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Date April 18, 2022

RESOLUTION APPROVING PROCUREMENT OF TYPE 1 AMBULANCE FROM FOSTER COACH SALES, INC., APPROVING USE OF H-GAC COOPERATIVE AGREEMENT, AND APPROVING AGREEMENT WITH FOSTER COACH SALES, INC.

WHEREAS, the Fire Department has requested the Finance Department’s Procurement Division to issue a purchase order for one Type 1 replacement ambulance with one Stryker Power Load System for a total cost of \$355,433.00; and

WHEREAS, the Procurement Administrator has determined that the Type 1 ambulance with Stryker Power Load System has been competitively bid and is available from Foster Coach Sales, Inc., 903 Prosperity Drive Street, Sterling, Illinois 61081 (Steve Foster, President), pursuant to Houston-Galveston Area Council (H-GAC) cooperative purchase contract AM10-20 with Halcore Group, Inc., as assigned to Foster Coach Sales, Inc. by Limited Contract Assignment and Assumption Agreement; and

WHEREAS, Municipal Code Section 2-726(m) authorizes the procurement of goods and/or services from contracts that have been competitively established through cooperative group contracting consortiums for state government departments, institutions, agencies and political subdivisions, such as the Houston-Galveston Area Council (H-GAC), without conforming to the competitive bidding requirements of the Procurement Ordinance; and

WHEREAS, the one Type 1 ambulance with one Stryker Power Load System is proposed to be purchased for use by the Fire Department from Foster Coach Sales, Inc., for the amount of \$355,433.00, which quote includes a reduction for trade-in of one City-owned 2012 F450 4x2 truck with 102,317 miles and Stryker Power Cot in the trade-in amount of \$15,000; and

WHEREAS, funding for the above-described purchase of goods is available from 2020-2025 CIP, Fire Protection Improvements - 4, FR013-Equipment Acquisition-Fire Department, Being: G.O. Bonds Issued; and

WHEREAS, the City Finance Department has negotiated a short-form agreement, in form on file in the City Clerk’s office, with Foster Coach Sales, Inc. supplementing the H-GAC cooperative purchase contract AM10-20 with terms specific to the City’s procurement.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Des Moines, Iowa, that:

1. The purchase of one Type 1 ambulance with one Stryker Power Load System from Foster Coach Sales, Inc., in the total amount of \$355,433.00 and per the general terms and pricing of the Houston Galveston Area Council (HGAC) purchasing contract number AM10-20 with Halcore Group, Inc. and related Limited Contract Assignment and Assumption Agreement with Foster Coach Sales, Inc., is hereby approved.
2. The Short Form Agreement – City Contract No. J22-365 between the City and Foster Coach Sales, Inc., in substantially the form on file with the City Clerk, supplementing Houston Galveston Area Council (HGAC) purchasing contract number AM10-20 with terms specific to the City’s procurement, is hereby approved and the Mayor is directed to execute said Agreement following approval as to form by the Legal Department.

Date April 18, 2022

(Council Communication No. 22-193)

Moved by _____ to adopt.

Second by _____.

APPROVED AS TO FORM:

/s/ Glenna K. Frank
 Glenna K. Frank
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
SHEUMAKER				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

CERTIFICATE

I, P. Kay Cmelik, 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

City of Des Moines
Finance Department – Procurement Division
City Hall 400 Robert D Ray Drive
Des Moines, IA 50309-1891
515-283-4228

SHORT FORM AGREEMENT – CITY CONTRACT NO. J22365

Contractor Foster Coach Sales, Inc. 903 Prosperity Dr. Sterling, IL 61081	Department City of Des Moines Fire Department 2715 Dean Ave. Des Moines, IA 50317
Contract Commencement Date: April 18, 2022	Contract Termination Date: January 1, 2023 or upon delivery and final acceptance by City of any orders from the City and accepted by Foster, whichever occurs later.
Shipping Terms: FOB Destination, Freight Prepaid	Payment Terms: Net 30 Days

In addition to the terms and conditions stated in the purchase order and the terms and conditions of AM10-20, the City of Des Moines (“City”) and Foster Coach Sales, Inc. (“Contractor”) hereby agree to the special provisions as follows:

