

#27

3124

13-R-3680

(Do Not Write Above This Line)

1301342

First Reading

Committee _____
Date _____
Chair _____
Referred To _____

FINAL COUNCIL ACTION

- 2nd
- 1st & 2nd
- 3rd
- Readings
- Consent
- V Vote
- RC Vote

A RESOLUTION

BY

C. X. [Signature]

A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, ON BEHALF OF THE CITY OF ATLANTA TO ENTER INTO THE APPROPRIATE CONTRACTUAL AGREEMENT WITH DREAM OUTDOORS, LLC. FOR THE PURCHASE OF TWENTY (20) VENDING KIOSKS, IN AN AMOUNT NOT TO EXCEED SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS AND NO CENTS (\$750,000.00) TO BE CHARGED TO AND PAID FROM VARIOUS FUND, DEPARTMENT, ORGANIZATION, AND ACCOUNT NUMBERS; AND FOR OTHER PURPOSES.

ADOPTED BY

NOV 18 2013

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

COUNCIL

Date Referred

10/21/13

Referred To:

Finance / Exec

Date Referred

11/4/13

Referred To:

Finance / Exec

Date Referred

Referred To:

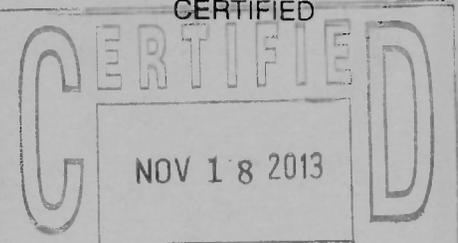
Committee *Fin. / Exec*
Date *10-30-13*
Chair *Tetiana V. Moore*
Action *Fav, Adv, Hold (see rev. side) on condition*
Members *[Signatures]*
Refer To _____

Committee _____
Date _____
Chair _____
Action _____
Fav, Adv, Hold (see rev. side) _____
Other _____
Members _____
Refer To _____

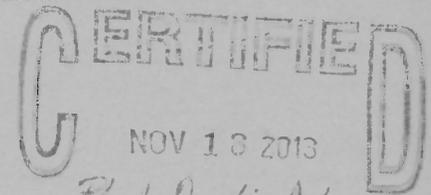
Committee *Fin. / Exec*
Date *11-13-13*
Chair *[Signature]*
Action *Fav, Adv, Hold (see rev. side) on condition*
Members *[Signatures]*
Refer To _____

Committee _____
Date _____
Chair _____
Action _____
Fav, Adv, Hold (see rev. side) _____
Other _____
Members _____
Refer To _____

CERTIFIED



COUNCIL PRESIDENT PROTEM



Rhonda Doushin Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

RETURNED WITHOUT SIGNATURE

NOV 27 2013



CITY COUNCIL
ATLANTA, GEORGIA

13-R-3680

A RESOLUTION

BY COUNCILMEMBER C.T. MARTIN

AS SUBSTITUTED BY THE FINANCE EXECUTIVE COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, ON BEHALF OF THE CITY OF ATLANTA TO ENTER INTO THE APPROPRIATE CONTRACTUAL AGREEMENT WITH GENERAL GROWTH PROPERTIES, DRUM MAJOR INSTITUTE AND DREAM OUTDOORS, LLC. (“SELLERS”) FOR THE PURCHASE OF TWENTY (20) VENDING KIOSKS, IN AN AMOUNT NOT TO EXCEED SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS AND NO CENTS (\$750,000.00) TO BE CHARGED TO AND PAID FROM VARIOUS FUND, DEPARTMENT, ORGANIZATION, AND ACCOUNT NUMBERS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (“City”) sought to initiate a public vending management program; and

WHEREAS, the Atlanta City Council passed City Resolution 08-R-1209; and

WHEREAS, pursuant to the above-referenced Resolution, the City entered into a contract with General Growth Properties, LLC entitled FC-600700095, Public Vending Management Program (the “Initial Contract”) pursuant to the Initial Contract, twenty (20) kiosks were constructed in the City’s right-of-way; and

WHEREAS, the Superior Court of Fulton County, in its December 21, 2012 Order, voided both the City’s public property vending ordinance and its public property vending management contract, declaring them “without effect”; and

WHEREAS, the City now seeks to purchase twenty (20) kiosks from Sellers for the purchase price of Seven Hundred and Fifty Thousand Dollars and No Cents (\$750,000.00) to be paid in equal payments over a two-year period; and

WHEREAS, by and through the purchase of twenty (20) kiosks, Sellers and the City, acting through their duly authorized agents, desire to fully and finally compromise, indemnify against and settle all disputes between them, including all claims which Sellers and the City had, now have or may later claim to have or have had against the other, or any of them, on account of or arising out of this transaction, to include the Initial Contract.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES that the Mayor, or his designee, is authorized to enter into a contractual agreement with Sellers to purchase twenty (20) vending kiosks in an amount not to exceed Seven Hundred Fifty Thousand Dollars and No Cents (\$750,000.00).



