right-of-way.
 - b. To provide advice to Grantee on obtaining power and fiber connectivity, 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 the Grantee.
 - c. To appoint a primary contact person for questions and/or issues as it relates to the Program.
 - d. Should Grantor 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 for (4) weeks or less), Grantor shall inform Grantee and Grantee shall, at Grantee's sole expense, have the digital kiosk removed within the time frame provided by the Grantor, stored temporarily and reinstalled. Should, however, the need to modify and/or change location(s) be deemed to be longer than four (4) weeks, Grantor will collaborate with Grantee to find a replacement location that is comparable in terms of pedestrian traffic. If any public improvement project is initiated by Grantor, then kiosks will be relocated at Grantee's expense.
5. Term and Termination

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 ten (10) years (the "Initial Term"). Unless otherwise terminated pursuant to the terms of the Agreement, the Grantee may elect to renew this Agreement for ten (10) additional one (1) year terms (each a "Renewal Term", and together with the Initial Term, each a "Term" and collectively the "Term") by delivering a written notice of such election at least ninety days prior to the end of the then applicable Term. The Grantor, after the Effective Date, may terminate the Agreement (i) by written notice of either party (the "Non-Breaching" party) but only if the other party breaches any provisions of the 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, (ii) by written notice to Grantee by the Grantor if the License is not executed by the Grantor, (iii) unless otherwise agreed to by Grantee and Grantor, by written notice to Grantee if the program is not fully operational within six (6) months from the date of the License Agreement. For purposes for this Section 5b, Grantee shall not be considered to be in breach of this Agreement in the event of a Force Majeure.
6. On conclusion of all activities, Grantee shall restore the Property to the original condition it was in prior to any activities conducted by the Grantee.
7. Grantee shall furnish a performance bond to Grantor of \$50,000 starting on the effective date of this Encroachment and for the life of the Encroachment, to guarantee the faithful performance of all the Grantee's obligations under the Encroachment Agreement.

8. The Grantee hereby agrees to indemnify and save harmless the Grantor from any and all damages and claims for damage that may arise by reason of the installation and location of the encroachment(s) and at the request of the Grantor, without any cost to the Grantor, shall make any necessary and required design changes if such changes are required, including, but not limited to, the removal of the encroachments.
9. The Grantee hereby agrees to maintain the encroachment(s) in a safe condition so that it will not cause a public nuisance nor unreasonable interfere with the sidewalk until such time as the encroachment(s) is removed at Grantee's expense either at the request of the Grantor or otherwise as a decision of the Grantee as specified in Chapter 4.128 (c) of the Greensboro Code of Ordinances.
10. The Grantee, within thirty (30) days from the execution of this Agreement, shall make arrangements to begin the manufacturing of the encroachment(s) and shall take the necessary and reasonable precautions to protect the public from danger during the building and installing of the encroachment(s) in the rights-of-way.
11. The Grantee shall maintain \$1,000,000.00 in liability insurance. Grantee hereby agrees to indemnify and save harmless the Grantor from any and all damages and claims for damage that may arise by reason of the encroachment in the rights-of-way, and shall remove any or all of the encroachment(s) at the request of the Grantor, without any cost to the Grantor. Grantee further assures Grantor that it currently has liability insurance in the minimum amount of \$1,000,000.00 to cover all risks involved with this authorization and that such insurance will remain in full force and effect during the activities hereby authorized.
12. The Grantee, during the building and installing of the encroachment(s), for themselves, their assignees and successors in interest, agree that with regard to the work performed during the building and installation of the encroachment over the right of way of the Grantor, shall not discriminate on the grounds of race, religion, color, national origin, age, sex or handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment.
13. The Grantee shall pull all necessary permits from the City of Greensboro.
14. Off-Premise Sign Restriction. Grantee shall not permit a kiosk's signs, information, advertising, or content to be legible from a public street or private street per Land Development Ordinance 30-14-5.8.
 - a. Grantee shall not display any signs, information, advertising, or content on the structure of the kiosk itself, with the exception that Grantor may, in its sole discretion, permit a kiosk to display a geographic location or that the kiosk is acting as a city guide or information hub.
 - b. Grantee shall not display any signs, information, advertising, or content on the screens of the kiosk that is legible from a public or private street.
 - c. If the kiosk is determined by Grantor in its sole discretion to be an off-premise sign, the Grantee, at Grantee's expense, shall remove the kiosk from the right-of-way within thirty (30) days of notification. Grantee expressly waives any right to appeal the Grantor's determination that the kiosk is an off-premise sign subject to removal.

15. Grantee is responsible for locating any and all utilities (public and private) and structures in the encroachment area and to prevent damage to the same. If any underground or aboveground infrastructure is public or private, then Grantee shall pay for all relocations.
16. E-Verify. The Grantee certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Agreement, it will continue to comply with these requirements. The Grantee also certifies that it will require that all of their subcontractors that perform any work pursuant to this Agreement to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Violation of this section shall be deemed a material breach of this Agreement.
17. The parties agree to cooperate fully with each other and to execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to fully give effect and force to the terms and intent of this Agreement.
18. Grantee and Grantor shall forward all notifications or correspondence to the following:

City of Greensboro:

Jane Nickles
Chief Information Officer
City of Greensboro
P.O. Box 3136
Greensboro, NC 27402-3136

Phone: 336-373-2314
Jane.nickles@greensboro-nc.gov

Smart City Media, LLC:
Name: Mike Mainthow
54 West 40th Street
New York, NY 10018

Phone: 1.914.960.3695
Email: Mike@smartmedia.city

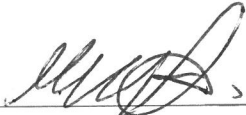
IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed in duplicate originals the day and year first above written.

Smart City Media, LLC

WITNESS:

By: 

Name: Mike Mainthow
Title: CMO

By: 

Name: Gregory Diakonidze
(Please Print)

Recommended:

By: _____
Chief Information Officer

Date: _____

Approved to as form and legality.

By: _____
Assistant City Attorney

Date: _____

“This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.”

By: _____
Deputy Finance Director

Date: _____

ATTESTED BY:

CITY OF GREENSBORO

By: _____
City Clerk

By: _____
Assistant City Manager