



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Fred Kelley
Director, Department of
Transportation

SUBJECT: Franchise Agreement For IKE Digital
Advertising and Wayfinding Kiosks

DATE: November 14, 2022

City Administrator Approval

Date: Nov 29, 2022

RECOMMENDATION

Staff Recommends That The City Council Adopt The Following Pieces of Legislation:

- 1) **AN ORDINANCE: (A) GRANTING A NON-EXCLUSIVE FRANCHISE TO IKE SMART CITY LLC FOR DIGITAL ADVERTISING KIOSKS WITH WAYFINDING CAPABILITIES WITHIN THE PUBLIC RIGHT-OF-WAY CONTINGENT UPON EXECUTION OF A FRANCHISE AGREEMENT; (B) AUTHORIZING THE CITY ADMINISTRATOR NEGOTIATE AND EXECUTE A FRANCHISE AGREEMENT WITH IKE SMART CITY LLC; AND (C) ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS, AND**
- 2) **RESOLUTION (A) AUTHORIZING THE CITY ADMINISTRATOR TO ACCEPT REVENUES PAYABLE FROM IKE SMART CITY LLC, INCLUDING A ONE TIME PAYMENT OF \$250,000.00, A MINIMUM ANNUAL GUARANTEE OF \$10,000.00 PER COMMISSIONED KIOSK, REVENUE SHARING EQUAL TO THIRTY-FIVE (35) PERCENT OF ANNUAL NET REVENUES ABOVE THE MINIMUM GUARANTEE, AND ONGOING PAYMENTS OF \$65,000.00 PER YEAR FOR REIMBURSEMENT OF STAFF COSTS FOR MANAGING THE FRANCHISE AGREEMENT AND KIOSKS, (B) APPROPRIATING REVENUES AND EXPENSES TOTALING \$282,500.00 EACH IN FISCAL YEAR 2022-2023 BUDGET, AND (C) ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS, AND**
- 3) **RESOLUTION (A) GRANTING A CONDITIONAL AND REVOCABLE MASTER MAJOR ENCROACHMENT PERMIT TO IKE SMART CITY LLC TO ALLOW FOR THE INSTALLATION AND ENCROACHMENT INTO THE PUBLIC RIGHT OF WAY OF DIGITAL KIOSKS AT UP TO FIFTY ADDRESSES TO BE DETERMINED, (B) AUTHORIZING THE CITY ADMINISTRATOR TO SPECIFY THE ADDRESSES IN ACCORDANCE WITH THE FRANCHISE AGREEMENT AND (C) ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS**

EXECUTIVE SUMMARY

IKE Smart City (IKE), an advertising agency, is proposing a non-exclusive franchise agreement to install fifty (50) digital wayfinding kiosks in the City of Oakland (City) right-of-way. In April 2022, Oakland City Council directed staff to begin negotiations with representatives from IKE for a Franchise Agreement and return to City Council. IKE's proposal includes a thirty-five (35) percent net revenue share with the City and estimates that the average annual income to the City would be in the range of \$1,400,000 to \$1,600,000 per year over a twenty (20) year term. Council directed staff to develop terms related to funding city staff time by IKE and how and when funding is distributed, equitable distribution of kiosks, maintenance of the kiosks by IKE including response time, the number and in-kind slides to the city, privacy concerns including not utilizing the cameras, IP address tagging and any other privacy concerns. Staff worked with IKE to develop a proposed Franchise Agreement that meets this direction.

This report supports three actions related to this proposed partnership: (1) an ordinance granting a non-exclusive Franchise Agreement to IKE, (2) a resolution appropriating various funds related to the agreement and (3) a resolution granting a master encroachment permit to IKE for placement of the fifty (50) kiosks in accordance with the Franchise Agreement.

BACKGROUND / LEGISLATIVE HISTORY

In 2018, City of Berkeley entered into a fifteen (15) year franchise agreement with IKE to install and operate thirty digital wayfinding and advertising kiosks in its public right-of-way.

In August 2020, the City received an unsolicited proposal from IKE for a franchise agreement to install fifty (50) digital kiosks in Oakland's right-of-way.

In November 2021, Oakland City Council directed Oakland Department of Transportation (OakDOT) staff to study digital wayfinding kiosks and return to Council in March 2022 with recommendations, including the possibility of entering into an agreement with IKE.

In December 2021, IKE installed two of the anticipated thirty kiosks in the City of Berkeley.

