

II. FISCAL IMPACT ANALYSIS

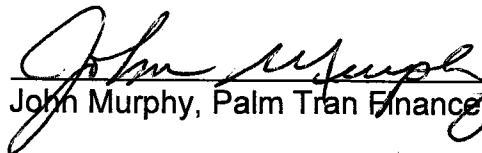
A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	200-	200-
Capital Expenditures					
Operating Costs					
External Revenues		(\$26,600)	(\$9,975)		
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT		(26,600)	(9,975)		
# ADDITIONAL FTE POSITIONS (Cumulative)		0	0		

Is Item Included In Current Budget? Yes X No _____
 Budget Account No.: Fund 1340 Dep't. 540 Unit 5101 Object 6210
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:


C. Departmental Fiscal Review:



 John Murphy, Palm Tran Finance Manager

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Revenue calculated by 152 benches @ \$75.00 a bench.


 OFMB 5/18/10
 5/17/10
 AD


 Contract Dev. and Control
 E. Jones 5/21/10

This amendment complies with
 our review requirements.

B. Legal Sufficiency:


 Assistant County Attorney 5/24/2010

C. Other Department Review:

 Department Director

**SECOND AMENDMENT TO
CONTRACT FOR BUS BENCH ADVERTISING
BETWEEN
PALM BEACH COUNTY
AND
THE BENCH PRESS LTD. INCORPORATED
(R2000 1931)**

THIS SECOND AMENDMENT to the Contract for Bus Bench Advertising Services by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter referred to as the "COUNTY") and The Bench Press Ltd. Incorporated, a foreign (Canadian) corporation authorized to do business in the State of Florida (hereinafter referred to as the "CONTRACTOR"), is made and entered into this _____ day of _____, 2010.

WHEREAS, the parties entered into an agreement on November 21, 2000 (R2000 1931), as amended on September 9, 2003 (R2003 1377) under which the Contractor has installed and maintained bus benches and marketed, installed and placed advertising on such benches (hereinafter referred to as the "Contract"); and

WHEREAS, the parties now desire to amend the Contract to extend the period of performance and term of the agreement for an additional period.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. The period of performance set forth in ARTICLE 2 – SCHEDULE paragraph A is deleted as the following substituted:

"A. The CONTRACTOR shall commence services on December 1, 2000 and complete all services by February 14, 2012."
2. ARTICLE 3 – PAYMENTS TO COUNTY is amended to add the following as subparagraph 3 of paragraph A:

A.3. For the 11th year of the Contract, an annual payment of \$175 per installed advertising type bus stop bench. Thereafter, the Contractor shall pay County the proportional amount due it for the number of days remaining in the term of the Contract (based on the annual payment of \$175 per bench).
3. Except as amended herein, all other terms and conditions of the Contract are hereby confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, The undersigned parties have made and executed this Second Amendment as of the year and day first written above.

ATTEST:
Sharon R. Bock, Clerk and Comptroller

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chairman

Witnesses:

(Signature) *Monique Lovett*
MONIQUE LOVETT
Name: Type or Print

(Signature) *Shae Thompson*
SHAEE THOMPSON
Name: (Type or Print)

THE BENCH PRESS LTD. INCORPORATED
By: _____
(Signature) *David Gray*
David Gray
President

(Corporate Seal)

Approved as to Form and
Legal Sufficiency

Approved as to Terms
and Conditions

County Attorney

Charles D. Cohen, Executive Director
Palm Tran

CONTRACT R2000 1931

This Contract is made as of this _____ day of NOV 21 2000, 2000, by and between Palm Beach COUNTY, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY and The Bench Press LTD Incorporated, a foreign corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I. D. number is 980218820.

