

AGREEMENT FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC SEATING SERVICES/BUS BENCHES

THIS AGREEMENT, made and entered into, in duplicate, this November 10th day of 2014, by and between PINELLAS COUNTY, a political subdivision of the State of Florida, hereinafter, referred to as "COUNTY," and BIG BROTHERS BIG SISTERS OF TAMPA BAY, INC., BOYS & GIRLS CLUBS OF THE SUNCOAST, INC., SPECIAL OLYMPICS FLORIDA, INC., not for profit corporations or organizations, hereinafter collectively referred to as "CLUBS," or where individually indicated, "CLUB," and METROPOLITAN SYSTEMS, INC., a Florida corporation, hereinafter referred to as "SERVICE PROVIDER."

WITNESSETH:

WHEREAS, this Agreement is made pursuant to Section 337.408, Florida Statutes (2014), a municipality or county may authorize the installation, without public bid, of benches and transit shelters together with advertising displayed thereon within the right-of-way limits of such roads; and

WHEREAS, the COUNTY desires to have benches placed within its unincorporated areas, as now constituted or hereafter enlarged, at transit stops and at other points of pedestrian convenience or necessity in order that such amenities may fulfill a collateral public transportation need and be of continuing benefit to those who use public transportation, and to others; and

WHEREAS, the CLUBS desire to sponsor or co-sponsor as a civic project in the community for the benefit and accommodation of the general traveling public, and of others, the installation and continued provision of benches at transit stops and at other points of pedestrian convenience or necessity within the unincorporated areas of the County as now constituted and hereafter enlarged; and

WHEREAS the SERVICE PROVIDER is engaged in the manufacturing, installation, and management of street furnishings, including benches, as an ordinary and desirable incident of urban streets and roads, and, to that end, has entered into agreements with the CLUBS.

NOW, THEREFORE, in consideration of the premises and of the mutual promises and covenants herein contained, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals: The Recitals hereinabove set forth are true and correct and are incorporated herein and made a part hereof by this reference.

2. All prior agreements between the COUNTY and the CLUBS related to the placement of benches are hereby terminated by mutual agreement.

3. The COUNTY hereby grants the CLUBS and the SERVICE PROVIDER the right to install benches upon public space under COUNTY's jurisdiction or control, and the SERVICE PROVIDER shall install, and at all times hereunder shall continue to furnish benches, as hereinafter provided upon public space within the unincorporated areas of the County, as now constituted or hereafter enlarged, in a quantity sufficient, in the judgment of the COUNTY reasonably exercised, to establish a public seating service within the County for the benefit of the general traveling public as well as for the benefit of others. The public seating service shall be without cost to the COUNTY, however, in order to fund such service, the COUNTY further hereby grants the CLUBS and the SERVICE PROVIDER the right to lease display space on said benches as hereinafter provided, for both public service and commercial messages.

4. It is understood and agreed that the COUNTY may permit a person or entity to administer the bus bench program on behalf of the COUNTY, including the Pinellas Suncoast Transit Authority ("PSTA"), which person or entity shall be referred to hereinafter as the "Program Administrator." If the COUNTY delegates authority to administer the Agreement to a Program Administrator, the COUNTY will provide the CLUBS and the SERVICE PROVIDER with written notification of this delegated authority.

5. Benches placed within the unincorporated areas of the County herein provided, shall be governed by and subject to the following general criteria:

- a) No bench shall be more than forty-three (43) inches high, not more than seventy-four (74) inches long, and not more than twenty-eight (28) inches wide.
- b) Construction shall be of concrete and wood or of equivalent materials.
- c) The placement of benches shall be at locations specifically approved by the COUNTY which may include at approved PSTA transit and Pinellas County School Board ("school") bus stops, and such placement shall be subject to review by the COUNTY so that no bench shall be allowed to cause a public sidewalk to be closed to pedestrian passage or to create a hazard, or to otherwise be detrimental to the public safety. The supplying of benches at transit stops as herein provided shall be in close proximity to sites marked or designated by the transit system.
- d) No bench, unless otherwise authorized, may be placed so that the angle of its longest side in relation to the curb line shall be greater than forty-five degrees (45 degrees)

and no bench, unless otherwise authorized, may be placed so that it is closer than eighteen (18) inches to the face of the curb.

