



# Council Report

To: The Honorable Mayor and Council Members

From: Alberto Destrade, Purchasing Director 

Date: March 8, 2016

RE: **A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE INTERIM CITY MANAGER AND INTERIM CITY ATTORNEY TO NEGOTIATE AND EXECUTE AN OPTION TO RENEW 'AGREEMENT FOR BUS BENCHES' BETWEEN THE CITY OF NORTH MIAMI AND MARTIN OUTDOOR MEDIA, INC., FOR THE INSTALLATION AND MAINTENANCE OF ADVERTISING BUS BENCHES AND TRASH RECEPTACLES FOR A TERM OF FIVE (5) YEARS, INCLUDING AN INCREASED FEE SCHEDULE PAYABLE TO THE CITY; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

**RECOMMENDATION**

Staff is requesting that the Mayor and City Council authorize the Interim City Manager and Interim City Attorney to negotiate and execute an option to renew the agreement with Martin Outdoor Media, Inc. (Martin) for the installation and maintenance of advertising bus shelters and trash receptacles located throughout the City, for a five (5) year period.

**BACKGROUND**

On June 13, 2006, the City Council awarded a contract to Martin for the right to install, maintain and advertise on bus benches and trash receptacles throughout approved locations within the City to accommodate bus patrons. The initial term of the contract is for a ten (10) year period from July 1, 2006 and ending June 30, 2016, with an option to renew for five (5) more years.

In consideration for the City's renewal of this agreement, Martin is offering to increase the per bench monthly renewal fee as follows:

<u>Contract Year</u> <u>Renewals</u>	<u>Current Renewal Fee</u> <u>(Per Contract)</u>	<u>Proposed Fee</u> <u>(Adjustment)</u>
Year 11	\$10	\$21
Year 12	\$10	\$21
Year 13	\$10	\$22
Year 14	\$11	\$22
Year 15	\$11	\$23

**NOTE:** Fees are based on a monthly amount per bench paid to the City.

In addition to the proposed fee adjustment, Martin has agreed to replace all existing bus benches and trash bins with an updated style shown in Attachment “A”. The new benches and bins would be installed approximately three (3) months after receipt by the vendor.

As part of this renewal, Martin shall continue to be solely responsible to ensure that the installation of bus benches and trash bins comply with all Federal, State and local rules and regulations, including compliance with the Americans with Disability Act and applicable Florida Department of Transportation regulations. Moreover, Martin shall maintain and keep in good repair any and all benches and trash bins installed within the City at no expense or cost to the City.

**ATTACHMENTS**

Resolution

Agreement with Martin Outdoor Advertising

Attachment “A” - Proposed Replacement Bus Bench

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE INTERIM CITY MANAGER AND INTERIM CITY ATTORNEY TO NEGOTIATE AND EXECUTE AN OPTION TO RENEW ‘AGREEMENT FOR BUS BENCHES’ BETWEEN THE CITY OF NORTH MIAMI AND MARTIN OUTDOOR MEDIA, INC., FOR THE INSTALLATION AND MAINTENANCE OF ADVERTISING BUS BENCHES AND TRASH RECEPTACLES FOR A TERM OF FIVE (5) YEARS, INCLUDING AN INCREASED FEE SCHEDULE PAYABLE TO THE CITY; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

**WHEREAS**, on June 13, 2006, the Mayor and Council of the City of North Miami (“City”) passed and adopted Resolution No. R-2006-63, authorizing the City Manager to negotiate and execute an agreement between the City and Martin Outdoor Media, Inc. (“Contractor”), to provide the City with state-of-the-art bus benches for the use and benefit of public-transit patrons; and

**WHEREAS**, on June 26, 2006, the City and Contractor entered into an agreement for the provision of bus benches and trash receptacles (“Agreement”), pursuant to the authority extended to the City Manager under Resolution No. R-2006-63; and

**WHEREAS**, in accordance with Section 1 of the Agreement, the City granted Contractor the right to erect, place, maintain and install bus benches at certain official Miami-Dade County bus stop locations within the City for an initial term of ten (10) years beginning July 1, 2006 and ending June 30, 2016, subject to City’s annual review for full compliance with the terms and conditions of the Agreement; and

**WHEREAS**, Section 19, provides that the Agreement may be renewed in writing by mutual consent of the parties for an additional period of five (5) years after the expiration of the initial term, executed not later than three (3) months prior to the expiration of the initial term on June 30, 2016; and

**WHEREAS**, City administration desires to exercise the option to renew the Agreement to allow Contractor to supply the City with updated bus benches and trash receptacles at a higher rate payable monthly by Contractor to the City; and

**WHEREAS**, the Mayor and City Council find that the execution of an option to renew Agreement with Contractor, serves the best interest of the public health, safety and welfare.

**NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:**

**Section 1.**      **Authority of Interim City Manager and Interim City Attorney.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the Interim City Manager and Interim City Attorney to negotiate and execute an option to renew ‘*Agreement for Bus Benches*’ between the City of North Miami and Martin Outdoor Media, Inc., for the installation and maintenance of advertising bus benches and trash receptacles for a term of five (5) years, including an increased fee schedule payable to the City.

**Section 2.**      **Effective Date.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
DR. SMITH JOSEPH  
MAYOR

ATTEST:

\_\_\_\_\_  
MICHAEL A. ETIENNE, ESQ.  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
ROLAND C. GALDOS, ESQ.  
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Vote:**

Mayor Smith Joseph, D.O., Pharm. D.

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Vice Mayor Alix Desulme

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Councilman Scott Galvin

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Councilwoman Carol Keys, Esq.

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

Councilman Philippe Bien-Aime

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

**AGREEMENT FOR BUS BENCHES**

THIS AGREEMENT entered into this 26<sup>th</sup> day of June, 2006 by and between the CITY OF NORTH MIAMI, a Florida Municipal corporation, hereinafter referred to as "CITY" and MARTIN OUTDOOR MEDIA, INC., a Florida corporation, authorized to and doing business in Miami-Dade County, Florida with its principal place of business located at 151 NE 166<sup>th</sup> Street, Miami, Florida 33162, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, pursuant to Resolution # 2006-63, the CITY Commission of the CITY of North Miami approved and authorized the execution of a ten (10) year agreement between the CITY and MARTIN OUTDOOR MEDIA, INC. relating to bus benches;

WHEREAS, the CITY has control of and owns or has the right to use various and numerous locations in its municipal boundaries for the convenience of its citizens as locations for bus stops, where it is desirable to place benches for the convenience of the public; and

WHEREAS, the placement of bus benches is a public utility and convenience and, as such, fulfills a collateral public transportation need.

NOW, THEREFORE,

IN CONSIDERATION of the mutual covenants and agreements herein contained, it is hereby agreed by and between the parties as follows:

1. CITY hereby grants to CONTRACTOR the right to erect, place, maintain and install bus benches at certain official Miami-Dade County bus stop locations within the City for a term of ten (10) years beginning July 1, 2006 and ending June 30, 2016, subject to annual review for full compliance with the terms and conditions of this Agreement. All bus stop locations, and bus stop locations approved for bus bench placement are specified on the attached hereto labeled "Exhibit A". This listing shall be updated in writing by the CONTRACTOR prior to any installations or replacements pursuant to this agreement and then on a yearly basis thereafter. Benches shall be located in the public rights-of-way as close and convenient as practical to the transit stop. The CITY shall approve the placement and orientation of all benches. A dimensioned site plan of each planned installation or replacement shall be submitted and approved by the City prior to commencement and inspected by the City upon completion. In no event shall there be more than one (1) bench installed or allowed to remain at any one location without written approval of CITY. In no event shall there be a bench located or maintained at a location that has a bus shelter without written approval of CITY. Said approval shall be at the CITY's sole discretion.

2. CONTRACTOR agrees to place and maintain litter receptacles at all bus bench locations. Receptacles shall bear, at the discretion of the CITY, the CITY seal or logo and under no circumstances contain advertising without a written amendment to this Agreement.

3. The new benches and receptacles shall be installed and substantially complete within eighteen (18) months of entering into the Agreement.

4. CONTRACTOR shall pay the CITY a fixed fee per sellable bench of \$7.00 per bench per month for years one through four of the agreement, \$8.00 per bench per month for years five through seven of the agreement, and \$9.00 per bench per month for years eight through ten of the agreement. This amount is to be paid one month in arrears by the first of each month. Should the CONTRACTOR not make its monthly payment by the tenth day of the month, the amount due will be increased by ten percent (10%) for that month. If the CONTRACTOR shall enter into a similar agreement with another municipality located in South Florida that pays a higher rate per bench per month in any given year, the CONTRACTOR agrees to increase the payment schedule to the CITY to the same rate.

