

Date March 22 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 COA 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)

Date March 22 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

(Council Communication No. 10-168)

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

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.

MOTION CARRIED APPROVED

 Mayor

 City Clerk

★ Roll Call Number

10-395

✓ 46
Agenda Item Number

48

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**

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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

10-395

Agenda Item Number

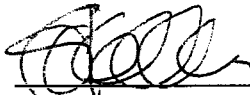
46
48

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:


 Michael F. Kelley
 Assistant City Attorney

Moved by Griess to refer to the City Manager to include a provision in the contract to assess a \$50 penalty for failure to remove snow from bench areas.

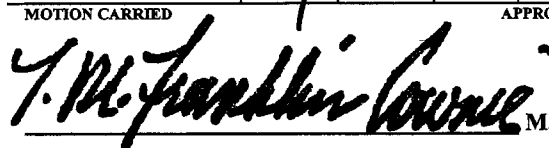
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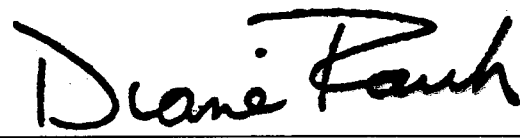
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

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.

MOTION CARRIED APPROVED

 T. M. Franklin
 Mayor


 Diane Rauh
 City Clerk

Date MAR 22 2010

Agenda Item 46

Roll Call #

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 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, however where this contract and either the RFP response or the issued RFP differ from this contract, the terms specified in this contract shall prevail.

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, with services consisting primarily of installation, construction and maintenance, including snow removal and treatment of ice (including appropriate applications of salt and/or sand to ensure safety of the general public) in the 3 foot radius measured from each edge of the bus bench, COA agrees to clear snow in an area 3 feet wide from the edge of the bench facing the street to the curb once and once only following electronic notification posted as <http://www.dmgov.org> that

the snow ordinance contained in Des Moines Municipal Code Section 102-124 is no longer in effect 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. To ensure the safety of the general public, benches will be installed facing oncoming traffic at an angle not to exceed 35 degrees from the curb while maintaining a minimum 2 foot setback from the pad and the curb and a minimum 1 foot separation between the pad and any public sidewalk. The City Manager will have final authority over all installations.
 - f. 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 30 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 either electronically or by hard copy document. 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.

3. 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 approved 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. COA shall ensure that the installation of and all maintenance and repair, (as specified in this contract) 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.
4. 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.
5. 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.
6. 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.
7. COA shall maintain all Benches as defined herein in good repair as specified in this contract and is solely responsible for ensuring the provision of normal maintenance, snow removal and treatment of ice within a 3 foot radius, as described in Section 1 above, 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.
8. COA shall provide the above mentioned normal maintenance specified in this contract to the benches on a frequency of not more than or not less than every seven days, during the term of this agreement. Removal of snow and treatment of ice will be conducted as specified in this contract following electronic notification posted as <http://www.dmgov.org> that the snow ordinance contained in Des Moines Municipal Code Section 102-124 is no longer in effect.
9. COA agrees to continually maintain as specified in this contract all Benches in order to keep them free from damage and protect the property of the City from injury or loss.
10. COA shall:
- (a) Remove snow, (and treatment of ice if necessary) specifically from the 3 foot radius around a bench, as described in Section 1 above, within a reasonable time. Should there be exceptional circumstances, (which may endanger public safety or cause damage to public or private property) which prevent removal of snow from a complete 3 foot radius around a bench then COA will consult with the Public Works Director.
 - (b) It is COA's understanding that when the electronic notification is posted at <http://www.dmgov.org> that the snow ordinance is no longer in effect; it signifies that all snow plowing has stopped. With the understanding that the snow ordinance is no longer in effect and with the understanding that this means that all snow plowing activity has stopped; COA will conduct a one single snow removal , (and treatment of ice if necessary) at every bench location within a 48 hour period starting with the notification the snow ordinance is no longer in effect, provided, however, that in extraordinary weather circumstances the Director of Public Works or his or her designated representative may provide additional time for removal under this section. COA will not be subject to fines if the City fails to properly coordinate removal of snow ordinance with the end of snow plowing operations resulting in cleared locations being buried by snow plows.