- e) Not more than one (1) bench displaying a commercial message or intended for the display of a commercial message shall be installed at a particular location.
- f) Display space shall be restricted to the backrest area of the bench and shall not be greater than six (6) feet in length and two (2) feet in height. No commercial message displayed thereon shall appear other than on the front or rear surface of such backrest area and no copy or designs may be of an immoral nature or otherwise violate community standards of decency. Neither may such copy or designs promote a product or service that is not lawfully available to minors unless such product or service is produced by the State. Should any message be deemed objectionable in the judgment of the COUNTY reasonably exercised then, upon notice to the SERVICE PROVIDER, such message shall forthwith be removed by the SERVICE PROVIDER.
- g) Notwithstanding any other provision here, placement of benches shall be in compliance with the Americans with Disabilities Act.

6. SERVICE PROVIDER shall not subcontract any construction, installation or maintenance activity related to this agreement.

7. Should any bench fail to conform to the above general criteria or should a property owner object to the presence of a bench abutting his property, then the COUNTY may order the SERVICE PROVIDER to adjust or remove such bench and that failing, may adjust or remove same at the expense of the SERVICE PROVIDER. Such removal or adjustment shall occur within thirty (30) days of receipt of written notice from the COUNTY. For benches placed pursuant to any prior agreement between the COUNTY and the CLUBS, the SERVICE PROVIDER agrees to remove any benches that are not in compliance with this Agreement, including not placed in an approved location, within thirty (30) days after receiving written notification from the COUNTY.

8. This Agreement will serve as a general Right-of-Way Utilization Permit for the placement of benches at transit and school bus stops. However, prior to the placement of any bench, the SERVICE PROVIDER will obtain written permission from the Pinellas County Public Works Department, or any other department of Pinellas County as designated by the County Administrator with ten (10) days notice to the SERVICE PROVIDER, to place the bench in any requested location, and the SERVICE PROVIDER will comply with all of the terms of this Agreement with respect to each bench which has been or will later be installed. The SERVICE PROVIDER is authorized pursuant to this Agreement to place benches at places

of pedestrian convenience other than a transit or school bus stop which are approved by COUNTY, however this Agreement does not serve as a general Right-of-Way Utilization Permit for those placements and the SERVICE PROVIDER is responsible for seeking individual permits for placement of benches other than at transit and school bus stops.

9. Within 120 days of the execution of this Agreement, the COUNTY and SERVICE PROVIDER shall review all inventories of currently existing benches placed in accordance with or under the auspices of the prior agreement and agree upon a schedule to remove all benches that are not (a) at an operating transit or school bus stop (b) in a location approved by the COUNTY, or (c) in the COUNTY'S opinion, not placed in accordance with this Agreement or applicable law. If, by January 1, 2016, the parties have not agreed upon a schedule to remove benches that are in locations not approved by the COUNTY by January 1, 2016, this Agreement shall automatically terminate by mutual agreement of the parties.

10. All benches installed or maintained pursuant to this Agreement will be located in compliance with section 336.046, Florida Statutes, Chapter 337, Florida Statutes, Rule 14-20, Florida Administrative Code, and in compliance with all applicable Federal, State, and local government laws, statutes, codes, court orders, and consent decrees in existence or adopted during the term of the Agreement. The SERVICE PROVIDER will assure that all benches meet the Americans with Disabilities Act ("ADA") accessibility requirements established by Federal and/or State laws, and to the extent any benches are or become non-compliant at any time, the SERVICE PROVIDER will provide a schedule for ensuring that all benches meet ADA accessibility requirements. The schedule will be submitted to the Director of Public Works or Program Administrator within thirty (30) days of the CLUBS and SERVICE PROVIDER becoming aware that any benches are non-compliant. The parties agree that any dispute relating to ADA compliance will be resolved by the COUNTY'S ADA Coordinator, whose determination shall be accepted by all parties as final.

11. The COUNTY reserves the right, upon written notice to the SERVICE PROVIDER, to order the removal of any particular bench which the COUNTY, in its judgment reasonably exercised, believes not to be located to the public benefit. Should the SERVICE PROVIDER fail to remove such bench within thirty (30) days of receiving notice, the COUNTY may remove same at the expense of the SERVICE PROVIDER.