5. Installation of the bus benches and trash receptacles shall comply with all Federal, State, and Local rules and regulations; this shall include compliance with the Americans with Disability Act and applicable Florida Department of Transportation regulations. The CITY will not require concrete slabs to be installed initially for benches located on grassy swales. The CITY shall have the right to direct the CONTRACTOR to install slabs in locations where CITY determines they are needed.

6. CONTRACTOR shall install, maintain, and keep in good repair any and all such benches and trash receptacles that are placed in the CITY at CONTRACTOR's expense and at no expense or cost to CITY. Vandalized or otherwise damaged benches and receptacles must be replaced or repaired within seventy-two (72) hours. Should the CONTRACTOR not repair or replace a damaged/vandalized bench within seventy-two (72) hours, the CONTRACTOR shall be fined \$20.00 per day for each additional day it takes to repair or replace the bench. Should the CONTRACTOR not repair or replace a damaged/vandalized receptacle within seventy-two (72) hours, the CONTRACTOR shall be fined \$10.00 per day for each additional day it takes to repair or replace the receptacle. The CITY shall in no way be liable to CONTRACTOR for any monies or compensation for the placement of such benches at any bus stop, park, or any other place whatsoever and the sole compensation to be derived by CONTRACTOR is that which may be derived from such advertising as will appear on such benches. CONTRACTOR shall in no way be liable to CITY for any rentals, monies, profits or returns from any of the bus bench advertising, nor shall CONTRACTOR be made to account for any of the monies or other income that may be derived by CONTRACTOR from such bus bench advertising, except as provided in Paragraph 4 above. CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that might be made against CONTRACTOR or CITY by any person, firm or corporation entering into contract with CONTRACTOR for advertising on such benches.

7. The benches and trash receptacles to be furnished by CONTRACTOR shall be constructed as set forth in the technical drawings to be submitted as "Exhibit B". Any change in

the structure of the benches must be requested in writing with specifications, and approved, in writing, by the City Manager or their designee.

8. At all times, CONTRACTOR shall maintain the benches in a safe condition and shall make regular inspections to ascertain that all benches are safe and in good condition. CONTRACTOR shall maintain each bus bench in a good state of repair and appearance, and shall keep the area surrounding each bench free of debris, high grass, weeds, and other rubbish. As specified in Section 6, CONTRACTOR has seventy-two (72) hours to inspect, repair, and make safe any faulty benches that are reported or discovered during a regular inspection.

9. CONTRACTOR shall be responsible for ensuring the trash receptacles are emptied five (5) times per week. At bus benches locations with infrequent usage, the City may allow, by written agreement, for the receptacles to be emptied less frequently. The area surrounding each bench must be kept free of litter, weeds, and overgrown grass at all times for a radius of twenty-five (25) feet from the center of each bench. CONTRACTOR shall pick up litter and debris from every bus bench location three times per week, and shall mow or trim all areas within a twenty-five (25) foot radius of the center of each bus bench with sufficient frequency to insure that the area is free of weeds and overgrown grass at all times. CONTRACTOR must also clean inside any hedges within that radius. Should the CONTRACTOR not comply with this section, the CONTRACTOR will be fined \$10.00 per day for each unmaintained location until the maintenance for that area has been properly completed.

10. (a). CONTRACTOR agrees to indemnify and hold harmless and defend CITY from and against any and all liability, damage and claims and for any injury or damage to persons or property caused by said benches or by any cause connected with said benches directly or indirectly including but not limited to the acts of CONTRACTOR and/or its agents regarding the installation, condition, maintenance, removal, replacement, renovation or repair of the benches.

(b). CONTRACTOR hereby covenants to secure comprehensive general liability insurance in the minimum amount of \$1,000,000 per occurrence, bodily injury and property damage combined. This policy as written shall, by its terms, include CITY as additional insured, and copies of such insurance policies shall be furnished to CITY by CONTRACTOR.

CONTRACTOR shall provide Worker's Compensation insurance as required by Florida Statute 440. In the event any work is sublet, CONTRACTOR shall require the subcontractor similarly to provide Worker's Compensation insurance, unless such employees are covered by the protection afforded by the CONTRACTOR.

CONTRACTOR shall maintain Automobile Liability insurance covering all owned, non-owned, and hired vehicles used in connection with the work, in amounts not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.

