


Celso Ortiz (Nov 22, 2022, 16:33 PST)

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

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

WHEREAS, the Oakland Department of Transportation is tasked with improving transportation choices and minimizing parking demand, congestion, and pollution, such as through transportation demand management programs; and

WHEREAS, IKE Smart City, LLC (“IKE” or “Grantee”), an advertising agency, provided an unsolicited proposal to install fifty (50) digital advertising and wayfinding kiosks in Oakland’s right-of-way; and

WHEREAS, the proposed kiosks feature a large, interactive digital display that either shows advertising or allows for touch-based interaction 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; and

WHEREAS, the City Council directed staff to negotiate the terms of a non-exclusive Franchise Agreement with IKE, including 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 and to bring back to the City Council the terms of agreement and any other needed legislation for approval; and

WHEREAS, in order to facilitate and expedite the implementation of the digital advertising and wayfinding kiosk program in Oakland, the City Council desires to delegate authority to the City Administrator, or their designee, to issue Major Encroachment Permits to Grantee for the proposed fifty (50) Kiosks in the Public Right of Way pursuant to Oakland Municipal Code Chapter 12.08 and section 12.08.030 et seq.;

WHEREAS, the City has independently reviewed and considered the IKE digital advertising and wayfinding kiosks program and finds and determines that that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to the following CEQA exemptions, which each independently and collectively serve as a basis for CEQA compliance: CEQA Guidelines Sections 15268 (Ministerial Projects), 15183 (Projects Consistent with a Community Plan, General Plan or Zoning), 15301(c) (Existing Facilities, Highways and Streets), 15302 (Replacement or Reconstruction), 15303 (Small Structures), 15304 (h) (minor alterations to land, and/or 15061 (b)(3) (No significant Effect on the Environment); and

WHEREAS, staff negotiated these terms and prepared a proposed Franchise Agreement (See **Exhibit A**);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Public Purpose of Franchise. The Council does hereby find and declare that the above recitals are true and correct and that the granting of a non-exclusive franchise to IKE to install and operate Smart City Digital Advertising Kiosks With Wayfinding Capabilities within the public right-of-way is for a proper public purpose.

SECTION 2. California Environmental Quality Act. The City Council has independently reviewed and considered the IKE digital advertising and wayfinding kiosks program and finds and determines that that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15268 (Ministerial Projects), 15183 (Projects Consistent with a Community Plan, General Plan or Zoning), 15301(c) (Existing Facilities, Highways and Streets), 15302 (Replacement or Reconstruction), 15303 (Small Structures), 15304 (h) (minor alterations to land, and/or 15061 (b) (3) (No significant Effect on the Environment); each of the aforementioned provides a separate and independent basis for CEQA compliance. As such, the City Council directs the City's Environmental Review Officer to file a Notice of Exemption with the Alameda County Clerk's Office and appropriate agencies.

SECTION 3. Franchise Grant/Term. The City Council hereby grants to IKE, contingent upon its execution of a Digital Advertising Kiosks With Wayfinding Capabilities Non-Exclusive Franchise Agreement (Agreement), a non-exclusive franchise to install and operate fifty (50) Digital Advertising Kiosks With Wayfinding Capabilities within the public right-of-way under the terms and conditions, including locations, to be specified in the Franchise Agreement. The term of this franchise is from November 1, 2022 to October 31, 2032.

- (A) The term of the Agreement shall automatically renew for 2 additional terms of 5 years each (each a "Renewal Term" and together the "Renewal Terms") upon the expiration of the Initial Term or then current Renewal Term, as applicable, so long as Grantee meets the following criteria ("Performance Standards"): (a) Grantee shall have deployed monthly software updates, including security screening, bug fixes, and user experience improvements to the operating software for the Kiosks over the initial term; (b) Grantee shall

have complied with all maintenance, repair, and replacements obligations for the Digital Wayfinding Kiosks throughout the Initial Term of the Agreement; (c) Grantee shall have electronically monitored the Kiosks twenty-four hours per day, seven days per week to ensure that all operating software is operable and malfunctions to the operating software have been repaired within a reasonably practicable time period; (d) Grantee has refreshed the internal networking components for the Digital Wayfinding Kiosks at least one time during the Initial Term; (e) Grantee will have complied with all revenue payment provisions of this Agreement; and (f) Grantee is not in default of the Agreement. Grantee shall provide all necessary data to assess compliance with the Performance Standards in the form of an Annual Report. The Annual Report will be delivered to City staff within sixty days of the end of each Calendar year during the Term of the Agreement.