In April 2022, Oakland City Council received an informational report on IKE's unsolicited proposal and directed staff to begin negotiations with representatives from IKE.

In May 2022, OakDOT staff began regularly meeting with representatives from IKE to develop the terms of a Franchise Agreement.

In November 2022, OakDOT staff and representatives from IKE agreed on the terms of a proposed Franchise Agreement.

ANALYSIS AND POLICY ALTERNATIVES

City Council directed OakDOT staff to negotiate with IKE on key terms of the proposed Franchise Agreement, including: funding city staff time by IKE and how and when funding is distributed, equitable distribution of kiosks, maintenance of the kiosks by IKE including response time, the number and in-kind slides to the city, privacy concerns including not utilizing the cameras, IP address tagging and any other privacy concerns and to bring back to the City Council the terms of agreement and any other needed legislation for approval.

IKE's proposed kiosks feature a large, interactive digital display that either shows advertising (when not in use) or allows for touch-based interaction. The interactive display can provide information about a range of topics, including transit information, wayfinding, local business directories and more. The kiosks also provide a free Wi-Fi hotspot that allows anyone with a Wi-Fi-enabled device to access the Internet with limited speeds.

The key terms negotiated with IKE are reflected in the "Summary of Key Terms" section of the proposed Franchise Agreement (see **Exhibit A** to the proposed Ordinance) and reproduced below. It should be noted that the key terms, including the upfront payment, revenue share, minimum annual guarantee and staff reimbursement, are equivalent to or exceed the terms granted to other cities with similar agreements.

- 1. Kiosk Program** City selects IKE (Grantee) as the non-exclusive digital information kiosk franchisee in the City. Grantee may install and operate up to (50) digital information kiosks offering wayfinding and other value-added functions (Kiosks). Grantee may elect to install additional Kiosks upon mutual agreement of Grantee and the City.
- 2. Franchise Prepayment** Grantee shall pay to the City \$250,000 at execution of this Agreement, to be recouped by Grantee out of advertising revenues above the Minimum Annual Guarantee.
- 3. Transportation Staff Payment** Grantee shall pay \$65,000 annually to the Department of Transportation to fund staff oversight of this Agreement, such amount being equal to 25% of the annual time of a Transportation Planner II position. The initial payment to be made when the first Kiosk is installed and is operational, pro-rated based on the operational date of such kiosk relative to the calendar year of installation. The payments to the Department of Transportation shall increase annually at the same rate that Department of Transportation Planner II staff compensation is increased, in order to fund 25% of the annual total compensation for Transportation Planner oversight. Payments will be made annually for the duration of the agreement.

- 4. Public Benefit Payment** Each year, Grantee shall pay to the City the greater of (i) the Minimum Annual Guarantee or (ii) 35% of annual Net Revenues from the sale of advertising
- 5. Net Revenue** “Net Revenue” shall mean total revenue earned from the sale of advertisements on the Kiosks, less the amount of any uncollected or bad debts and the following out-of-pocket costs and expenses incurred by Grantee: (i) utility services, including electric and data service; (ii) insurance premiums with respect to insurance which is carried by Grantee; (iii) repairs and maintenance to the Kiosks ; (iv) personal property taxes assessed on the Kiosks; (v) sales and management expenses equal to 12.5% of the total revenue; (vi) any taxes, permitting fees, use fees or other fees as may be assessed by a governmental or quasi-governmental agency; and (vii) an amount equal to the annual amortized portion of the cost to fabricate, acquire, install and replace the Kiosks, amortized on a straight-line basis over a seven (7) year period.
- 6. Minimum Annual Guarantee** The term “Minimum Annual Guaranty” means \$10,000.00 per operational Kiosk per annum (\$833.33 per operational Kiosk per month) during the first full calendar year of each Term Year and 10 years thereafter. Kiosks are deemed operational once installed and commissioned and until removed.
- 7. Term** 10 full calendar years commencing on the Effective Date and expiring on December 31st of the 10th full calendar year following the earlier of (a) the date on which the final Kiosk is installed and (b) the date that is thirty-six (36) months following the Effective Date.
- 8. Renewal Terms** This Agreement shall renew for 2 additional terms of 5 years each upon the expiration of the initial term so long as Grantee meets certain Performance Standards, as detailed in Annual Reports provided by Grantee to the City, which shall be reviewed by the City to determine whether the Performance Standards have been achieved.
- 9. Capital Costs** Grantee shall bear all costs and expenses associated with obtaining any and all required approvals and permits.
- 10. Equity Allocation & Content** Fifteen percent (15%) of the Kiosks, or 7 out of the 50 planned Kiosks, will be located in “highest priority and high priority neighborhoods” as designated by the City’s Geographic Equity Toolbox. In addition, Grantee will cooperate with the City Office of Economic & Workforce Development to develop localized

content in the form of digital public art from local City-based artists and arts organizations, community and neighborhood-specific content and information content about local non-profit organizations, at no cost to the City.

