



Interoffice Memorandum

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

October 1, 2014

OCT 21 2014 NP/BH

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Mark V. Massaro, P. E., Director, Public Works Department

A handwritten signature in black ink, appearing to read "Mark V. Massaro".

CONTACT PERSON: Diana Almodovar, P.E., Manager
Development Engineering Division

PHONE NUMBER: (407) 836-7973

SUBJ: **Indemnification and Hold Harmless Agreement and Agreement to comply with Applicable Regulations between Metropolitan Systems, Inc. and Orange County, Florida**

Florida Statutes Section 337.4408(1) and the County's recently adopted Ordinance Regulating the Placement of Transit Facilities within the Right-Of-Way requires that transit facilities installed within the right-of-way be compliant with all applicable rules and regulations, including the Americans with Disabilities Act. Counties and municipalities that authorize these installations within State right-of-way are required to ensure compliance with applicable rules and regulations. Florida Statutes Section 337.4408(1) also requires providers of transit facilities which are located within the right-of-way to indemnify and hold harmless the Florida Department of Transportation from any actions relating to the installation and maintenance of transit facilities within the right-of-way. Metropolitan Systems, Inc., which has installed bus benches within County and State rights-of-way, has previously certified to the County that it is in compliance with all applicable rules and regulations. In this agreement, Metropolitan Systems, Inc. acknowledges this compliance and also indemnifies and holds harmless the Florida Department of Transportation and the County.

This agreement has been approved as to form by the County Attorney's Office.

ACTION REQUESTED: Approval of Indemnification and Hold Harmless Agreement and Agreement to comply with Applicable Regulations between Metropolitan Systems, Inc. and Orange County, Florida. All Districts.

MVM/ray

Attachment

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

Prepared by:
Orange County Attorney's Office
P.O. Box 1393
Orlando, FL 32802-1393

OCT 21 2014 NP/KH

**INDEMNIFICATION AND
HOLD HARMLESS AGREEMENT
AND AGREEMENT TO COMPLY WITH
APPLICABLE REGULATIONS
between
METROPOLITAN SYSTEMS, INC.
and
ORANGE COUNTY, FLORIDA**

This Indemnification and Hold Harmless Agreement and Covenant to Comply with Applicable Regulations (the "Agreement") is made by and between METROPOLITAN SYSTEMS, INC. a Florida corporation, whose mailing address is 3014 West Horatio Street, ("Metropolitan"), and Orange County, a charter county and political subdivision of the State of Florida, whose mailing address is c/o Orange County Administrator, 201 South Rosalind Avenue, Orlando, Florida 32801 (the "County").

WITNESSETH:

WHEREAS, on July 27, 1999, the County entered into that certain agreement with Altrusa International of Orlando-Winter Park, Inc., Orlando Jaycees, Inc., Southwest Orlando Jaycees, Inc., West Orange Jaycees, Inc., Boys and Girls Clubs of Central Florida, Inc., Big Brothers/Big Sisters of Central Florida, Inc., Mothers Against Drunk Driving, Central Florida Chapter, and Apopka Woman's Club, Inc., (collectively, the "Clubs"), which agreement grants the right to the Clubs to place concrete and wooden benches in public spaces in the County at various transit stops or other points of pedestrian convenience (the "Bus Bench Agreement") ;
and

WHEREAS, the Bus Bench Agreement provides that the Clubs or a designated service company (“Service Company”) may place and maintain benches within the County and may lease advertising space on such benches and that the Clubs shall contract with a Service Company to implement and assume responsibility for performance of the Bus Bench Agreement; and

WHEREAS, the Clubs selected Metropolitan as the Service Company, and both the County and Metropolitan hereby acknowledge that Metropolitan is the Clubs’ designated Service Company; and

WHEREAS, the Bus Bench Agreement provides that the placement of benches is subject to review by the County such that no bench shall be detrimental to the public safety, welfare, morals, or health; and

WHEREAS, the Bus Bench Agreement provides that the County reserves the right, upon notice to the Clubs or the Service Company, to order the removal of any bench which the County believes not to be located to the public benefit; and

WHEREAS, section 337.408(1), Florida Statutes (2013), in pertinent part, requires all benches installed within the right-of-way limits of municipal, county, or state roads to be in compliance with all applicable laws and rules, including, without limitation, the Americans with Disabilities Act (“ADA”); and

WHEREAS, section 337.408(1), Florida Statutes (2013) also provides that a county or a municipality that authorizes or has authorized a bench or transit shelter to be placed in the right-of-way limits of any road in the State Highway System is responsible for ensuring that such bench or shelter complies with all applicable laws and rules, including, without limitation, the ADA, and the county or municipality must require the supplier or any other person under

contract to install the bench or transit shelter to indemnify, defend, and hold harmless the Florida Department of Transportation (“FDOT”) from any suits, actions, proceedings, claims, losses, costs, charges, expenses, damages, liabilities, attorneys fees, and court costs relating to the installation, maintenance, removal, or relocation of such installations, and shall annually certify to FDOT that this requirement has been met; and

