

CITY COUNCIL RESOLUTION NO. 2014-011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AUTHORIZING THE CITY OF LAKE CITY, FLORIDA, TO ENTER INTO AN AGREEMENT WITH METROPOLITAN SYSTEMS, INC., AND KIWANIS CLUB OF LAKE CITY, FLORIDA, INC., TO PLACE BENCHES UPON THE SIDEWALKS AND OTHER PUBLIC PLACES WITHIN THE CITY LIMITS.

WHEREAS, pursuant to and in accordance with the provisions of a prior agreement between the City of Lake City, Florida ("City"), Metropolitan Systems, Inc., ("Metropolitan"), and Jaycees of Lake City, Florida (the "Prior Agreement"), as authorized and approved by City Resolution No. 2001-096, Metropolitan, a manufacturer of benches, furnished benches and installed them upon public areas within the corporate limits of the City; and

WHEREAS, the Prior Agreement terminates on March 4, 2014, and the City has been advised that the Jaycees of Lake City no longer desires or is willing to renew or participate in the Prior Agreement; and

WHEREAS, the Kiwanis Club of Lake City, Florida, Inc. ("Kiwanis Club") desires to sponsor or co-sponsor, as a community project for the benefit and accommodation of the general traveling public, and of others, an agreement with Metropolitan for the placement of benches at transit stops and/or at other points of pedestrian convenience or necessity within the corporate limits of the City, subject to the City's consent and approval, and, to that end, has entered into agreements with Metropolitan; and

WHEREAS, City recognizes that physical rest is essential to human well-being as well as welcomed by the public; and

WHEREAS, City finds that the installation and presence of a public seating service within the City limits would fulfill a collateral public transportation need and be of a benefit to the general traveling public, and to others; and

WHEREAS, City desires to continue to place, or have placed, benches upon its sidewalks and other places for the convenience or necessity of the general public; and

WHEREAS, City finds that is in the public interest for the City to enter into the agreement with Metropolitan and Kiwanis Club, copy of which is attached hereto and made a part of this resolution (the "Kiwanis Club Agreement").

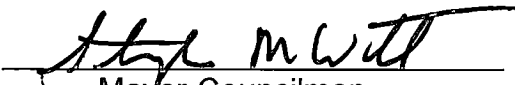
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are all true and accurate and are hereby incorporation herein and made a part of this resolution.

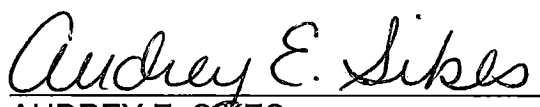
Section 2. The City is hereby authorized to enter into the Kiwanis Club Agreement.

Section 3. The Mayor and City Clerk are authorized to execute the Kiwanis Club Agreement for and on behalf of the City.

PASSED AND ADOPTED at a meeting of the City Council this 18th day of February, 2014.


Mayor-Councilman

ATTEST:


AUDREY E. SIKES
City Clerk

APPROVED AS TO FORM AND LEGALITY:

By: 
HERBERT F. DARBY
City Attorney

**AGREEMENT WITH METROPOLITAN SYSTEMS, INC.,
AND KIWANIS CLUB OF LAKE CITY, FLORIDA, INC.
FOR THE PLACEMENT OF BENCHES UPON CITY SIDEWALKS**

THIS AGREEMENT made and entered into this 18th day of February, 2014, by and between the CITY OF LAKE CITY, FLORIDA, a municipal corporation (herein "City"), whose mailing address is 205 North Marion Avenue, Lake City, Florida 32055; METROPOLITAN SYSTEMS, INC., a corporation, whose mailing address is 1050 West Robinson Street, Orlando, Florida 32805, (herein "Service Company"); and KIWANIS CLUB OF LAKE CITY, FLORIDA, INC. (herein "Kiwanis Club").

RECITALS

A. Pursuant to and in accordance with the provisions of a prior agreement between the City, the Service Company, and Jaycees of Lake City, Florida (the "Prior Agreement"), as authorized and approved by City Resolution 2001-096, the Service Company furnished benches and installed them upon public areas within the corporate limits of the City.

B. The Prior Agreement terminates on March 4, 2014, and the City has been advised by the Jaycees of Lake City, Florida that it no longer desires or is willing to renew the Prior Agreement with the City and the Service Company.