11. Advertising Restriction

All Kiosk slides shall not display any advertisements that: (a) are contrary to any law, ordinance, rule or regulation of the City of Oakland, including the City Sign Code, or the State of California, (b) that promotes or advertises tobacco products, (c) promotes or advertises adult bookstores, adult cinemas or adult live entertainment venues, or (d) promotes a candidate for public office.

Privacy considerations

As a franchise agreement, the City Attorney determined that this project is not subject to the City's Surveillance Technology Ordinance, which applies to new procurements. Even so and in response to City Council direction, OakDOT staff worked with IKE to include explicit privacy protections in the agreement. As stated in the proposed agreement, the "Kiosks shall not be equipped with any cameras and shall not employ any form of facial recognition technology or similar surveillance tools. Grantee may not activate the optional "Photobooth" camera feature (which allows users to voluntarily take their own self-portraits which are not stored following transmission to the user) unless authorized by action of City Council and with any required approvals by the City's Privacy Advisory Commission, if applicable. Grantee may activate and use the kiosks' pedestrian counting feature which operates by reading anonymized MAC addresses from Wi-Fi enabled devices within a specified radius of each Kiosk. Grantee shall not share any personally identifiable information of any Kiosk user with any third party unless approved in writing by the City Administrator or his or her designee."

Staffing needs

There are currently no staff dedicated to managing the City's street furniture or bus shelter program, let alone the proposed IKE digital advertising kiosk program. Staff estimate that the development, implementation, evaluation and ongoing management of any new contracts for street furniture, including digital advertising kiosks, will require approximately one-half of a full-time equivalent (FTE) staff position within OakDOT at the Transportation Planner II level. OakDOT's Parking & Mobility Division (PMD). PMD is responsible for standing up and overseeing programs ranging from bike share stations and metered parking to EV chargers and wayfinding systems. The partially dedicated staff position would also manage vendors and administer agreements, coordinate and conduct community outreach, facilitate permit review, and serve as a single-point-of-contact for the street furniture program, thereby improving interdepartmental and interagency coordination on street furniture issues while relieving pressure on existing staff. Digital advertising kiosks are only one aspect of a coordinated street furniture program. The full cost of a fulltime equivalent Transportation Planner II, including all overhead, is \$236,680.00 per year. A new staff position responsible for directing other street furniture programs such as bus shelters, pedestrian wayfinding, transportation demand management and more. Assuming this franchise program is implemented, and other funding sources are identified, OakDOT staff plan to include a recommendation in the City's 2023-24 baseline budget to create a new position. Until such a position is established, OakDOT staff are

recommending that City Council appropriate salary expenses so that PMD and other staff can charge time dedicated to the implementation of the IKE program.

Master Major Encroachment Permit

To facilitate the implementation of proposed digital kiosk platform, OakDOT staff is also recommending that City Council grant a “master major encroachment permit” to IKE. In so doing, staff will be authorized to executive separate indenture agreements, under the same master major encroachment permit, for each of the fifty kiosks, at locations to be determined in consultation with City staff and approved by the City Administrator. This strategy has been used in the past when deploying complex systems that involve multiple locations, and where the specific addresses are yet to be determined.

Alternatives

Approval of the actions would grant a Franchise Agreement for fifty digital kiosks in the City’s right of way. The Franchise Agreement contributes to City-wide priorities of vibrant sustainable infrastructure (as the digital kiosks are an effective use of the right of way that will be maintained at no cost to the City) and trustworthy-responsible government (as the kiosks will give the City an interactive means of communicating with the public, while generating revenues for the General Fund and covering staff costs).

If the City were to decline to approve the actions, then no Franchise Agreement would be granted to IKE and the City staff would proceed with a full street furniture advertising request for proposal.