In consideration of the mutual promises contained herein, the COUNTY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

- A. The CONTRACTOR'S responsibility under this Contract is to design, construct, install and maintain new and replacement bus stop benches in Palm Beach County and to market advertising for same for Palm Tran, as more specifically set forth in RFP No. 00-132/MKP (Exhibit "A") and the CONTRACTOR'S proposal, dated July 27, 00 (Exhibit "B"). Copies of the documents referred to as Exhibit "A" and Exhibit "B" are in the possession of both parties hereto and are incorporated herein by reference and made a part hereof. The Contractor's proposal shall include all supporting documentation including but not limited to all representations, certifications and assurances and any other certificate or assurance or document required by the RFP, as amended. In the event of any conflict or inconsistency between this document (excluding the RFP, as amended, and the Contractor's proposal), the RFP as amended, and the Contractor's proposal, the parties agree that the order of priority and precedence in resolving any conflict, inconsistency or ambiguity shall be as follows: 1) this Document (excluding the RFP, as amended, and the Contractor's proposal); 2) the RFP, as amended (excluding Appendices "A", "B", "C", and "D"); and finally 3) The Contractor's Proposal (including executed Appendices "A", "B" and "C")
- B. The COUNTY'S representative/liaison during the performance of this Contract shall be Perry Maull, Executive Director of Palm Tran, whose telephone number is (561) 841-4210 or designee.
- C. The CONTRACTOR'S representative/liaison during the performance of this Contract shall be David Gray, President, whose telephone number is (800) 661-6088 ext 303.

ARTICLE 2 -SCHEDULE

- A. The CONTRACTOR shall commence services on December 1, 2000, and complete all services by November 30, 2010.
- B. Reports and other items shall be delivered and/or completed in accordance with Exhibit "A".

ARTICLE 3 - PAYMENTS TO COUNTY

- A. The CONTRACTOR shall pay the COUNTY without off-set, deduction, diminution, reduction, abatement or counterclaim, except as expressly provided herein, the following revenue for the term of this Contract:
1. For years 1 through 5, annual payments of \$150.00 per installed advertising type bus stop bench.
 2. For years 6 through 10, annual payments of \$175.00 per installed advertising type bus stop bench.
- B. The CONTRACTOR agrees to use its best efforts to obtain the fair market value for the display of advertising material on the bus stop benches. CONTRACTOR agrees to include in all its contracts for the display of advertising material on bus stop bench a standard provision requiring that should the CONTRACTOR be held in default under this Contract, the COUNTY shall have the ability to assume all the CONTRACTOR'S rights from the date of the assumption under the advertising contract(s) and shall have the right to assign said Contract to another entity. The form of Contractor's contract for the display of advertising material shall be submitted to the County for its approval prior to the Contractor's use of the contract.
- C. Compensation shall be paid to the COUNTY monthly within Twenty-two (22) calendar days from the end of the month except in the case of the last payment, when compensation shall be paid within thirty (30) calendar days after the expiration, termination or cancellation of the Contract. Each payment shall be based on the fixed monthly payment per bench as specified above.
- D. Payments of compensation made by the CONTRACTOR to the COUNTY pursuant to the provisions of this Contract shall not be considered in any manner to be in the nature of a tax, but shall be in addition to all taxes of whatsoever kind or description which are now or which may hereafter be required to be paid by an ordinance or local law of Palm Beach County or any municipality or city within the Palm Beach County, or any law of the State of Florida or the United States. Payment of compensation shall be in addition to any permit fees required by law.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONTRACTOR'S most favored customer for the same or substantially similar service. The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate presentation of fees paid to outside contractors. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

A. Termination for Default

1. This Contract may be terminated by the COUNTY, in whole or in part, in writing, whenever the COUNTY determines that the CONTRACTOR has failed to perform any of the services required by this Contract or the CONTRACTOR fails to perform the services within the time specified in the CONTRACT, or if the CONTRACTOR fails to perform any other provision(s) of the Contract.
2. Should the CONTRACTOR fail to perform any of the services required by this CONTRACT, the COUNTY shall have the right, after ten (10) days written notice to the CONTRACTOR, if contractor has failed to cure the default, to cause any work, that in its sole discretion it deems necessary, to be done, and to provide at whatever cost and by whatever means it deems appropriate, any necessary materials or to terminate the contract for default. The CONTRACTOR shall reimburse the COUNTY for the costs of such work, labor, services, and/or materials obtained hereunder within thirty (30) days after receipt of written notification.

B. Termination for Convenience

1. The COUNTY may terminate this Contract immediately upon written notice to the CONTRACTOR. In the event of such termination by the COUNTY, the CONTRACTOR shall be paid only for services rendered to the COUNTY's satisfaction through the date of termination.

C. After receipt of a termination notice, and except as otherwise directed by the COUNTY, the CONTRACTOR shall:

1. Stop work on the date and to the extent specified.
2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
3. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
4. Continue and complete all parts of the work that have not been terminated.