1. Scope of Services

This Agreement between the City of Des Moines (City) and Foster Coach, Inc. (Foster) for **Ambulances, EMS & Other Special Service Vehicles** is governed by the terms and conditions of purchasing contract AM10-20 between the Houston-Galveston Area Council (H-GAC) and Halcore Group, Inc., as assigned to Foster Coach Sales, Inc. by Limited Contract Assignment and Assumption Agreement (“Assignment”) between H-GAC, Halcore Group, Inc. and Foster Coach Sales, Inc. AM10-20 and its Assignment (collectively, “AM10-20”) are incorporated herein by reference. In the event of conflict or inconsistency between the terms of this Agreement and AM10-20 and its Assignment, the terms of this Agreement shall govern and control. All capitalized terms shall have the same meaning as in AM10-20 unless otherwise stated herein. Except as modified herein, all other terms and conditions of AM-20 shall remain in full force and effect.

2. Notices, Payments and Invoices

All notices which the parties are authorized or required to give one another pursuant to this Agreement, and all reports, payments, and invoices, shall be in writing and may be e-mailed or personally delivered. Such notices, reports, payments, and invoices shall be personally delivered or e-mailed to the following persons at the addresses listed:

Invoices: FIN-AP@dmgov.org

All other notices and communications:

Contractor:

Foster Coach Sales, Inc.
 Attn: _____
 903 Prosperity Dr.
 Sterling, IL 61081
 Email: _____
 Phone: _____

City:

City of Des Moines, IA
 Attn: Procurement Division
 400 Robert D. Ray Dr.
 Des Moines, IA 50309
JNJohnson@dmgov.org
 515-283-4228

3. Miscellaneous

a. **Definitions:** For purposes of this Agreement and unless otherwise specified herein, the City shall constitute the “End User” and this Agreement and related purchase order (incorporated herein by this reference) shall constitute the “End User Agreement” under AM10-20; within the General Provisions, references to “H-GAC” shall be replaced with “City” in Articles 2, 3, and 21; references to the “State of Texas” shall be replaced with “State of Iowa”; and references to “both parties” shall mean the City and Contractor.

b. **Disputes:** Prior to implementing the provisions of Article 25 of the General Provisions under AM10-20, the City and Foster shall first make reasonable, good faith efforts to resolve any disputes prior to commencing legal action,

seeking intervention by H-GAC or terminating this Agreement. The parties hereto agree to meet to have their respective senior management, who are authorized to act on their behalf, resolve any differences until such time as the meetings are not productive or have no reasonable probability of resolving the dispute, in which time other courses of action may be pursued by either or both party(ies).

- c. Choice of Law: This Agreement will be governed by and interpreted and construed in accordance with the laws of the State of Iowa, and any action relating to this Agreement shall be brought in the Iowa District Court in Polk County, Iowa or the United States District Court for the Southern District of Iowa. If any provision of this Agreement is held to be invalid or unenforceable, the remainder shall be valid and enforceable.
- d. Indemnification: The City shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by Contractor arising out of or in any way connected or associated with Contractor's work, including that of its officers, agents, employees, subcontractors and others under the control of Contractor, except to the extent caused by or resulting from the negligent act of the City.
- e. Contractor shall obtain all applicable licenses and/or permits as required by Federal, State, or local law.
- f. This Agreement shall be effective upon execution by the parties.
- g. Contractor may not sub-contract, assign or delegate this Agreement or any responsibilities or rights hereunder without the prior written consent of the City Manager, and in accordance with Article 10 of AM10-20 pursuant to which "H-GAC" is hereby replaced with "City" for purposes of this Agreement.
- h. This Agreement, including AM10-20 as referenced herein, represents the whole agreement of the parties and any modification requires a written amendment executed by the parties.
- i. Contractor agrees to fulfill this Agreement in accordance with the pricing and terms specified in this Agreement and the terms of AM10-20 to and including the later of January 1, 2023, or the delivery and final acceptance by City of any orders from the City and accepted by Foster, regardless of the duration of AM10-20 and any performance period stated therein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives.

CITY OF DES MOINES, IOWA

T. M. Franklin Cownie
Mayor

FOSTER COACH SALES

By: _____
Its: _____

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank
Assistant City Attorney