12. At all times hereunder, the benches which are the subject of this Agreement shall remain the property of the SERVICE PROVIDER and the SERVICE PROVIDER shall maintain said benches in a safe condition, in good repair and presentable appearance. The SERVICE PROVIDER will maintain the area within five (5) feet of each bench, and such maintenance will include mowing and trimming of grass and the removal of trash and debris from the area around each bench. At all times hereunder the land upon which the benches are placed shall not

be in the legal possession or control of the SERVICE PROVIDER, but shall only be subject to the necessary installation and maintenance of the benches.

13. The SERVICE PROVIDER will maintain insurance according to the requirements set forth in Exhibit "A" attached to this Agreement, as amended herein below. Said insurance coverage shall be primary non-contributory basis in nature. Further, the SERVICE PROVIDER shall indemnify and hold harmless the COUNTY from and against all claims, losses and expenses, including court costs and reasonable attorney's fees, arising out of or resulting from any claim of wrongful or negligent act on the part of the COUNTY, its agents, representatives, and employees related to the installation, maintenance, and management of benches hereunder.

14. It is intended and understood that the program for the placement and continued maintenance of benches established under the terms of this Agreement is philanthropic and quasi-commercial in nature, accordingly, such program shall be sponsored or co-sponsored by the CLUBS, however, notwithstanding anything herein to the contrary, such sponsorship shall be the CLUBS only obligation and responsibility hereunder. Should a CLUB at any time and for any reason be compelled to withdraw as sponsor of the public seating service established hereunder, the remaining parties named as CLUBS shall assume such right, obligation and responsibility, and this Agreement shall continue according to its terms.

15. Should the SERVICE PROVIDER or CLUBS be found to be in default of any of the conditions herein, it shall be given notice in writing, and reasonable time not to exceed forty-five (45) days to correct same. In the event that the SERVICE PROVIDER should fail to correct such default or fail to commence a diligent effort to correct such default within a reasonable time after receipt of notice of same, the County may, at its option, terminate the rights and obligations created by this Agreement upon the giving of ninety (90) days notice in writing to the CLUBS and to the SERVICE PROVIDER. Should such termination duly occur, or should the rights and obligations to provide public seating as set forth herein cease for any other reason, then the SERVICE PROVIDER shall be allowed an additional six (6) month period to remove its benches. The SERVICE PROVIDER shall maintain the insurance required pursuant to this Agreement for the duration that benches placed pursuant to this Agreement, or any prior agreement between the COUNTY and the CLUBS, remain on right-of-way located within the unincorporated COUNTY or other property owned or managed by the COUNTY.

16. Where notice to the SERVICE PROVIDER and/or to the CLUBS is required or otherwise given pursuant to this Agreement, it shall be in writing, sent by registered or certified mail to the principal offices with return receipt(s) requested or by personal delivery to such office(s) with receipt furnished.

17. This Agreement shall be for a term of five (5) years commencing upon execution by the Board of County Commissioners, and thereafter, so long as the CLUBS and SERVICE PROVIDER perform as provided herein, shall automatically renew under the same terms and conditions for an additional five (5) year extension. After the first renewal, the parties shall have two options to extend the term of this Agreement, by mutual written agreement, for two (2) additional five (5) year extensions, upon the same terms, covenants, and conditions.

18. Every year on January 1, or the following business day if January 1 falls on a weekend or holiday, the SERVICE PROVIDER will provide the COUNTY with a comprehensive inventory of all benches, identifying each bench in accordance with a mutually approved bench data sheet. This inventory will be sent to Pinellas County, Director of Public Works, 22211 US 19 North, Building 1, Clearwater, Florida 33765, or at any other such address provided to the SERVICE PROVIDER by the COUNTY.

19. This Agreement shall take effect no later than ten (10) days after acceptance and execution by the COUNTY, provided the insurance requirements contained in Exhibit A are satisfied, or upon execution by the COUNTY and receipt by the COUNTY of proof of satisfaction of the insurance requirements contained in Exhibit A, whichever is sooner.

20. This Agreement may be enforced by specific performance.

21. The COUNTY warrants and agrees that displays installed on benches pursuant to the terms of this Agreement do not constitute signage for regulatory purposes.

22. This Agreement shall be construed as if each of the parties equally participated in and equally contributed to the drafting of its provisions with the ordinary and fair meaning attributed to its wording and to each of its terms.