WHEREAS, the President of Metropolitan has provided written certification to the County that, to the best of his knowledge and belief, the benches installed by Metropolitan in Orange County are in compliance with the applicable requirements of the ADA as of August 13, 2012; and

WHEREAS, the County has determined that it is not in the public interest to allow benches to remain in the right-of-way without a hold harmless and indemnification agreement that indemnifies and holds harmless both FDOT and the County from any suits, actions, proceedings, claims, losses, costs, charges, expenses, damages, liabilities, attorneys fees, and court costs relating to the installation, maintenance, removal, or relocation of such benches; and

WHEREAS, Metropolitan wishes to keep in place the benches it has installed and wishes to continue to install benches in the right-of-way in unincorporated Orange County pursuant to the terms of the Bus Bench Agreement and is willing to enter into this Hold Harmless and Indemnification Agreement.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS in hand paid by Metropolitan to County, the mutual agreements, benefits, obligations, covenants, terms, conditions and restrictions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **RECITALS.** The above recitals are true and correct and are hereby incorporated as a material part of this Agreement by this reference.

2. **HOLD HARMLESS AND INDEMNIFICATION.** Metropolitan, on behalf of itself and its successors and assigns hereby indemnifies, defends (with legal counsel acceptable to the County), and holds harmless the County, its Board members, officers, employees, contractors, agents and elected and appointed officials, from and against any and all claims, suits, judgments, demands, liabilities, damages, costs and expenses (including but not limited to attorneys' fees, paralegals' fees, consultants' fees and costs at all administrative, pretrial, trial and appellate levels) of any kind or nature whatsoever, arising out of or related in any way to the installation, maintenance, removal, or relocation of benches installed by Metropolitan or its successors and assigns in Orange County pursuant to the Bus Bench Agreement.

Metropolitan, on behalf of itself and its successors and assigns, hereby releases, indemnifies, defends (with legal counsel acceptable to FDOT), and holds harmless FDOT, its employees, contractors, agents and appointed officials, from and against any and all claims, suits, judgments, demands, liabilities, damages, costs and expenses (including but not limited to attorneys' fees, paralegals' fees, consultants' fees and costs at all administrative, pretrial, trial and appellate levels) of any kind or nature whatsoever, arising out of or related in any way to the installation, maintenance, removal, or relocation of benches installed in unincorporated Orange County by Metropolitan or its successors and assigns pursuant to the Bus Bench Agreement in the right-of-way limits of any road in the State Highway System.

3. **AGREEMENT TO COMPLY WITH APPLICABLE REGULATIONS.** Metropolitan hereby acknowledges that section 337.408(1) Florida Statutes (2013), requires all benches installed within the right-of-way limits of municipal, county, or state roads to be in

compliance with all applicable laws and rules, including, without limitation, the ADA, and Metropolitan represents that it is, as of the effective date of this Agreement with respect to the benches installed in Orange County pursuant to the Bus Bench Agreement, in compliance with all such applicable laws and rules. Furthermore, Metropolitan, on behalf of itself and its successors and assigns hereby agrees that, with respect to all benches installed pursuant to the Bus Bench Agreement before and after the effective date of this Agreement, it will comply with all applicable laws and rules as they may be amended, including, without limitation, the ADA.

4. **AMENDMENT/TERMINATION.** This Agreement may be amended or terminated only by express written instrument approved by the Board of County Commissioners and Metropolitan.

5. **APPLICABLE LAW AND VENUE.** This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida. Venue for any legal proceedings arising out of this Agreement shall be in the Circuit Court for Orange County, Florida.

7. **EFFECTIVE DATE.** This Agreement shall become effective on the date of its execution by the last party to execute this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective duly authorized representatives on the respective dates set forth below.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Martha O. Haynie*
Deputy Clerk

Date: OCT 21 2014
PWKS-C-05



METROPOLITAN SYSTEMS, INC.,
a Florida corporation

By: Andrew Alfonso

Name: ANDREW ALFONSO

Title: PRESIDENT

Date: 12/02/13

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 02nd day of DECEMBER,
2013, by ANDREW ALFONSO, as PRESIDENT of Metropolitan Systems, Inc., a
Florida corporation, who [] is personally known to me or [] produced
as identification and did not take an oath.

(NOTARY SEAL)

Ricardo Hornik

Notary Public, State of Florida

Print Name: Ricardo Hornik

My Commission Expires: 09/30/2016

