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RESOLUTION NO. 92-283

A RESOLUTION ACCEPTING THE PROPOSAL FROM PHOENIX SHELTER ADVERTISING FOR REPLACEMENT OF EXISTING SHELTERS IN THE CITY OF KEY WEST, INCLUDING MAINTENANCE, INSURANCE AND ADMINISTRATION OF ADVERTISING PROGRAM AND APPROVING AND AUTHORIZING CITY MANAGER TO EXECUTE CONTRACT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, request for proposals to administer a bus shelter advertising revenue program for the City was issued by the Port and Transit Authority; and

WHEREAS, bid opening was held on May 21, 1992, with Phoenix Shelter Advertising being the only responder; and

WHEREAS, Phoenix Shelter Advertising proposes to replace all the existing shelters in the City of Key West with new shelter, provide necessary maintenance, insurance, sell advertising and guarantee the City ten percent of gross revenues realized by Phoenix;

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Key West, Florida as follows:

Section 1. The proposal of Phoenix Shelter Advertising for replacement of existing bus shelters, including maintenance, insurance and administration of advertising program is hereby accepted, contingent, however, upon negotiation of a contract acceptable to both parties.

Section 2. The City Manager is hereby authorized to execute the attached contract with Phoenix Shelter Advertising.

Section 3. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 7th day of July, 1992.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the date and year indicated below each of its names.

Signed, Sealed and Delivered
in the Presence of:

CITY OF KEY WEST
P.O. BOX 1409
KEY WEST, FLORIDA 33041

Lynn Hunter
Witness

Felix Cooper
G. Felix Cooper
City Manager

Shirley J. Sealey
Witness

Date: 7-27-92

PHOENIX SHELTER
ADVERTISING, INC.
1045 E. ATLANTIC AVE.
STE. 214
DELRAY BEACH, FL 33483

Carroll A. Feumann
Witness

Edward A. Butler
Vice President

Suzanne Cardero
Witness

Date: July 15, 1992

To the Company:

Phoenix Shelter Advertising,
Inc.
Edward Bolter/John Anderson
1045 East Atlantic Avenue
Suite 214
Delray Beach, Florida 33483

All notices shall be deemed delivered at the time of hand delivery in the event of personal delivery, upon receipt of telecopier copy, or upon receipt or rejection of certified mail, in the event delivery is made by certified mail. Either party may change its address for the purposes of receiving notices pursuant to this paragraph, providing such change is in writing, which shall not be effective until actually received by the recipient party.

14. In the event that either party has recourse to court action in order to enforce this Agreement, the prevailing party shall recover court costs, including attorney's fees on the trial or appellate level, from the non-prevailing party.

15. In the event either party shall fail to perform any of its obligations under this Agreement, the performing party shall give notice pursuant to paragraph thirteen (13) to the non-performing party, which notice shall state the nature of the violation. The non-performing party shall have thirty (30) days from the receipt of notice to cure such violation. In the event the non-performing party shall fail to cure its violation of this Agreement within the thirty (30) day period, the performing party shall have the option of terminating this Agreement by giving notice of termination to the non-performing party effective upon delivery of the notice. In the event the City shall terminate this Agreement pursuant to this paragraph, the City may order Phoenix to remove its shelter/benches within thirty (30) days of termination at no cost to the City. In the event Phoenix shall terminate this Agreement, Phoenix may remove its shelters/benches within sixty (60) days of termination, and the cost of maintaining or removing any shelters/benches remaining subsequent to the sixty (60) day period shall be the sole responsibility of the City.

16. City and Phoenix hereby acknowledge and agree that this contract is interpreted to mean that Phoenix has an exclusive agreement with the City to provide bus stop shelters.

17. The bus stop shelters will be located only in public rights-of-way in the City of Key West. Phoenix agrees that it will coordinate with the appropriate governmental authority for individual sites located on sites not identified as City of Key West rights-of-way. City makes no warranties as to Phoenix's ability to place or replace bus shelter on property other than that belonging to the City of Key West.

18. In the event that the Port and Transit Authority (PATA) of the City of Key West is reorganized or becomes a contract function of private industry, City will require said department or contractor to honor the terms and conditions of this Agreement.

19. The parties agree that the Request for Proposals (Exhibit A), the Phoenix Bid Response (Exhibit B) with attachments are incorporated as part of this Agreement. Where any conflict exists between an Exhibit and the Agreement, the Agreement will govern. Where conflict exists between the Exhibits, the Bid Response shall govern.

(30) days prior to the effective date of said cancellation. Said insurance is a condition precedent to the erection or placement of any bus stop shelters. If the insurance protection mentioned herein lapses, this agreement shall immediately be void and have no further force and effect except for the continuing duty of the Phoenix to comply with the provisions of paragraph 3 regarding indemnification. Phoenix shall also, in the event the insurance protection lapses, immediately remove all shelters from the public right-of-way without notice from the City or at any cost to the City.