23. In the performance of this Agreement the SERVICE PROVIDER will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, age, marital status, disability or national origin. The SERVICE PROVIDER will take affirmative action to ensure that employees are treated without regard to their race, color, religion, gender, sexual orientation, age, marital status, disability or national origin.

24. The SERVICE PROVIDER and CLUBS acknowledge that they are functioning as independent entities in performing this Agreement, and are not acting as employees or agents of the COUNTY. The SERVICE PROVIDER and CLUBS acknowledge that they are responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, located at 8 U.S.C. Section 1324, et seq., and regulations relating thereto. Failure to comply with the

above provisions of this Agreement will be considered a material breach and grounds for immediate termination of the Agreement, except that notice to cure shall be given.

25. Should any one or more of the provisions hereof be found invalid or unenforceable by a court of competent jurisdiction, then such provision or provisions shall be null and void and shall be deemed severed from the whole, and such finding shall be without effect upon the remaining provisions, which remaining provisions shall continue in full force and effect provided that the rights and obligations of the parties contained herein are not materially prejudiced and that the intentions of the parties continue to be effective.

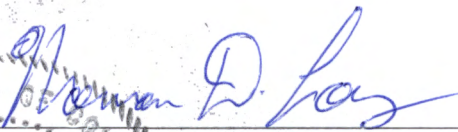
26. Attachments as numbered and listed in this Agreement are incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed in their respective corporate or other proper names by the persons duly authorized to sign on their behalf.

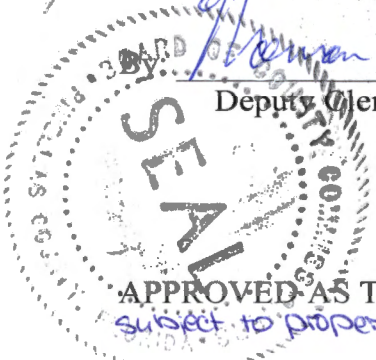
PINELLAS COUNTY, FLORIDA by and through its Board of County Commissioners


By: 
John Morrone, Commission Chair

ATTEST: Ken Burke, Clerk

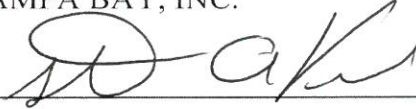

Deputy Clerk

APPROVED AS TO FORM:
subject to proper execution



By: 
Office of County Attorney

BIG BROTHERS BIG SISTERS
OF TAMPA BAY, INC.

By: 

Print Name: Stephen A Kod

Title: President of CEO

ATTEST:

By: 

APPROVED AS TO FORM:

By: _____
Attorney

BOYS & GIRLS CLUBS OF THE SUNCOAST, INC.

By: Nita Smith

Print Name: Nita Smith

Title: President/CEO

ATTEST:

By: Bill J

APPROVED AS TO FORM:

By: _____
Attorney

SPECIAL OLYMPICS FLORIDA, INC.

By: 


Print Name: Larry Daniell

Title: COO

ATTEST:

By: 

APPROVED AS TO FORM:

By: 
Attorney

METROPOLITAN SYSTEMS, INC., a Florida Corporation

By: Andrew Alfonso

Print Name: ANDREW ALFONSO

Title: PRESIDENT

ATTEST:

By: Kathleen Watson

APPROVED AS TO FORM:

By: _____
Attorney

EXHIBIT A – INSURANCE REQUIREMENTS

Notice: The SERVICE PROVIDER must provide a certificate of insurance and endorsement in accordance with this Agreement and the insurance requirements listed below).

The SERVICE PROVIDER shall obtain and maintain, and, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and have an AM Best rating of A- VIII or better.