BE IT FURTHER RESOLVED, that all costs shall be charged to and paid from 1001.040402.5212001.1565000 GENERAL FUND.EXE GENERAL BUILDINGS & PLANTS.CONSULTING / PROFESSIONAL.GEN GOV-BLDGS\ & PLANT.

BE IT FURTHER RESOLVED, that the Mayor or his designee is directed to assist the City Attorney in the preparation of the appropriate Agreement for execution by the Mayor.

BE IT FINALLY RESOLVED, that the Agreement will not become binding upon the City, and the City will incur no liability under it until the Agreement has been approved by the City Attorney as to form, executed by the Mayor, attested to by the Municipal Clerk, and delivered to Sellers.

A true copy,

A handwritten signature in black ink, appearing to be "S. D. ...", written over the text "A true copy," and above the title "Deputy Clerk".

Deputy Clerk

ADOPTED by the Atlanta City Council
APPROVED as per City Charter Section 2-403

NOV 18, 2013
NOV 27, 2013



CONTRACT FOR THE PURCHASE OF GOODS

This CONTRACT AND MUTUAL RELEASE (the “Agreement”) is made and entered into this _____ day of _____, 2013 by [General Growth Properties, Dream Outdoors, Drum Major Institute] (“Sellers”) and the City of Atlanta, Georgia (“the City”).

WHEREAS, the City sought to initiate a public vending management program; and

WHEREAS, the Atlanta City Council passed City Ordinance 08-O-1220 and City Resolution 08-R-1209; and

WHEREAS, pursuant to the above-referenced Ordinance and Resolution, the City entered into a contract entitled FC-600700095, Public Vending Management Program (the “Initial Contract”);

WHEREAS, the Superior Court of Fulton County, in its December 21, 2012 Order, voided both the City’s public property vending ordinance and its public property vending management contract, declaring them “without effect”; and

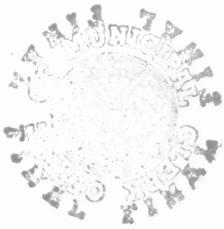
WHEREAS, in order to avoid the inconvenience and expense of litigation and/or further dispute, Sellers and the City, acting through their duly authorized agents, desire to fully and finally compromise and settle all disputes between them, including all claims which Sellers and the City had, now have or may later claim to have or have had against the other, or any of them, on account of or arising out of this transaction, to include the Initial Contract.

1. Nature of Transaction: The City desires to purchase from Sellers 20 vending kiosks as identified in Exhibit A (attached hereto). Sellers agree to sell and the City agrees to purchase and receive 20 kiosks (“Goods”) in accordance with the terms of this Agreement for a total purchase price not to exceed Seven hundred and fifty-thousand dollars and zero cents (\$750,000.00).

2. Term: The term of this Agreement shall commence on _____, 2013 and shall continue until final payment, due on _____, 2015.

3. Authorization: This Agreement is authorized by legislation adopted by City which is attached as Exhibit ____.

4. Warranties: Sellers and the City hereby make the following respective representations and warranties, and acknowledge that these and all other representations and warranties contained herein are material to this Agreement:



- a. Sellers are fully authorized to execute this Agreement and thereby binds themselves to the promises, covenants, terms and conditions set forth herein;
- b. The City, pursuant to City Council Resolution 13-R-_____, is fully authorized to execute this Agreement and thereby will bind itself to the promises, covenants, terms and conditions set forth herein; and
- c. Sellers and the City hereby represent and warrant that no rights, demands, claims, damages, losses, costs, expenses, actions, or causes of action whatsoever that they had, now have, or may later claim to have or have had against the other have been assigned, conveyed or transferred in any manner to any individual or entity.

5. Price/Consideration: For and in consideration of the promises, obligations, covenants and warranties contained herein, the City will pay to Dream Outdoors, Seven hundred and fifty-thousand dollars (\$750,000.00). This purchase price shall be paid to Dream Outdoors in equal payments annually over a two-year period set to commence on _____, 2013 and not past _____, 2015. For and in consideration of the promises, obligations, covenants and warranties contained herein, the City will take possession of the 20 kiosks installed in its right of way by Sellers.

