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**Date** March 8, 2010

**RESOLUTION APPROVING MULTI-YEAR CONTRACT WITH  
CREATIVE OUTDOOR ADVERTISING OF AMERICA TO PROVIDE  
BUS BENCHES ON DES MOINES STREETS SERVED BY PUBLIC TRANSIT**

WHEREAS, pursuant to a Request for Proposals (RFP) issued in May of 2009, Creative Outdoor Advertising of America, 1200 U.S. Highway 1, North Palm Beach, Florida (COA) submitted proposals whereby COA would:

1. Replace existing bus benches on streets served by public transit with new and more aesthetically pleasing benches at approved sites;
2. Inspect and maintain each bus bench on a weekly basis; and
3. Guarantee an annual return to the City of \$20,000 for the first three years of the agreement and \$30,000 per year in years four and five. The parties will review the circumstances and engage in good faith negotiations to determine the feasibility of projected \$40,000 annual payments during years six through ten of the contract; and

WHEREAS, COA was the only company which responded to the RFP; and

WHEREAS, City staff from Traffic and Transportation, Purchasing, Legal and City Manager's Office reviewed COA's proposals and recommended that the proposals be given approval and that the City Council authorize the City Manager to negotiate a contract with COA regarding the bus benches and related services and amenities; and

WHEREAS, on October 26, 2009, by Roll Call No. 09-1970 the City Council authorized and directed the City Manager to negotiate an Agreement with OCA for new bus benches and related services and to submit the negotiated contract for City Council approval; and

WHEREAS, the City and COA have negotiated a contract with a ten-year term (April 1, 2010 through March 31, 2020) which provides that in consideration for the right to install and maintain approximately 150-175 bus benches at public transit stops in Des Moines, COA will pay the City \$20,000 per year in years 1 through 3 of the contract and \$30,000 in years 4 and 5 of the contract. With regard to the remaining term, City staff and COA have agreed to review the circumstances and engage in good faith negotiations to determine projected annual payments for years 6 through 10.

(Continued on Page 2)

★ **Roll Call Number**

Agenda Item Number

48

Date March 8, 2010

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa as follows:

1. The contract between the City and COA, a copy of which is on file in the City Clerk's Office, is hereby approved.
2. The Mayor is authorized and directed to execute the above-referenced contract and the City Clerk to attest to his signature.
3. The City Manager or his designee is authorized and directed to administer the contract according to its terms.

APPROVED AS TO FORM:

Moved by \_\_\_\_\_ to adopt.



Michael F. Kelley  
Assistant City Attorney

\\CDMFS\1D-VOLUME\APPDATA\LEGAL\LAHYERS\MFK\ROLL CALLS\Creative Outdoor Advertising - Bus Bench Contract.docx

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_ City Clerk

CONTRACT BY AND BETWEEN  
THE CITY OF DES MOINES, IOWA  
AND  
CREATIVE OUTDOOR ADVERTISING OF AMERICA  
FOR  
BUS BENCH AND PAD AND RELATED ADVERTISING SERVICES PARTS

WHEREAS, the City of Des Moines, Iowa, a municipal corporation organized and existing pursuant to the laws of the State of Iowa, "CITY", desires to establish a uniform program of street-side bus bench and related hard surface pads, including advertising and public service signs that are served by public transit; and

WHEREAS, on May 10, 2009, the Procurement Division issued a Request for Proposals for such services (the "CITY's RFP"); and

WHEREAS, on May 29, 2009, Creative Outdoor Advertising of America, a Florida Corporation, 1930 Commerce Lane, Suite 1, Jupiter, Florida 33458, ("CONTRACTOR"), submitted a response to the CITY's RFP, including "Bid #1, The Boulevard Bench" (CONTRACTOR's Proposal #1); and

WHEREAS, the evaluation and selection committee determined that CONTRACTOR's PROPOSAL #1 was the best proposal; and