- (c) When ice has formed on the bench and in the 3 foot radius around a bench as described in Section 1 above so that it cannot be reasonably removed, COA shall within forty-eight (48) hours following electronic notification posted at <http://www.dmgov.org> that the snow ordinance is no longer in effect , (and with the understanding that this signifies the end of snow plowing operations),sprinkle the bus bench radius with sand or deicing chemicals in such manner as to provide traction and prevent the sidewalk from being dangerous to persons using the bus bench. Nothing in this section shall be construed to be a substitute for the removal of ice, as required above in (a) of this section. This subsection shall only apply when ice cannot be reasonably removed; however, all accumulations of ice shall be removed as soon as practical. The city is aware that if the surrounding sidewalk beyond the area of COA's responsibility has not been cleared either by the city or private property owners there is a risk to public safety from snow and ice melting, covering area cleared by COA and then re- freezing. In some cases, the treatment of ice may be preferable to removal of ice until such time as surrounding area not under COA's responsibility has been cleared.
- (d) City staff will be given access to COA's interactive on line website putting them in direct contact with COA Operations. COA and the City agree that the primary goal is to keep communications open and cooperate in getting snow removed within the 48 hour period. The City agrees to take advantage of the advanced technology that COA has in place in order to more effectively communicate removal issues to the local Operations team in Des Moines. COA's failure to remove snow and treat ice as specified in this contract within forty eight (48) hours of posting on the City of Des Moines website that the snow ordinance is no longer in effect shall be subject to an administrative penalty, (Not to exceed \$50.00) as provided in the scheduled administrative penalties adopted by the City Council by resolution which will be provided to COA by the City.
- (e) COA agrees to keep detailed, accurate and up to date scanner data of every service visit to each bench and maintain a rolling 8 week record on-line for monitoring by city officials which will stand as proof of performance. The City agrees to integrate this system into its monitoring of the bench program.(e)

Penalties shall be paid in full within thirty (30) days of the issuance of the notice.

(g) Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to the violator by the director of public works or his or her designated representative or any police officer. Service of the notice may be by regular mail or delivery in person. Such notice shall include:

- (1) a statement that the violator has a right to an administrative hearing regarding the violation;
- (2) a statement that the violator may file a written request for hearing as set forth in section 102-126.07. The request of hearing shall stay payment of the administrative penalty until the hearing is decided. If issuance of the notice of violation is upheld, the violator shall have 30 days from issuance of the hearing decision to pay the administrative penalty.

11. The City may provide written notice using COA's on line work order tool to identify any Bench which 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. The record of this service work will be posted on COA's website.
12. The City may provide written notice to COA when any Bench requires emergency physical 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 physical maintenance and repair 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.
13. COA shall comply with all requirements of the City with respect to parking and street occupancy during all installations and maintenance of Benches as specified in this

contract.

14. 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

All outdated City Code ordinances which relate to bench definitions, parallel installation, approved materials, and maintenance standards, including snow removal and ice treatment and the like, which are not pertinent to the current COA program will be amended to reflect the provisions of the contract. All City and Transit officials connected with the bench program and the enforcement of ordinances related to the bench program will be notified by the City Manager of how the contract may affect the daily administration of the bench program.

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 31st 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 keep current service and maintenance records which shall be collected electronically and stored on line for viewing by City Officials. Printed reports are available on request. 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, electronic mail 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:

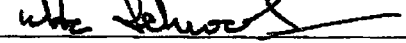
Gary Fox
City Traffic Engineer
City of Des Moines
600 East Court Avenue
Des Moines, IA 50309

Payments:

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

CONTRACTOR

CREATIVE OUTDOOR ADVERTISING OF AMERICA


Bill Schwartz- Municipal Affairs Manager
1930 Commerce Lane, Suite I
Jupiter, Florida 33458

Notary Public in the State of Florida