D. The Contract may be terminated by the CONTRACTOR upon one hundred eighty (180) days prior written notice to the COUNTY'S representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this CONTRACT through no fault of the CONTRACTOR.

E. The COUNTY reserves the right to purchase any installed bus stop benches, at the end of the Contract term, or upon early termination of this Contract, or pursuant to any default by the Contractor at the cost of construction less depreciation of ten percent (10%) per year, predicated on the installation date.

1. In the event the COUNTY decides it wants to acquire ownership of the bus stop bench, it will so notify the CONTRACTOR. The CONTRACTOR and the COUNTY will negotiate in good faith for the COUNTY's acquisition of the bus stop benches.
2. If the COUNTY does not acquire the bus stop benches, the CONTRACTOR shall be responsible for removing all installed bus stop benches, at no cost to the COUNTY, within ninety (90) days of the end of the contract, or earlier termination, and return the site to its original condition. Any bus stop bench not removed after the ninety (90) day period shall be deemed abandoned by the CONTRACTOR. All rights, title and interest of the CONTRACTOR in any bus stop bench not removed shall be forfeited and any bus stop bench not removed may be removed by the COUNTY at the CONTRACTOR's expense. The County shall have the right to effect the cost of removal, including reasonable administrative fee, against any sum due the CONTRACTOR.

F. The CONTRACTOR agrees to convey such bus stop benches to the COUNTY in accordance with this section upon demand. The exercise by the COUNTY of this option set forth in this section by commencement of legal proceedings, audit, or otherwise, shall not be deemed a waiver of its right to exercise any other option provided herein.

G. Liquidated Damages

1. If the CONTRACTOR fails to comply with the annualized completion schedule set forth herein, the CONTRACTOR shall, in place of actual damages, pay to the COUNTY as fixed, agreed, and liquidated damages, for each calendar day of delay, the sum of Twenty-Five Dollars (\$25.00) per bench.
2. The CONTRACTOR shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the CONTRACTOR or its subcontractor(s); provided, however, that the CONTRACTOR must supply acceptable documentation to the COUNTY substantiating that the delay is beyond the control of the CONTRACTOR. See Article 14, Excusable Delays, below.

ARTICLE 6 - PERSONNEL

- A. The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.
- B. All of the services required herein shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.
- C. Any changes or substitutions in the CONTRACTOR'S key personnel, must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY'S representative before said change or substitution can become effective.

- D. The CONTRACTOR warrants that all professional services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 7 - SUBCONTRACTING

- A. The COUNTY reserves the right to accept the use of a subcontractor, or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONTRACTOR is encouraged to seek disadvantaged business enterprises (DBE) for participation in subcontracting opportunities. If the CONTRACTOR uses any subcontractors on this project, the following provisions of this Article shall apply:
- B. If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.
- C. The CONTRACTOR agrees to abide by all provisions of the County's DBE Program (Resolution 99-1617 Palm Beach County) and understands that failure to comply with any of the requirements will be considered a breach of contract.
- D. The CONTRACTOR understands that each DBE firm utilized on this contract must be certified by Palm Beach County in order to be counted as DBE participation.
- E. The CONTRACTOR further agrees to provide the DBE Coordinator with a copy of the CONTRACTOR'S contract with any DBE subcontractor or any other related documentation upon request.
- F. CONTRACTOR understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of the contract as it relates to the use of DBE firms. Any DBE which, for any reason, no longer remains associated with the CONTRACTOR shall be replaced with another certified DBE, unless approval to the contrary is granted by the COUNTY.
- G. The CONTRACTOR understands that he/she is prohibited from making any Contracts with the DBE in which the DBE promises not to provide subcontractors quotations to other bidders or potential bidders.

