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**AN ORDINANCE AMENDING THE STOCKTON MUNICIPAL CODE, TITLE 11, CHAPTER 11.32 RELATING TO FRANCHISES FOR DOWNTOWN PROMOTIONAL BANNERS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

**SECTION 1. AMENDMENT OF CODE**

Chapter 11.32, Downtown Promotional Banner Franchise, of the Stockton Municipal Code is hereby amended to read, as follows:

**SEC. 11.32.010 Findings:**

The Council for the City of Stockton hereby finds and determines that public safety and welfare requires the issuance of a nonexclusive franchise, limited to a reasonable term of ten (10) years from the effective date of November 16, 2018, as said franchise:

- 1) Eliminates the necessity of identifying the owner of the banners when repairs are required for safety;
- 2) Eliminates clutter caused by an accumulation of banners located at prime locations;
- 3) Enables the City to control placement and condition of banners; and
- 4) Enables the City to protect the public from undue encroachment into and upon the public right-of-way.

**SEC. 11.32.020 Grant of Franchise:**

The City of Stockton hereby grants to the Downtown Stockton Alliance (DSA), a California 501(c)(6) Corporation ("franchisee"), for the term of ten (10) years from the original effective date of this ordinance (November 16, 2018) ) codified in this chapter, subject to all terms and conditions hereinafter made and expressed, the franchise, right, privilege and permission to place and maintain banners with advertising thereon on the light poles within the Downtown Stockton Alliance boundary in the City of Stockton.

**SEC. 11.32.030 General Conditions:**

- 1) Wherever the words City Manager appear in this ordinance, they shall mean the City Manager of the City of Stockton or an authorized representative.
- 2) Banners shall be, and remain, the property of the franchisee.
- 3) Franchisee shall place and maintain a minimum of 25 banners on standard light poles.
- 4) Franchisee shall pay all expenses of publication of required legal notice incurred in the granting of this franchise.

- 5) The franchisee shall post a performance bond in the sum of \$10,000.00, guaranteeing its performance of the conditions of the franchise and stating that the said sum of \$10,000.00 shall be forfeited to the City as liquidated damages in the event of franchisee's failure to perform the conditions of its franchise. Said bond shall be furnished by a surety company authorized to do business in the State of California and approved by the City Manager.
- 6) The City shall have the right at all reasonable times to examine all books, papers, and records of the franchisee for the purpose of verifying statements or reports required and for any other purpose whatsoever connected with the franchise.

**SEC. 11.32.040 Construction:**

- 1) No work shall be commenced under the provisions of this franchise until plans and specifications shall have been filed with and approved by the City Manager, or a designee, nor until a map showing the precise location of the banners to be installed shall be filed with the City Manager, or a designee.
- 2) Banners shall be constructed of materials sufficiently durable to withstand normal wear and weather conditions, to prevent unauthorized removal from their sites, and minimize other vandalism. Banner construction shall include fabric which can withstand a wind load of 30 miles per hour with an ultraviolet inhibitor to retard fading and tearing. Banners must be fastened to mounting hardware. Bracket hardware must be the same on all banners installed: (1) engineered to withstand 30 miles-per-hour winds; and (2) fastened to street pole using stainless steel banding. The City reserves the right to determine suitability of construction. Banners installed on standard light poles shall be 30 inches in overall width and 84 inches in overall length. Banners installed on antique-style street lamps shall be 30 inches in overall width and 24 inches in overall length. Banners must also be double-sided with readable copy/design on both sides.

**SEC. 11.32.050 Advertising:**

No pictures or representations on any banner shall include any word, phrase, symbol or character that might interfere with, mislead or direct traffic. No profanity or obscene material shall be included within any advertisements on banners.

**SEC. 11.32.060 Location and Placement:**

- 1) The bottom of all banners shall be placed not less than 15 feet from ground on street side and 10 feet from ground on sidewalk side. No banner shall be placed or located so as to be an obstruction to pedestrian travel or in any manner create a hazard to life, limb, or property.
- 2) No banner after being installed on the light poles of the City of Stockton shall be removed by franchisee during the period of this franchise except with the consent of the City Manager or a designee.
- 3) The banners shall be placed only in locations approved by the City Manager or a designee.

- 4) The City shall have the right to have the franchisee install a banner at any new unoccupied light pole. City will also have the right to have franchisee move or relocate any banner. Said move or relocation shall be completed within 10 days of written notice from the City.