C. It is everywhere recognized that physical rest is essential to human well being as well as welcomed by all people and the City has determined that the installation and presence of a public seating service within the corporate limits of the City would fulfill a collateral public transportation need and be of continuing benefit to the general traveling public and to other.

D. The City is charged with the public interest and, accordingly, as a proprietary function is desirous of having placed within its corporate limits, at transit stops and/or at other points of pedestrian convenience or necessity, benches designed for comfortable seating in order that such benches may inure to the convenience and enjoyment of those who use public transportation, and of others.

E. Service Company is engaged in the manufacture and installation of benches as an ordinary and desirable incident of urban streets and road.

F. Kiwanis Club is desirous of sponsoring or co-sponsoring as a community project for the benefit and accommodation of the general traveling public, and of other, the placement of benches at transit stops and/or at other points of pedestrian convenience or necessity within the corporate limits of the City and, to that end, has entered into agreements with Service Company.

**City of Lake City
Office of the City Clerk
RECORD COPY**

G. Service Company has offered to furnish benches and install them upon public areas within the corporate limits of City subject to the terms, conditions and limitations of this agreement.

H. City has determined that it is in the public interest and welfare to provide its citizens and the traveling public with benches for seating and comfort and is willing to grant Service Company and Kiwanis Club the right to place benches upon public space, subject to the terms, conditions and limitations of this agreement.

NOW, THEREFORE, in consideration of the premises, and mutual covenants herein contained, Service Company, Kiwanis Club and City agree as follows:

1. The above recitals are true and accurate and are incorporated herein and made a part of this agreement.

2. Service Company, its successors and assigns, shall install and at all times hereunder shall continue to furnish benches, as hereinafter provided, upon public space within the corporate limits of City (as now constituted or hereafter enlarged) in a quantity sufficient, in the judgment of City reasonably exercised, to establish a public seating service within the City 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 City, however, in order to fund such service, Service Company, its successors and assigns, shall have the right to lease display space on said benches as hereinafter provided, for both public service and commercial messages.

3. Benches placed within the corporate limits of City, as 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 nor more than seventy-four (74) inches long nor more than twenty-eight (28) inches wide.
- b. Construction shall be of concrete and wood or of equivalent materials.
- c. Benches shall be placed at transit stops and/or at other points of pedestrian convenience or necessity and such placement shall be subject to the approval and review by the City so that no bench shall be permitted 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.
- d. No bench, unless otherwise authorized, may be placed so that the angle of its long diversion in relation to the curb line shall be greater than forty-five

degrees (45°) 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 permitted 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 City reasonably exercised, then, upon notice to Service Company, such message shall forthwith be removed by Service Company.

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 City may order Service Company to remove such bench and, that failing, may remove same at the expense of Service Company.

4. City shall reserve the right, upon notice to Service Company, to order the removal of any particular bench which City, in its judgment reasonably exercised, believes not to be located to the public benefit. Should Service Company fail to remove such bench, then City may remove same at the expense of Service Company.

5. At all times hereunder, the benches which are the subject of this agreement shall remain the property of Service Company and Service Company shall maintain said benches in a good and substantial state or repair. At all times hereunder the land upon which the benches are placed shall not be in the legal possession or control of Service Company, but shall only be subject to the necessary installation and maintenance of the benches.

6. Service Company shall at all times hereunder maintain public liability insurance and shall provide City with a Certificate of Insurance as evidence of same; the insurance shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for individual injury and One Million Dollars (\$1,000,000.00) for more than one injury resulting from one accident and One Hundred Thousand Dollars (\$100,000.00) for property damage and if and when such minimum amounts become deficient, in the judgment of City reasonably exercised, then such amounts shall be appropriately increased upon the written request

of City. Further, Service Company shall indemnify and save harmless City from and against all claims, losses, and expenses, including court costs and reasonable attorney's fees, arising out of or resulting from any wrongful or negligence act on the part of Service Company, its agents, representatives and employees in the installation and maintenance of benches hereunder. City shall be named an additional insured under general public liability policies.

7. It is intended that the program for the placement and continued maintenance of benches established by this agreement be quasi-commercial in nature, accordingly, such program shall be sponsored or co-sponsored by Kiwanis Club, however, notwithstanding anything herein to the contrary, such sponsorship shall be the Kiwanis Club's only right and obligation hereunder. The benches shall be referred to as the "Kiwanis Club's Benches". Should the Kiwanis Club at any time and for any reason be compelled to withdraw as sponsors of the public seating service established by the acceptance of this program by City so as to leave no sponsoring organization for such program, then Service Company shall, within a reasonable time thereafter, join with another civic, service or charitable organization or organizations as sponsor of such service and City shall be notified of such sponsorship.