ARTICLE 8 - FEDERAL AND STATE TAX

- A. The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY'S Tax Exemption Number in securing such materials.
- B. The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

ARTICLE 9 - INSURANCE

- A. The CONTRACTOR shall at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the Contract.
- B. Commercial General Liability. CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by COUNTY'S Risk Management Department. CONTRACTOR shall provide this coverage on a primary basis.
- C. Business Auto Liability: CONTRACTOR shall maintain Business Auto Liability at a limit of liability not less than \$500,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event CONTRACTOR doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing CONTRACTOR to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General liability, or separate Business Auto coverage form. CONTRACTOR shall provide this coverage on a primary basis.
- D. Worker's Compensation Insurance & Employer's Liability. CONTRACTOR shall maintain Worker's Compensation & Employer's Liability in accordance with Florida statute Chapter 440. CONTRACTOR shall provide this coverage on a primary basis.
- E. Property Insurance. CONTRACTOR agrees to maintain, or acknowledges to be self-insured, for all-risk property insurance on all new and existing benches. All-risk property insurance means builder's risk insurance while the benches are in the course of construction in an amount at least equal to the estimated completed bench value as well as subsequent modifications of that sum; thereafter, property insurance for adequate limits based on the CONTRACTOR'S replacement cost or probable maximum loss estimates for the peril of windstorm. CONTRACTOR shall agree to endorse COUNTY as a Loss Payee, and to provide the coverage on a primary basis. CONTRACTOR shall agree to be fully responsible for any deductible, uncovered loss, or self-insured retention.
- F. Advertiser's Professional (Errors & Omissions) Liability. CONTRACTOR shall agree to maintain Advertiser's Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$1,000,000.00 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$100,000.00, COUNTY reserves the right, but not the obligation, to review and request a copy of CONTRACTOR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONTRACTOR warrants the Retroactive Date equals or precedes the effective date of the Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advance; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of the Contract, CONTRACTOR shall agree to purchase SERP with a minimum reporting period not less than three (3) years. The requirement to purchase a SERP shall not relieve CONTRACTOR of the obligation to provide

replacement coverage. CONTRACTOR shall agree to maintain Advertiser's Professional Liability for a period not less than three (3) years following the expiration of this Contract. CONTRACTOR shall agree this coverage shall be provided on a primary basis.

- G. Additional Insured Clause. CONTRACTOR shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a political Subdivision of the State of Florida and Palm Tran Inc., and their Representatives, Officers, Employees and Agents." CONTRACTOR shall provide the Additional Insured endorsements coverage on a primary basis.
- H. Waiver of Subrogation. CONTRACTOR hereby waives any and all rights to Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.
- I. Certificate(s) of Insurance. Immediately following notification of the award of this Contract, CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage.
- J. Umbrella or Excess Liability. If necessary, CONTRACTOR may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-form" basis.
- K. Right to Review. COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

ARTICLE 10 INDEMNIFICATION

- A. The Contractor shall save, indemnify, hold harmless and defend the County and Palm Tran, Inc, their respective officers, directors, agents, servants, and employees from and against any and all claims, liability, loss, cost, damages or causes of action, of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising directly or indirectly, from any negligent act or omission of the Contractor, its agents, servants, or employees as a result of its performance of services under this Contract.
- B. The Contractor further agrees to indemnify, save harmless and defend the County and Palm Tran, Inc., their respective officers, directors, agents, servants and employees from and against any claim, liability, loss, cost, damage, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the Contractor not included in the paragraph above and for which the County, its agents, servants or employees are alleged to be liable.

ARTICLE 11 - SUCCESSORS AND ASSIGNS

The COUNTY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract, without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONTRACTOR.

ARTICLE 12 - REMEDIES

This Contract shall be governed by the laws of the State of Florida, U.S.A. Venue for any and all legal action arising under this contract will be held in Palm Beach County, Florida, U.S.A. No remedy herein conferred upon any party is intended to be exclusive of any other remedy; and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law, or in equity, or by statute, or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 13 - CONFLICT OF INTEREST

- A. The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statute 112.311. The CONTRACTOR further represents that no person having any interest shall be employed for said performance or services.
- B. The CONTRACTOR shall promptly notify the COUNTY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business

association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONTRACTOR. The COUNTY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the COUNTY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONTRACTOR under the terms of this Contract.

ARTICLE 14 - EXCUSABLE DELAYS

- A. The CONTRACTOR shall not be considered in default by reason of any failure in performance, if such failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; force majeure; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.
- B. Upon the CONTRACTOR'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 15 -ARREARS

The CONTRACTOR shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 16 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

- A. The CONTRACTOR shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.
- B. To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract, for or at the COUNTY'S expense, shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

- C. All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 17 - INDEPENDENT CONTRACTOR RELATIONSHIP

- A. The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work; and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.
- B. The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, Contract or representation other than specifically provided for in this Contract.