**SEC 11.32.070 Maintenance/Emergency Repairs:**

- 1) Franchisee shall, at its own cost and expense, maintain all banners in good, sightly, and safe condition. All banners shall be inspected at least once a month. They shall be replaced or repaired as needed immediately. In no event shall more than 10 working days transpire before work/repairs are completed after franchisee is aware said work/repairs are needed. In the event that graffiti is placed on banners, they shall be cleaned immediately. In no event shall more than 48 hours (two working days) transpire before graffiti is removed after Franchisee is aware or notified.
- 2) In the event of hazardous situations or situations deemed to cause imminent danger to the public, repairs shall be made within 24 hours of being notified of said facts by the City.
- 3) If the franchisee fails to perform necessary maintenance as outlined in subsections A and B of this section, and City performs the necessary maintenance or removal, the franchisee will be charged a penalty fee of \$150 per occurrence payable to the City for its performance of said maintenance and removal.
- 4) In the event a hazardous situation is created that cannot be left uncorrected for 24 hours, City shall effect repairs and bill franchisee for the time and materials only.

**SEC. 11.32.080 Payment:**

- 1) For the privilege herein granted, the franchisee will pay to the City of Stockton \$25.00 per standard light pole per year and \$10.00 per antique-style light pole per year. Said payments to the City will be subject to annual review and adjustment. These payments will be in lieu of payment to the City of a percentage of gross receipts.
- 2) Franchisee shall pay the City of Stockton each year in advance the above specified fee for each banner in place within the Downtown Stockton Alliance boundary. The payment shall be due and payable to the City on or before February 15<sup>th</sup>. Franchisee shall submit an annual report to the City Manager, or a designee, as to the number of banners installed throughout the Downtown Stockton Alliance boundary. The annual fee shall be paid according to the number of banners in place regardless of whether or not there is advertising on them.
- 3) Franchisee shall also submit with the annual report a map showing the location of all banners and a complete listing of all banners citing location of banners and whether the banner has advertising on it.
- 4) In the event franchisee is delinquent in making any payment owed to the City, the franchisee shall pay an additional penalty in the amount of \$500 if the delinquency period exceeds 60 days.

#### **SEC. 11.32.090 Indemnification:**

Franchisee shall hold the City harmless from all or any claims or damage to any person or property arising from the installation, maintenance or existence of the banners. The franchisee shall carry public liability insurance, said insurance policy shall be endorsed to include the liability assumed by this franchise. A certificate evidencing this policy shall be filed with the Risk Management Division of the City of Stockton and shall be maintained throughout the existence of the franchise. The insurance policy shall insure the franchisee against loss or liability for injury to, or death of, any person or damage to property growing out of the installation, maintenance, or existence of any banner, to the amount or limit of \$1,000,000, on account of injury to or death of any one person, and, subject to the same limit as respects injury to or death of any one person, and subject to the same limit as respects injury to or death of one person, or \$1,000,000 on account of injury to or death of more than one person, and of \$1,000,000 for damage to property of others, resulting from any one accident or occurrence.

#### **SEC. 11.32.100 Termination:**

- 1) In the event that either party shall fail or neglect to perform each and all the terms and conditions of this franchise on their part, the aggrieved party may give the party in default 10 working days written notice to correct conditions in default, and if party in default refuses or neglects to make such corrections within the 10 working-day period, the aggrieved party may terminate the franchise. Should franchisee default, franchisee shall remove all banners within 30 days of termination of this franchise if requested to do so by the City and shall leave the site conditions in the same manner or better condition than before the installation. Failure to submit a written notice of default does not constitute acceptance or waiver by the aggrieved party.
- 2) The granting of this franchise shall not in any way or to any extent, impair or affect the right of the City now or hereafter conferred upon it by law to acquire the property of the franchisee hereof either by purchase or through the exercise of the right of eminent domain. Upon any such acquisition by the City, the compensation or price shall not include the value of the franchise. Nothing herein contained shall be construed to contract away or modify or to abridge either for a term or in perpetuity, the right of eminent domain with respect to this franchise.

#### **SEC. 11.32.100 City Authority to Grant Franchise:**

This franchise is granted pursuant to the authority provided under Article XXI of the Charter of the City of Stockton.

#### **SEC. 11.32.100 Acceptance of Franchise by Franchisee:**

Within 10 days after passage of the ordinance granting the franchise or any extension thereof granted by the City Council, franchisee shall file written acceptance of

the terms of the franchise with the City Clerk. Failure to do so shall render the franchise null and void.

## **SECTION II. SEVERABILITY**

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

## **SECTION III. EFFECTIVE DATE**

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: October 16, 2018

EFFECTIVE: November 16, 2018