No modifications or change in insurance shall be made without thirty (30) days written notice to the CITY.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which are applicable to the operations of the CONTRACTOR in the performance of this Agreement.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida, shall be A.M. Best rated B+10 or higher, and shall be acceptable to the CITY regarding size, financial strength and past performance. They shall be admitted in the State of Florida, and covered by the Florida Guaranty Fund.

Nothing in this provision shall be construed as a waiver of City of North Miami's sovereign immunity limits pursuant to Section 768.28 Florida Statutes.

11. CONTRACTOR agrees to display messages of civic interest, as approved by CITY, on all non-advertising benches at all times during the term of this Agreement. Additionally, the CITY will be provided complimentary advertisements by the CONTRACTOR on up to ten percent (10%) of the benches within the CITY. The CONTRACTOR will provide the CITY with a proof of any CITY related advertisement prior to production.

12. CONTRACTOR shall remove and replace any bench for the purpose of repairing, renovating or replacing upon discovery during regular inspection by the CONTRACTOR or written notice is given by the CITY. CONTRACTOR shall remove, repair, renovate or replace the benches within a reasonable period of time not to exceed seventy-two (72) hours of discovery or notice. All such removal, repair, renovation or replacement shall be at the sole expense of the CONTRACTOR. In the event the bench is not removed, repaired, renovated or replaced within such time, it shall be deemed abandoned and CITY shall have legal title and right to treat the bench in any manner deemed fit, including but not limited to its removal, repair, renovation or replacement at CONTRACTOR's expense.

13. CITY shall have the right to request removal and/or relocation of a bench if the continued maintenance of the bench at the location concerned, will obstruct traffic or create a hazard to public safety, welfare or convenience, or if the abutting property owner or tenant of the adjacent property can justify an objection in writing directed to CITY concerning the continued maintenance of the bus bench at that location.

14. No advertisement or sign on any bench placed as a result of this Agreement shall display the words, "Stop", "Look", "Danger" or any other word, phrase, symbol or character calculated to interfere with, mislead or distract traffic.

15. It is understood and agreed upon by and between the parties that the CITY may cancel/terminate this Agreement without penalty immediately upon notice to CONTRACTOR in the event CONTRACTOR materially disregards the terms or conditions of the Agreement, or

does not resolve complaints in a timely manner to be determined at the sole discretion of the CITY. Any money paid to CITY in advance shall be retained by CITY, and CITY shall incur no liability whatsoever to those who use ADVERTISER's services.

16. Should CITY question the advertising on any bus benches as being immoral, obscene or lascivious, CITY will so notify CONTRACTOR, and such immoral, obscene or lascivious advertising shall be removed by CONTRACTOR at the request of CITY. Should a dispute between CITY and CONTRACTOR arise as to whether the advertising material is considered immoral, obscene or lascivious, the judgment of CITY or its representatives shall prevail and CONTRACTOR must abide by said decision.

17. The rights granted to CONTRACTOR under this Agreement shall not be an exclusive right.

18. CONTRACTOR agrees that he will defend, indemnify and hold CITY harmless for any damages, costs or legal fees incident to any lawsuits that are brought against CITY by reason of this Agreement.

19. CITY and CONTRACTOR agree that this Agreement may be renewed for an additional five (5) year period after the expiration of the initial term with the option to renew exercisable upon the mutual agreement of CITY and CONTRACTOR to all terms and conditions of such renewal. The parties shall agree to all terms and conditions and execute renewals of this Agreement not later than three (3) months prior to the expiration of the term of this Agreement and each subsequent renewal. Shall both parties mutually agree to renew the Agreement, CONTRACTOR shall pay the CITY a fixed fee of \$10.00 per bench per month for years eleven through thirteen of the agreement and \$11.00 per bench per month for years fourteen through fifteen of the agreement.

20. CONTRACTOR agrees to pay, at its sole expense, all costs for the restoration of CITY's sidewalks, curbs and/or landscaping due to damage caused by CONTRACTOR's installation, maintenance, removal, repair, renovation or replacement of the bus benches.

21. CONTRACTOR agrees not to advertise on any new or existing bus benches along Northeast 125<sup>th</sup> Street between Northeast 6<sup>th</sup> Avenue and Northeast 10<sup>th</sup> Avenue.

22. CONTRACTOR agrees not to advertise on any bench that the CITY designates as a non-advertising bench as designated prior to installation. In general, it is the CITY's intention to not allow advertising in single-family zoning districts. However, the CITY reserves the right, at its sole discretion, to designate benches in commercial areas as non-advertising.