ARTICLE 18 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 19 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records related to all charges, expenses, and costs incurred in estimating and performing the work for at least six (6) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONTRACTOR'S place of business.

ARTICLE 20 - NONDISCRIMINATION

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 21 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 22 - SEVERABILITY

If any term or provision of this Contract or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 23 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 24 - MODIFICATIONS OF WORK

- A. The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the COUNTY'S notification of a contemplated change, the CONTRACTOR shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.
- B. If the COUNTY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.
- C. If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and approved and executed on behalf of Palm Beach County.

ARTICLE 25 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivered, or sent by other delivery service(s) requiring signed acceptance. If sent to the COUNTY', notices shall be addressed to:

Douglas V. Myers, Director
Purchasing Palm Beach COUNTY
50 South Military Trail, Suit 110
West Palm Beach, FL 33415

With a copy to:

Executive Director
Palm Tran, Inc.
3201 Electronics Way
West Palm Beach, FL 33407

If sent to the CONTRACTOR, notices shall be addressed to:

The Bench Press LTD Incorporated
2402 Stouffville Rd, Gormley
Ontario, Canada L0H1G0

ARTICLE 26 - ENTIRETY OF CONTRACT

The COUNTY and the CONTRACTOR agree that this Contract sets forth the entire Contract between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 24 - Modifications of Work.

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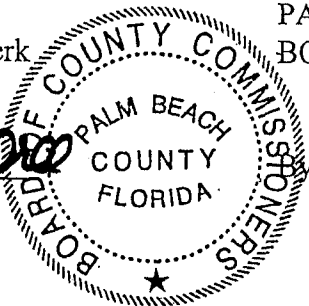
IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Contract on behalf of the COUNTY and CONTRACTOR has hereunto set its hand the day and year above written.

R2000 1931 NOV 21 2000

ATTEST:
DOROTHY H. WILKEN, Clerk
Board of County Commissioners

PALM BEACH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS:

By *Allegra R. Moore*
Deputy Clerk



W. J. M.
Chair

WITNESS:

CONTRACTOR:

Signature

The Bench Press LTD Incorporated
Company Name

Name (type or print)

By: *[Signature]*
Signature

David Gray
Typed Name

President
Title

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By *[Signature]*
County Attorney

(corp. seal)

EXHIBIT "A"

RFP NO. 00-132/MKP

BUS STOP SHELTER AND BENCH ADVERTISING

Copies of Palm Beach County RFP No. 00-132/MKP, as amended, are in possession of both parties hereto. The RFP is hereby incorporated into and made a part of this Exhibit "A".

EXHIBIT "B"

CONTRACTOR'S PROPOSAL SUBMITTED IN RESPONSE TO

RFP 00-132/MKP

Copies of this Contractor's proposal are in possession of both parties hereto. The Contractor's proposal is hereby incorporated into this Exhibit "B" by reference and made a part hereof.

FIRST AMENDMENT TO
CONTRACT FOR BUS BENCH ADVERTISING
BETWEEN
PALM BEACH COUNTY
and
THE BENCH PRESS LTD. INCORPORATED
(R2000 1931)

THIS FIRST AMENDMENT to the Contract for Bus Bench Advertising Services by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter referred to as the "COUNTY"), and The Bench Press Ltd. Incorporated, a foreign (Canadian) corporation authorized to do business in the State of Florida (hereinafter referred to as the "CONTRACTOR"), is made and entered into this _____ day of SEP 09 2003, 2003.

WHEREAS, on November 21, 2000, the COUNTY and CONTRACTOR entered into that certain agreement for bus bench advertising services under which the CONTRACTOR was to design, construct, install and maintain bus benches, and to market, install and place advertisements on such benches (referred to herein as "Contract"); and

WHEREAS, the COUNTY and CONTRACTOR now desire to amend the Contract to require the CONTRACTOR to provide benches that are lighter in color and more heat resistant, to remove the benches previously installed by CONTRACTOR and to replace them with such lighter more heat resistance benches, to require the CONTRACTOR to coordinate the removal of benches with COUNTY and any successor contractor for a six (6) month period following the termination or expiration of the Contract, and to eliminate the County's option to purchase the benches upon the expiration or termination of the Contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements expressed herein, the COUNTY and CONTRACTOR agree as follows:

1. The above statements set forth in the Preamble to this First Amendment are true and

correct and incorporated into and made a part hereof.