- a) Within 10 days prior to execution of this Agreement by the COUNTY the SERVICE PROVIDER shall email certificate that is compliant with the insurance requirements to riskmgmt@pinellascounty.org. The Certificate(s) of Insurance shall be signed by authorized representatives of the insurance companies shown on the Certificate(s). **A copy of the endorsement(s) referenced in paragraph c) for Additional Insured shall be attached to the certificate(s) referenced in this paragraph.**
- b) No work shall commence pursuant to this Agreement unless and until the required Certificate(s) of Insurance are received and approved by the County. Approval by the County of any Certificate(s) of Insurance does not constitute verification by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate(s) of Insurance is in compliance with the requirements of the Agreement. County reserves the right to require a certified copy of the entire insurance policy, including endorsement(s), at any time during the Bid and/or contract period.
- c) All policies providing liability coverage(s), other than professional liability and workers compensation policies, obtained by SERVICE PROVIDER and any subcontractors to meet the requirements of the Agreement shall be endorsed to include Pinellas County Board of County Commissioners as an Additional Insured.
- d) If any insurance provided pursuant to the Agreement expires prior to the expiration of this Agreement, renewal Certificate(s) of Insurance and endorsement(s) shall be furnished by the SERVICE PROVIDER to the County at least thirty (30) days prior to the expiration date.
 - (1) SERVICE PROVIDER shall also notify County within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, nonrenewal or adverse material change in coverage received by SERVICE PROVIDER from its insurer. Notice shall be given by certified mail to: Pinellas County Risk Management, 400 S Fort Harrison Ave., Clearwater, FL, 33756. Nothing contained herein shall absolve Bidder of this requirement to provide notice.
 - (2) Should SERVICE PROVIDER, at any time, not maintain the insurance coverages required herein, the County may terminate the Agreement.

- e) The County reserves the right, but not the duty, to review and request a copy of the SERVICE PROVIDER'S most recent annual report or audited financial statement when a self-insured retention (SIR) or deductible exceeds \$50,000.
- f) Each insurance policy and/or certificate shall include the following terms and/or conditions:
 - (1) The Named Insured on the Certificate of Insurance and insurance policy must match the SERVICE PROVIDER'S name on the agreement with the County. If Bidder is a Joint Venture per Section A. titled Joint Venture of this Bid, Certificate of Insurance and Named Insured must show Joint Venture Legal Entity name and the Joint Venture must comply with the requirements of Section C with regard to limits, terms and conditions, including completed operations coverage.
 - (2) Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of SERVICE PROVIDER.
 - (3) The term "County" or "Pinellas County" shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and Constitutional offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Pinellas County.
 - (4) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County or any such future coverage, or to County's Self-Insured Retentions of whatever nature.
 - (5) All policies shall be written on a primary, non-contributory basis.
 - (6) Any Certificate(s) of Insurance evidencing coverage provided by a leasing company for either workers compensation or commercial general liability shall have a list of covered employees certified by the leasing company attached to the Certificate(s) of Insurance. The County shall have the right, but not the obligation to determine that the SERVICE PROVIDER is only using employees named on such list to perform work for the County. Should employees not named be utilized by SERVICE PROVIDER, the County, at its option may stop work without penalty to the County until proof of coverage or removal of the employee by the contractor occurs, or alternatively find the Bidder to be in default and take such other protective measures as necessary.
 - (7) Insurance policies, other than Professional Liability, shall include waivers of subrogation in favor of Pinellas County from the SERVICE PROVIDER.
- g) The minimum insurance requirements and limits for this Agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:

(1) Workers' Compensation Insurance

Limit	Florida Statutory
Employers' Liability Limits	
Per Employee	\$ 500,000
Per Employee Disease	\$ 500,000
Policy Limit Disease	\$ 500,000

(2) Commercial General Liability Insurance including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal Injury.

Limit	
Combined Single Limit Per Occurrence	\$ 1,000,000
Products/Completed Operation Aggregate	\$ 1,000,000
Personal Injury and Advertising Injury	\$ 1,000,000
General Aggregate	\$ 2,000,000

(3) Business Automobile or Trucker's/Garage Liability Insurance covering owned, hired, and non-owned vehicles. If the SERVICE PROVIDER does not own any vehicles, then evidence of Hired and Non-owned coverage is sufficient. Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards, unless Bidder can show that this coverage exists under the Commercial General Liability policy.

Limit	
Combined Single Limit Per Accident	\$ 1,000,000

(4) Excess or Umbrella Liability Insurance excess of the primary coverage required, in paragraphs (1), (2), and (3) above:

Limit	
Each Occurrence or Claim	\$ 1,000,000
General Aggregate	\$ 1,000,000

(5) Property Insurance SERVICE PROVIDER will be responsible for all damage to its own property, equipment and/or materials.