WHEREAS, on October 26, 2009 by Roll Call No. 09-1970, the City Council accepted the CONTRACTOR's PROPOSAL #1 and approved a license contract with CONTRACTOR; and

WHEREAS, this Contract is intended to formalize and implement the provisions of the City's RFP and of the proposal made by CONTRACTOR in response thereto, both of which are made a part of this Contract by this reference.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

**SECTION 1: SCOPE OF SERVICES TO BE RENDERED**

CONTRACTOR agrees during the term of this Contract to provide to the CITY, under the terms and conditions set forth in this Contract, the RFP and CONTRACTOR's Proposal #1, services consisting primarily of installation, construction and maintenance, including snow and ice removal, of street facing bus benches and hard surface pads at approximately 150-175 bus stop sites as outlined by the following:

***INSTALLATIONS & MAINTENANCE***

1. The City agrees to permit COA to install benches on untraveled portions of public highways within the jurisdiction of the City of Des Moines:

- a. COA agrees to install units at locations that are approved by the City Manager.
  - b. Benches will be placed at locations within the city as determined by the City Manager and COA. Both the City Manager and COA may request sites anywhere in the city, but final approval of all sites rests with the City Manager.
  - c. Benches cannot be placed within the traffic sight triangle.
  - d. Benches must not interfere with the pedestrian right of way.
  - e. COA shall provide Benches and approved supporting mounting pad (where space requirements permit), and retain the full ownership of benches and pads. COA shall be solely responsible for the maintenance and repair of the Benches provided.
2. It is acknowledged by the parties that, in the selection of each location, consideration will be given to the convenience of the public. It is further acknowledged that the angled placement of the Benches shall be in such a manner so as not to obscure signs, transit stops and shall be Americans with Disabilities (ADA) compliant or interfere with the visibility or effectiveness of advertising on transit shelters. The placement of all Benches must be approved by the City Manager.

The City Manager will approve/decline any site requested by COA within 90 days of receiving such request. In the event that the City Manager has not responded to requests within 30 days, COA shall have the right to commence installations without penalty provided that the City has not requested an extension. Such requests/communications shall be delivered to the intended parties as per Clause 26.

3. The City Manager will not allow the placement of any other advertising products at sites containing COA products. If the City chooses to install a transit shelter or other amenity with advertising at any site with a COA bench, COA will move the bench and be compensated at approximate replacement value for any for pad left in place.
4. COA agrees to install all Benches on a mounting pad unless a suitable base exists. Where a mounting pad does not exist and is required, COA agrees to install, at COA's sole expense, a mounting pad for every Bench installed pursuant to this Agreement. COA shall be responsible for ensuring that all mounting pads provide for the safe movement of pedestrians to, from and around the transit Bench and waste receptacle modules. COA

shall ensure that the installation of and all maintenance and repair of the Benches is carried out in a proper and workmanlike manner and so as not to create hazards to utilities or the City and shall ensure the safety of pedestrians and the safe movement of vehicles.

5. COA shall conform to any environmental policies or programs adopted by the federal or state governments or by City Council prior to the term of this Agreement. The City will not reimburse COA for any costs associated with conforming to any such policies or programs. The City agrees to advise COA of any such proposed policies and programs prior to their consideration by City Council.
6. COA agrees during the construction or installation of the Benches to keep each location in a clean and orderly condition and remove all waste and unusable material from each location upon completion of the construction or installation of each Bench or as required by the City Manager.
7. COA shall be solely responsible for obtaining all, authorizations and the like before any Bench is installed and for any other work undertaken by COA pursuant to this Agreement.
8. COA shall maintain all Benches as defined herein in good repair and is solely responsible for ensuring the provision of normal maintenance within a 3 foot radius to those benches as follows:
  - a. to keep the area free of debris,
  - b. to keep the Benches clean and free of graffiti, and
  - c. to inspect benches for damage during regular maintenance and make arrangements for timely repair.
9. COA shall provide the above mentioned normal maintenance to the benches on a frequency of not more than or not less than every seven days, during the term of this agreement.
10. COA agrees to continuously maintain all Benches and keep them free from damage and to protect the property of the City from injury or loss.
11. COA and the City shall use their best efforts to cooperate during snowfalls. COA will remove snow once following notification from city that snow plows have made their final pass following a storm.