2. The Contract is hereby modified to add the following as subparagraphs 1 and 2 to paragraph A. of Article 1.

1. CONTRACTOR agrees to furnish benches different in color and composition (referred to herein as the "new benches") from those originally proposed by the CONTRACTOR (referred to herein as the "old benches") upon the request of COUNTY, and at no additional cost to COUNTY. The new benches shall be lighter in color, heat resistant and shall significantly increase the comfort level of Palm Tran's passengers utilizing bus benches, by making the seat and other portions of the benches which come into contact with any part of a passenger's body cooler to the touch. COUNTY shall have the right to determine whether the new benches satisfy this requirement. CONTRACTOR further agrees to remove all old benches whose color and composition conform to that originally proposed by CONTRACTOR and to replace them with the new benches, approved by COUNTY, at no additional cost to the COUNTY.

2. CONTRACTOR shall present to COUNTY, for COUNTY's review and approval, a proposed schedule for the removal of old benches and the installation of new benches and shall undertake to act in conformity with the schedule as expeditiously as possible so as to provide a heightened level of seating comfort to Palm Tran's passengers.

3. Paragraph E. of Article 5 of the Contract shall be deleted in its entirety and replaced with the following which shall become paragraph E. of Article 5:

E. In accordance with the direction provided by COUNTY's contract representative, prior to or upon the expiration or earlier termination of the Contract, CONTRACTOR shall meet with COUNTY' representative or his designee, to establish a schedule for the removal of all benches installed by CONTRACTOR during the term of

the Contract. COUNTY may require CONTRACTOR to immediately remove all benches or COUNTY may require CONTRACTOR to leave all or some of the benches in place for a period not to exceed six (6) months, which period may extend beyond the expiration or termination date of the Contract. All benches which are left in place during this period, shall be maintained by CONTRACTOR and advertisements may be placed on the benches in accordance with the Contract, as amended herein; except that no ad may be placed on a bench for a period which extends beyond the schedule established by the parties for the removal of the bench. CONTRACTOR shall remit to COUNTY the revenue payment established in paragraph A.2. of Article 3 of the Contract, on a prorata basis, for each month during which any bench with advertising remains in place. During this six (6) month period, the parties shall implement the schedule and CONTRACTOR shall undertake the performance of its obligations so as to ensure that its activities (i.e., the removal of the benches and the installation of advertisements) are coordinated with those of any successor contractor who has been retained by the COUNTY to install benches and place advertisements thereon or as otherwise required by COUNTY. The parties' acknowledge that the purpose of such period is to "wind down" the Contract, so as to ensure a smooth termination, modification or transition of the bus bench program from the CONTRACTOR to a successor contractor retained by COUNTY or as otherwise required by COUNTY. So long as CONTRACTOR shall have any benches in service during this "period," CONTRACTOR shall otherwise comply with the Contract's requirements, including but not limited to maintenance, insurance, indemnification, revenue payments, advertising standards and third party advertisers' contractual obligations.

4. The provision of this First Amendment shall take effect upon execution.
5. Except as provided herein, all other terms and conditions of the Contract are hereby

confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned parties have made and executed this First
Amendment on the day and year first written above.

ATTEST:
WILKEN, CLERK.

DOROTHY H. WILKEN, CLERK,
Board of County Commissioners,
By: [Signature]
DEPUTY CLERK
COUNTY
FLORIDA
BOARD OF COUNTY COMMISSIONERS

Witnesses:

[Signature]
(Signature)

JEFFREY S. JOHNSON
Name (Type or Print)

[Signature]
(Signature)

[Signature]
Name (Type or Print)

Approved as to Form and
Legal Sufficiency

[Signature]
County Attorney

Gf:..../draney/ACOA/BenchPress.Amend.5-19-03pt

PALM BEACH COUNTY, FLORIDA by its DOROTHY
Board of County Commissioners

By: [Signature]
Chair

P.2003 1377

SEP 09 2003

THE BENCH PRESS LTD. INCORPORATED

By: [Signature]
(Signature)

DAVID GRAY
(Print Name)

PRESIDENT
Title

(Corporate Seal)

Approved as to Terms
and Conditions

[Signature]
Perry Maull, Executive Director
Palm Tran