8. Service Company shall file with City a copy of each leases or rent agreement it enters into with any person or entity for display space on any bench and covenants with City to abide by and comply with all of the terms and conditions of all such leases or rental agreements.

In the event that this agreement is terminated by City because of Service Company's default, Service Company agrees to refund to each person or entity with whom Service Company has a display space lease any and all prepaid rent from and after the termination date.

9. Should Service Company be found to be in default of any of the conditions herein, it shall be given notice in writing and a reasonable time, not to exceed thirty (30) days, to correct same. In the event that Service Company should fail to correct such default within a reasonable time after receipt of notice of same, City may, at its option, terminate the rights and obligations created by the acceptance of this proposal upon the giving of ninety (90) days notice in writing to Kiwanis Club and to Service Company. 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 Service Company shall be allowed an additional six (6) month period to remove its benches.

10. Where notice to Service Company and/or to Kiwanis Club is required or otherwise given pursuant to the agreement created by the acceptance of this proposal by City, it shall be in writing, sent by registered or certified mail, to the relevant principal

office(s) with return receipt(s) requested.

11. It is expressly understood and agreed that the rights and obligations created by this agreement shall remain in full force and effect for a period of twelve (12) years from its effective date.

12. 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.

13. This agreement supersedes all prior negotiations, understandings, representations or agreements between the parties hereto, whether written or oral, with respect to the subject matter contained herein and with respect to the area intended hereunder.

14. The effective date of the agreement shall be the date it is executed by the last of City, Service Company and Kiwanis Club. Time shall be of the essence of such agreement and the rights and privileges created under the agreement shall be exclusive. Further, such agreement may be enforced by specific performance.

15. The installation of benches at transit stops as herein provided shall be in cooperation with the transit system, if any, authorized to provide service within the City.

16. Should City desire to have transit shelters installed at designated transit stops within its corporate limits which shelters are to be funded by the display of commercial messages, Kiwanis Club, together with Service Company, shall have the right of first refusal for the installation and operation of such shelters, together with the display space thereon.

17. In the event of default by either party under the terms of this agreement, the defaulting party shall be liable for, and agrees to pay, all costs and expenses incurred in the enforcement of this contract, including attorneys' fees.

18. Service Company and Kiwanis Club shall also be specifically bound by and comply with the provisions of Section 119.0701, Florida Statutes, adopted and created by the Florida Legislature effective July 1, 2013, relating to public records.

19. This Agreement is authorized by City Council Resolution No. 2014-011.

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 in their behalf.

Signed, sealed and delivered
in the presence of:

Eugene Jefferson
Witness
Eugene Jefferson
(print/type name)

Zachary A. Paulk
Witness
Zachary A. Paulk
(print/type name)
Witnesses as to City

Stephen M. Witt (SEAL)
STEPHEN M. WITT
Mayor

ATTEST: Audrey E. Sikes
AUDREY E. SIKES
City Clerk
"CITY"

Date executed by City: 2/18/2014

Signed, sealed and delivered
in the presence of:

John A. Kusk
Witness
John A. Kusk
(print/type name)

Grayson Larson
Witness
Grayson Larson
(print/type name)
Witnesses as to Service Company

By: General M. M. M. M.
Name: GENERAL MANABOL
Title: President

ATTEST: _____
Name: _____
Title: _____
"SERVICE COMPANY"

Date executed by
Service Company: 2/18/2014

Signed, sealed and delivered
in the presence of:

Verna L. Ingram
Witness
Verna L. Ingram
(print/type name)

Audrey Sikes
Witness
Audrey Sikes
(print/type name)
Witnesses as to Kiwanis Club

KIWANIS CLUB OF LAKE CITY,
FLORIDA, INC.

By: Teena Peavy
Name: Teena Peavy
Title: Kiwanis President

ATTEST: _____
Name: _____
Title: _____

"KIWANIS CLUB"

Date executed by
Kiwanis Club: 2/20/2014

APPROVED AS TO FORM AND LEGALITY:

By: Herbert F. Darby
HERBERT F. DARBY
City Attorney