12. The City may provide written notice to COA when any Bench requires regular maintenance or repair and COA, as soon as is reasonably possible, and not later than 48 hours after the giving of such notice, shall undertake the maintenance or repair required at COA's sole expense.
13. The City may provide written notice to COA when any Bench requires emergency maintenance or repair if its condition is such that, in the City Manager's sole opinion, the condition renders a serious danger to the public. In such an event, COA as soon as possible and not later than 24 hours after the giving of such notice, repair and make safe the Bench at COA's sole expense and to the satisfaction of the City Manager. In an emergency situation where a 24 hour wait is in the City Manager's sole opinion considered unacceptable, the City may arrange for work to be done to eliminate public danger and COA shall be solely responsible for paying all costs incurred by the City for such work.
14. COA shall comply with all requirements of the City with respect to parking and street occupancy during all installations and maintenance of Benches.
15. COA acknowledges and agrees that the City shall have the right to order the removal or relocation of any Bench installed within the jurisdiction of the City. COA agrees to remove or relocate any such Bench within 48 hours of the City giving notice to COA. COA shall restore the site from which the Bench was removed to the condition the site was in immediately prior to the installation of the Bench and to the satisfaction of the Transit Manager. Such removal, relocation and restoration shall be at no expense to the City and all such costs associated therewith shall be borne and paid by COA. Where COA fails to remove or relocate such Bench within 48 hours or where COA fails to restore the site as required, the City may arrange for such removal, relocation and restoration and COA shall be solely responsible for paying the City all costs incurred by the City for such work.

#### AUTHORITY OF CONTRACT

16. All outdated City Code ordinances which relate to bench definitions, parallel installation, approved materials and the like, which were specific to the old concrete and wood design will be amended to reflect the provisions of the contract.

## SECTION 2: CONTRACT ADMINISTRATION

The City Manager or his designee shall be the liaison with the CONTRACTOR for the purpose of administration of the services to be performed under this Contract. The services to be performed by the CONTRACTOR shall at all times be subject to the general supervision and approval of the City Manager or his designee. The Traffic and Transportation Engineer shall be the designated administrator under this Contract.

## SECTION 3: TERM OF CONTRACT

The initial term of this Contract shall commence on April 1, 2010 and shall terminate on March 31, 2020.

## SECTION 4: PRICES AND PAYMENT

In consideration of the non-exclusive rights and privileges granted in this Contract, CONTRACTOR agrees to pay CITY an annual fee of \$20,000 per year for each of the first three years of this Contract and \$30,000 per year for years four and five. The parties will review the circumstances and engage in good faith negotiations to determine the feasibility of projected \$40,000 annual payments during years six through ten of this Contract. Payment of all fees shall be made to the City of Des Moines Finance Department beginning on April 1, 2010 and on March 31<sup>st</sup> of each year thereafter.

## SECTION 5: CONTRACT DOCUMENTS

This Contract shall include and be composed of: (1) this Contract, (2) the CITY's RFP and (3) the CONTRACTOR's Proposal #1. In the event of any conflict or inconsistency between this Contract and the other documents comprising the Contract, the hierarchy of precedent shall be as listed above.

The parties agree that benches are not required to have litter and recycling elements and removal services.

## SECTION 6: REPORTS

Contractor shall submit installation and maintenance reports on a quarterly basis, with reports due on the fifteenth day of the month following the close of each quarter of the calendar year. Installation and maintenance reports shall be submitted in an electronic format to the City Traffic Engineer.