- (B) The term “Term Year” shall mean (a) for the first Term Year, the period starting on the date on which the last Kiosk is installed and operational and ending on December 31st of the first (1st) full consecutive calendar year after the final Kiosk is installed and (b) for each Term Year following the first Term Year, each period of 12 successive and consecutive months during the Term, with the Term Year commencing on the first day of the Term Year, January 1st, and ending the last day of the 12th consecutive full calendar month, December 31st thereafter.

SECTION 4. Franchise Pre-Payment/Oversight Costs/Advertising Revenue Payment. In consideration of the special non-exclusive franchise right granted by the City to IKE to transact advertising business, provide services, use the public street and/or other public places, and to install and operate IKE Smart City Digital Advertising Kiosks With Wayfinding Capabilities in the public right-of-way, IKE Smart City shall remit to City:

- (A) Grantee Pre-Payment To City. \$250,000 at the execution of the Agreement, to be recouped by Grantee out of advertising revenues above the Minimum Annual Guarantee;
- (B) Annual Payment For City Staff Oversight. \$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;
- (C) Public Benefit Payment. From and after the date on which the first Kiosk is installed and operational until the end of the Term, and subject to fulfillment of Grantee receiving the Reimbursement Share in full, Grantee shall pay to

the City a payment (the “Public Benefit Payment”) equal to the greater of: (i) 35% of annual Net Revenue earned by Grantee with respect to the operational Kiosks (the “Revenue Share”) or (ii) the Minimum Annual Guarantee of \$10,000.00 per commissioned kiosk..

SECTION 5: Equitable Allocation of Kiosks. Fifteen percent (15%) of the Kiosks, or 8 out of the 50 planned Kiosks, will be located in districts identified by the City as communities of opportunity.

SECTION 6. New Technologies. Grantee is committed to exploring new functionalities and new technologies to improve the Kiosks and shall regularly consult with the City on such matters, including but not limited to new and improved additional Kiosk applications and ancillary hardware experiences such as curbside electrical vehicle charging. In the event the parties elect to pursue such additional technologies or program enhancements, the parties shall work together in good faith to amend this Agreement to reflect such enhancements.

SECTION 7. Curbside EV Charging. Should the City desire to implement curbside electric vehicle (EV) charging in the public right-of-way at a location where IKE has installed or plans to install a Kiosk, IKE shall have the right of first refusal to come to an agreement within 90 days with the City provide such EV charging. If no such agreement is reached, the City may solicit another entity to provide charging at that location, including charging that may be partially or totally supported by advertising subject to the radius limitations contained in Section 4.I above.

SECTION 8. Annual Report. Grantee shall provide an Annual Report which includes, at a minimum, the following information:

- (A) number of monthly software updates, including security screening, bug fixes, and user experience improvements to the operating software for the Kiosks;
- (B) Logs of maintenance, repair, and replacements of the Kiosks;
- (C) Records of any Kiosk outages or malfunction periods;
- (D) Any replacement or refresh of the internal networking components for the Kiosks;
- (E) All revenue payments;
- (F) Total amount of slide content given or offered to the City.

The Annual Report will be delivered to City staff within sixty days of the end of each Calendar year during the Term of the Agreement.

SECTION 9. City Administrator Authority To Negotiate Agreement/Amendments/ Issue Major Encroachments For Kiosks. The City Administrator is authorized to conduct all negotiations and execute all documents including but not limited to amendments, modifications,

notices, and related actions (including advertising rate revenue adjustments as to be specified in the Agreement and issuing Major Encroachments For Kiosks) which may be necessary and consistent with the basic intent and purpose of this Ordinance.

SECTION 10. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 11. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE GRANTING AN EXCLUSIVE FRANCHISE TO IKE SMART CITY (IKE) FOR DIGITAL ADVERTISING KIOSKS WITH WAYFINDING CAPABILITIES WITHIN THE PUBLIC RIGHT-OF-WAY CONTINGENT UPON IKE'S EXECUTION OF A FRANCHISE AGREEMENT; AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE A FRANCHISE AGREEMENT WITH IKE; AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

This Ordinance serves to grant IKE Smart City, contingent upon its execution of a Digital Advertising Kiosks With Wayfinding Capabilities Non-Exclusive Franchise Agreement (Agreement) , a non-exclusive franchise to install and operate fifty (50) Digital Advertising Kiosks With Wayfinding Capabilities within the public right-of-way under the terms and conditions, including locations, to be specified in a Franchise Agreement to be negotiated and executed by the City Administrator or their designee. The term of this franchise from November 1,2022 to October 31, 2032. The City Council also made certain California Environmental Quality Act (CEQA) exemption findings in finding that the action complies with CEQA.