6. Phoenix shall coordinate and integrate the bus stop shelters with the City, County and Florida Department of Transportation.

7. Phoenix shall pay to the City an amount equal to ten (10) percent of gross revenues recognized by Phoenix for placement of advertising. Said payments shall commence six (6) months from the execution of this contract. Thereafter payment by Phoenix shall be made on a quarterly basis to the City, payable to the City of Key West, P.O. Box 1409, Key West, Florida 33041, Att: Revenue Department. Phoenix shall supply City with an annual financial audit on a yearly basis, commencing with the first anniversary date of the execution of this contract. City understands that said audits will be prepared on a calendar year basis.

8. As specified in the bid documents the number of shelters may be increased from 14 subject to approval of the City Manager or his designee.

9. The term of this contract shall be for ten (10) years from the date of execution of this contract. This term may be extended for an additional five (5) years upon agreement of both parties herein.

10. When space is available, Phoenix shall allow City approved public service announcements to be placed in designated advertising spaces within the shelters. Any such public service announcement may be removed by Phoenix in the event said advertising space becomes rented. Phoenix shall give City five (5) days notice prior to removal. All expense associated with the preparation and installation of such public service announcements shall be paid by City.

11. City recognizes that Phoenix is entitled to exclusive control of the placement of advertising on or about said shelter. City warrants that it will not permit or license any City controlled advertising within said shelters or to allow said advertising to obstruct the display on these shelters. Further, City will not license or cause to be placed any structure or fixture upon or inside the shelters without the written consent of Phoenix.

12. City agrees to be responsible for ensuring that access to shelters and from shelters to bus loading platform complies with all of the requirements of the Americans with Disabilities Act. Phoenix warrants that nothing in the design or construction of its shelter will be inconsistent with the American Disability Act or prevent access by individuals with disabilities.

13. All notices and other communications under this Agreement shall be in writing and shall be delivered either personally, by telecopier or by certified mail, return receipt required, postage prepaid, to the parties at the following addresses:

**AGREEMENT FOR BUS SHELTER/ADVERTISING
BETWEEN THE CITY OF KEY WEST,
AND PHOENIX SHELTER ADVERTISING, INC.**

THIS AGREEMENT, made and entered into in duplicate this 27th day of July, 1992, by and between the CITY OF KEY WEST, a municipal corporation in Monroe County, Florida, hereinafter referred to as the City, and PHOENIX SHELTER ADVERTISING, INC., 1045 E. Atlantic Avenue, Suite 214, Delray Beach, Florida 33483, hereinafter referred to as Phoenix.

W I T N E S S E T H:

WHEREAS, the City solicited proposals for a program to administer a bus shelter advertising revenue program for City of Key West Port and Transit Authority; and

WHEREAS, Phoenix was awarded the bid by the City Commission of the City of Key West by Resolution No. 92-283; and

WHEREAS, Phoenix is a corporation organized under the laws of the State of Florida and licensed to do business in the State of Florida; and

WHEREAS, the City desires to supply residents with shelter from inclement weather at bus stops and Phoenix proposes to supply said shelters at no cost to the City;

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Phoenix shall own and erect bus shelters, substantially as described and depicted on attached Exhibit "B", sites located on the public right-of-way within the City. Said sites shall be selected by both parties, and shall be located only at official bus stops. At all times during the term of this Agreement, the bus shelter structures shall remain the property of the Phoenix and the land upon which the bus shelters are erected, shall remain as a public right-of-way. This Agreement shall not be construed to impose any obligation on the Phoenix to maintain such land other than as necessary in erecting and maintaining the bus shelters. City shall remove and dispose of existing shelters at City's cost. Phoenix shall have the right to utilize parts otherwise intended for disposal.

2. Phoenix may sell and place advertising in the bus stop shelters, limited to two (2) display panels 48" x 72" per shelter. Advertising revenues shall be payable to the City as stated in paragraph number 7.

3. Phoenix shall at its sole expense erect, install, light, clean, maintain, repair or replace in compliance with all applicable codes, these shelters at no cost to the City. General maintenance shall be performed bi-weekly and damage to the shelter, shall be repaired within seventy-two (72) hours of the time said damage is reported by the City to Phoenix.

4. During the term hereof, Phoenix agrees to indemnify and hold harmless City of Key West, its officers, agents, and employees against any and all claims, losses, liabilities or expenditures of any kind, including but not limited to court costs, expenses, attorney's fees and sales tax, if any, accruing or resulting from any and all suits, claims, demands, or damages of any character or persons or corporations, associations, partnerships, or trusts, including the City of Key West, its officers, agents, and employees.



GANNETT TRANSIT: NEW YORK/ N Y
(LOCAL)



GANNETT TRANSIT: NEW YORK/ N Y



P&C MEDIA: ST. LOUIS/ MISSOURI
(LOCAL)



TARGET MEDIA: GLENDALE/ CA



TARGET MEDIA: GLENDALE/ CA