## SECTION 7: DART APPROVAL

CONTRACTOR acknowledges that the Des Moines Area Regional Transit Authority ("DART") has the right to approve the location of bus benches and to require the removal of any bench upon at the CONTRACTOR'S cost upon thirty days' written notice to the

CONTRACTOR. CONTRACTOR acknowledges that, in the event of such removal, no compensation or reimbursement shall be due to CONTRACTOR by DART, the CITY or any other party or entity.

#### SECTION 8: TERMINATION

If the CONTRACTOR does not fulfill its obligations as dictated by this Contract, the CITY may terminate this Contract by giving ninety (90) days written notification to the CONTRACTOR. CONTRACTOR agrees to cease all activity associated with this Contract at such time as the written notification is received. The Des Moines City Code allows 10 days to grieve a terminated contract.

#### SECTION 9 INSURANCE AND INDEMNIFICATION

The CONTRACTOR shall defend, pay on behalf of, indemnify and hold harmless the CITY as provided in Attachment 2 – Insurance and Indemnity/Endorsements – of the RFP. The CONTRACTOR shall obtain and maintain in continuous effect during the term of this Contract with the CITY, and while any of its obligations remain unsatisfied the insurance coverages, limits, waivers and endorsements set forth in Attachment 2 of the RFP.

#### SECTION 10 NON-DISCRIMINATION

As prescribed in Section II.13 – Discrimination and Affirmative Action – of the RFP, the CONTRACTOR shall not discriminate or permit discrimination in its operations or employment practices against any person or group of persons on the grounds of race, color, creed, national origin, gender, age, sex, religion, sexual orientation, gender identity or disability and shall furnish evidence of compliance with this provision when so requested by the CITY.

#### SECTION 11: ADA COMPLIANCE

CONTRACTOR agrees that all construction and installation of the hard surface and benches will be in compliance with the American with Disabilities Act (ADA) and implementing regulations and guidelines.

#### SECTION 12: NOTICES, PAYMENTS AND INVOICES

All notices which the parties are authorized or required to give one another pursuant to this Contract, and all reports, payments and invoices, shall be in writing and may be personally delivered or sent by ordinary mail to the addresses hereafter provided. Mailed notices, reports, payments or invoices shall be deemed to be received by the party to who directed when they are postmarked. Such notices, reports, payments and invoices shall be delivered or mailed to the following persons at the addresses listed:



CITY

Notices, Reports:

Gary Fox  
City Traffic Engineer  
City of Des Moines  
600 East Court Avenue  
Des Moines, IA 50309

Payments:  
City of Des Moines Finance Office  
400 Robert D. Ray Drive  
Des Moines, IA 50309

CONTRACTOR  
CREATIVE OUTDOOR ADVERTISING OF AMERICA

\_\_\_\_\_  
David Gray - President  
1930 Commerce Lane, Suite 1  
Jupiter, Florida 33458

IN WITNESS WHEREOF the parties hereto have executed this Contract as of this  
\_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF DES MOINES, IOWA

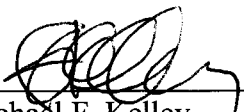
CREATIVE OUTDOOR ADVERTISING  
OF AMERICA INC.

\_\_\_\_\_  
T.M Franklin Cownie  
Mayor

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

APPROVED AS TO FORM:

ATTEST:

  
\_\_\_\_\_  
Michael F. Kelley  
Assistant City Attorney

\_\_\_\_\_  
Diane Rauh  
City Clerk

STATE OF IOWA )  
 ) ss:  
COUNTY OF POLK )

On this \_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared RICHARD A. CLARK and DIANE RAUH, to me personally known, and who, being by me duly sworn did state that they are the City Manager and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 10-\_\_\_\_\_ of City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, and that RICHARD A. CLARK and DIANE RAUH acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in the State of Iowa

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF PALM BEACH )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, a notary public, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he/she is the \_\_\_\_\_ of CREATIVE OUTDOOR ADVERTISING OF AMERICA, a \_\_\_\_\_ corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and he acknowledged the execution of the said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in the State of Florida