6. Mutual Release and Covenant Not to Sue:

a. Of the City by Sellers: For and in consideration of the promises, covenants and warranties contained herein, the payments in accordance with paragraph 5 above, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, Sellers, on behalf of themselves, their predecessors, successors, assigns, subsidiaries, affiliates and parent corporations, and each and all of Sellers' past and present officers, directors, agents, servants, employees and attorneys, does hereby release, remise, acquit and forever discharge the City and its respective departments, divisions, offices, predecessors, successors, assigns or respective past and present officers, directors, agents, servants, employees and attorneys, from any and all rights, demands, claims, compensatory damages, punitive damages, losses, costs, expenses, civil actions and causes of action arising out of the Initial Contract and/or this transaction including, but not limited to, claims for compensation, claims for deprivations of constitutional or civil rights, attorneys' fees, or any other torts alleging personal injury and property damage, or any civil or administrative claims under any municipal, state,



federal or international statute, regulation or ordinance, at law or in equity, known or unknown, contingent or fixed, suspected or unsuspected, arising out of, asserted in, assertable in, or in any way related to the Initial Contract and/or this transaction.

b. Of Sellers by the City: For and in consideration of the promises, covenants and warranties contained herein, the payments in accordance with paragraph 5 above, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the City, on behalf of itself, its predecessors, successors, assigns, subsidiaries, affiliates and parent corporations, and each and all of Sellers' past and present officers, directors, agents, servants, employees and attorneys, does hereby release, remise, acquit and forever discharge Sellers and their respective departments, divisions, offices, predecessors, successors, assigns or respective past and present officers, directors, agents, servants, employees and attorneys, from any and all rights, demands, claims, compensatory damages, punitive damages, losses, costs, expenses, civil actions and causes of action arising out of this transaction including, but not limited to, claims for compensation, claims for deprivations of constitutional or civil rights, attorneys' fees, or any other torts alleging personal injury and property damage, or any civil or administrative claims under any municipal, state, federal or international statute, regulation or ordinance, at law or in equity, known or unknown, contingent or fixed, suspected or unsuspected, arising out of, asserted in, assertable in, or in any way related to the Initial Contract and/or this transaction. Further, insofar as former vendors allege they are owed compensation for past rents, deposits, merchandise, etc. as a result of the public property vending program being voided by the Fulton County Superior Court, Sellers hereby agree to negotiate in good faith with the aggrieved vendors to make them whole.

7. Governing Law: This Agreement shall be deemed to have been executed in the State of Georgia, and all matters pertaining to the validity, construction, interpretation, and effect of this Agreement shall be governed by the laws of the State of Georgia.

8. Entire Agreement: This Agreement constitutes the entire agreement between Sellers and the City with respect to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, between Sellers and the City. This Agreement shall not be amended,



altered, revised, modified, terminated or changed in any way except by further written agreement signed by all parties hereto.

9. Assignment: No assignment of this Agreement, in whole or in part, will be made without the prior written consent of the non-assigning party. Sellers and the City agree that the terms and covenants set forth herein shall inure to the benefit of each party's respective officers, directors, partners, agents, employees, attorneys, assigns, representatives, parent corporations, departments, offices, subsidiaries, affiliates, predecessors and successors-in-interest, as the case may be, and all references in this Agreement to Sellers and the City shall include their respective officers, directors, parties, agents, employees, attorneys, assigns, representatives, parent corporations, departments, officers, subsidiaries, affiliates, predecessors and successors-in-interest.

10. Validity and Enforceability: This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to the other persons, entities or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

11. Confidentiality: The parties hereto shall hold in confidence and cause their respective officers, directors, employees, consultants, agents and representatives to hold in confidence, and not disclose to others the information exchanged by the parties in connection with this transaction, except as required by law.

IN WITNESS THEREOF, the undersigned parties have executed or caused this Agreement to be executed as of the date set forth herein.

[Signatures on the following page]



IN WITNESS WHEREOF, the parties hereto, acting by and through their duly authorized officers have caused their hands and seals hereunto affixed as of the Effective Date.

ATTEST:

CITY OF ATLANTA, A Georgia municipal corporation

Mayor Kasim Reed

Municipal Clerk

(SEAL)

APPROVED AS TO FORM:

DATE: _____

Senior Assistant City Attorney

DREAM OUTDOORS, LLC., a Georgia limited liability company

By: _____
Name: _____
Title: _____

RCS# 3150
11/18/13
2:25 PM

Atlanta City Council

13-R-3680

ENTER INTO AGREEMENT W/DREAM OUTDOORS
PURCHASE OF 20 VENDING KIOSKS
ADOPT

YEAS: 14
NAYS: 1
ABSTENTIONS: 0
NOT VOTING: 0
EXCUSED: 0
ABSENT 1

Y Smith	Y Archibong	N Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	B Mitchell