FISCAL IMPACT

Approval of this item and related actions will result in several sources of revenue, including a onetime advance payment of \$250,000.00, thirty-five (35) percent of ongoing net revenues from IKE, including a minimum annual guarantee of \$10,000 per operational kiosk, and \$65,000 per year (or twenty-five (25) percent of the fully burdened cost of a Transportation Planner II (whichever is greater), billable quarterly, to reimburse the City for staff costs related to developing and implementing a non-exclusive franchise agreement for digital advertising kiosks with wayfinding capabilities within the public right-of-way.

Assuming that the franchise agreement is executed in December 2022, then the onetime advance payment of \$250,000.00 and two quarterly payments of \$16,250.00 for reimbursement of staff time would be billable in the current fiscal year. Accordingly, staff is recommending that revenues collected from IKE in the amount of \$282,500.00 be appropriated to General Purpose Fund (1010), Revenue Account (45312), Mobility Management Organization (35247), Project Number (to be determined) and expenses in the amount of \$282,500.00 be appropriated to General Purpose Fund (1010), Regular Salaries Expense Account (51111), Mobility Management Organization (35247), Project Number (to be determined) in Fiscal Year 2022-2023.

PUBLIC OUTREACH / INTEREST

IKE presented their proposal for digital advertising kiosks to the Oakland Council of Business Improvement Districts in June 2021. Participating City staff included OakDOT and Economic and Workforce Development.

COORDINATION

In preparing this report, staff coordinated with the Budget Bureau, the Office of the City Attorney, the Economic and Workforce Development Department, the Department of Planning and Building and the City Administrator's Office.

SUSTAINABLE OPPORTUNITIES

Economic: Digital advertising and wayfinding kiosks may help Oaklanders and visitors to discover and locate restaurants, bars and retail options in commercial districts. The kiosks also provide revenue to the City's general fund through shared advertising sales.

Environmental: Digital advertising and wayfinding kiosks may help Oaklanders to plan trips using public transit, such as BART or AC Transit. The use of public transit helps to reduce greenhouse gas emissions and air pollution.

Race & Equity: Given City Council direction and the City's racial equity priorities, IKE has agreed to take a number of actions to help ensure that this program does not reenforce historical inequities while delivering benefits to areas of Oakland that would otherwise be excluded. Under the terms of the proposed agreement, IKE commits to locating fifteen percent (15%) of the Kiosks (or 7 out of 50 Kiosks) in "highest priority and high priority neighborhoods" as designated by the OakDOT Geographic Equity Toolbox, with installation of these Kiosks to generally occur on the same schedule as installation of Kiosks in other areas of the City. A minimum of one (1) kiosk shall be installed in such "highest priority and high priority neighborhoods" for every six (6) installed in other areas, before further Kiosks are installed in non-priority neighborhoods. In addition, IKE commits to cooperate with the City Office of Economic & Workforce Development to develop localized content in the form of digital public art from local City-based artists and arts organizations, community and neighborhood-specific content and information content about local non-profit organizations, at no cost to the City. Additionally, according to a 2018 AC Transit rider survey, the majority of AC Transit bus riders are people of color (thirty percent black, twenty percent Latino and twenty percent Asian). Sixty-five percent of riders are low-income. Improving access to real-time transit arrivals and wayfinding information will therefore benefit disadvantaged communities of color.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The actions supported by this report are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities), 15183 (projects

consistent with General Plan and Zoning), and 15061(b)(3) (no significant effect on the environment); Section 15183 (projects consistent with a community plan, general plan, or zoning), Section 15302 (replacement or reconstruction), and Section 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt The Following Pieces of Legislation:

- 1) AN ORDINANCE: (A) GRANTING A NON-EXCLUSIVE FRANCHISE TO IKE SMART CITY LLC FOR DIGITAL ADVERTISING KIOSKS WITH WAYFINDING CAPABILITIES WITHIN THE PUBLIC RIGHT-OF-WAY CONTINGENT UPON EXECUTION OF A FRANCHISE AGREEMENT; (B) AUTHORIZING THE CITY ADMINISTRATOR NEGOTIATE AND EXECUTE A FRANCHISE AGREEMENT WITH IKE SMART CITY LLC; AND (C) ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS, AND
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For questions regarding this report, please contact Michael Ford, Manager of the Parking and Mobility Division, at 510-238-7670.

Respectfully submitted,



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