23. Notwithstanding anything contained herein, the CITY shall have the unilateral right to cancel and terminate this contract within ten (10) days of the CITY being advised that the ADVERTISER has become insolvent by being unable to pay its debts when they become due and payable, or by having the amount of its liabilities exceed the amount of assets, or if the ADVERTISER commits any act of bankruptcy, or makes a general assignment for the benefit of

creditors, or if there is filed by or against the ADVERTISER a voluntary or involuntary petition in bankruptcy for the appointment of a receiver, or if the ADVERTISER commences, under any law, an action related to bankruptcy, insolvency, reorganization, or relief from debtors.

24. At the conclusion of the original ten (10) year Agreement (or at the conclusion of any extension of same that may be agreed upon by the parties in writing), CITY shall have the sole and exclusive right to elect between one of the following alternatives:

- (a) Require CONTRACTOR to remove all of its benches and related materials from CITY no later than 30 days after receiving written notice from the CITY to do so. Upon the CONTRACTOR's failure to effectuate such removal, the City may consider the materials abandoned and use or dispose of them as it sees fit.
- (b) Purchase any number or all of the installed benches, including those existing on the date hereof and described in "Exhibit A", as revised and updated, for a purchase price to be agreed upon by both parties. Subsequent to the termination of this contract and any extensions thereto, vendor shall have removed any and all benches within the CITY.

25. CITY shall attempt to provide CONTRACTOR with written notice of the option elected at least forty-five (45) days prior to the termination date hereof or the termination of any extensions. In the event that CITY elects to buy the existing benches from CONTRACTOR and in further event that CONTRACTOR and CITY are unable to agree as to purchase price of same, then the issue of the price of said benches shall be submitted to binding arbitration by the American Arbitration Association of Miami, Florida, for final disposition in accordance with the rules of said association. Any award in arbitration may be entered as a judgment in any court of competent jurisdiction. The costs of such arbitration shall be shared equally by the parties hereto. The costs and maintenance of the benches during arbitration will be borne by CONTRACTOR.

26. All notices required by this Agreement shall be sent to:

**AS TO CITY:**  
TRANSPORTATION MANAGER  
CITY OF NORTH MIAMI  
776 N.E. 125<sup>TH</sup> Street  
NORTH MIAMI, FL 33161  
Copy: City Attorney's Office  
City Manager's Office

**AS TO CONTRACTOR:**  
MARTIN OUTDOOR MEDIA, INC.  
151 N.E. 166<sup>TH</sup> STREET  
MIAMI, FL 33162

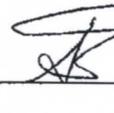
27. The parties expressly agree that this Agreement shall be construed and interpreted in accordance with and subject to the laws of the State of Florida. Miami-Dade County shall constitute the place of venue for all purposes in connection herewith, including the interpretation and enforcement of this Agreement.

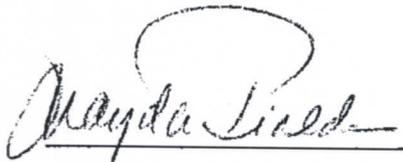
28. This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreement, oral or otherwise, regarding the subject matter shall be deemed to exist to bind either of the parties hereto.

IN WITNESS WHEREOF, the CITY OF NORTH MIAMI and MARTIN OUTDOOR MEDIA, INC. have caused these presents to be executed in their respective names by the proper officials the day and year first above written.

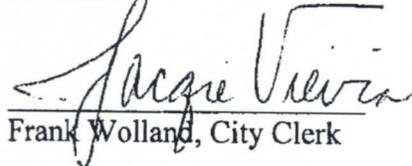
**City of North Miami, Florida, a Municipal Corporation of the State of Florida**

WITNESSES:

  
\_\_\_\_\_  
  
\_\_\_\_\_

  
\_\_\_\_\_  
  
\_\_\_\_\_

ATTEST:

  
  
Frank Wolland, City Clerk

MARTIN OUTDOOR MEDIA, INC.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary

CITY OF NORTH MIAMI

  
\_\_\_\_\_  
Clarence Patterson, City Manager

APPROVED AS TO FORM & LEGALITY  
for the use and reliance of  
the City of North Miami, Florida only.

  
\_\_\_\_\_  
V. Lynn Whitfield, City Attorney

#

## Attachment A

