

BENCH ARTWORK AGREEMENT

This bench artwork agreement (“Agreement”) is between Pace, the Suburban Bus Division of the Regional Transportation Authority, an Illinois municipal corporation (“Pace”), and (SELECT ONE):

[INSERT THE NAME OF THE ARTIST IF THE ARTIST IS 18 YEARS OF AGE OR OLDER] (“Artist”)

OR

[INSERT THE NAME OF THE ARTIST’S PARENT OR LEGAL GUARDIAN IF THE ARTIST IS UNDER 18 YEARS OF AGE] (“POLG”), individually and on behalf of _____
[INSERT THE NAME OF THE ARTIST UNDER 18 YEARS OF AGE], a minor (“Artist”).

Pace was established under the Regional Transportation Authority Act (70 ILCS 3615/1.01 et seq.) to aid and assist public transportation in the six-county northeastern Illinois area consisting of Cook, DuPage, Kane, Lake, McHenry, and Will Counties (“Region”) and began operations in 1984.

In celebration of its 40th anniversary, Pace seeks to have artists within the Region create works of art on benches similar to the one depicted in Exhibit A (“Bench”).

In consideration of the foregoing recitals, the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Engagement.** Subject to the terms of this Agreement, Pace hereby engages Artist to create a work of art on the Bench (“Artwork”), and Artist hereby accepts the engagement.
2. **Effective Date.** This Agreement is effective beginning on the date on which Pace signs this Agreement (“Effective Date”). If a party signs this Agreement but fails to date its signature, the date that the other party receives the signing party’s signature on this Agreement will be deemed to be the date that the signing party signed this Agreement.
3. **Term.** This Agreement will commence on the Effective Date and will end upon Pace’s pickup of the Bench from Artist and, if applicable, Artist’s receipt of the \$500 Visa gift card specified in paragraph 10.
4. **Artist Application.** Artist shall email Artist’s completed application, including an original design concept for the Artwork, to Pace at PaceBenches@gatesmanagency.com. If Pace approves Artist’s application, Pace will deliver the Bench to Artist who may begin creating the Artwork.
5. **Artist Representations and Warranties.** Artist represents and warrants to Pace that:
 - a. the Artwork is an original work of art solely created by Artist; and
 - b. Artist has not caused and will not cause any sale, assignment, transfer, license, grant, encumbrance, or use of the Bench, the Artwork, or any portion thereof or any intellectual property right related thereto that may affect or impair any rights, title, and/or interest granted by Artist to Pace pursuant to this Agreement.
6. **Bench Delivery.** Pace will coordinate its delivery of the Bench with Artist, who must be physically present and have Artist’s photo identification at the time of the Bench delivery. Artist or POLG, as applicable, must sign such documentation as required by Pace to acknowledge Artist’s receipt of the Bench.
7. **Artwork.** The Artwork must not include:
 - a. material that is political in nature or that expresses or advocates an opinion, position, or viewpoint on a matter of public debate about economic, political, moral, religious, or social issues;
 - b. tobacco-related products, including cigarettes, cigars, chewing tobacco, and electronic cigarettes;
 - c. material that promotes cannabis-related products;
 - d. films rated “NC-17” or “X”; television programs rated “MA”; video games rated “AO” or “M”; adult entertainment establishments; and sexually orientated businesses;
 - e. nudity or sexual conduct (the terms “nudity” and “sexual conduct” have the meaning as set forth in 720 ILCS 5/11-21(a), as amended);
 - f. material that is or that Artist reasonably should have known is false, deceptive, fraudulent, and/or misleading or would constitute defamation or invasion of privacy;
 - g. material that is an infringement of a copyright, trademark, or service mark;

- h. material that promotes unlawful or illegal goods, services, or activities under federal, state, or local law;
- i. profanity;
- j. images or descriptions of violence;
- k. material that depicts weapons;
- l. material that is adverse to Pace’s commercial, operational, or administrative interests or that tends to disparage public transportation or the quality of service provided by Pace;
- m. material that contains Pace graphics, logos, and/or representations or indirect references to Pace or its employees;
- n. material that implies or declares an endorsement of any service, product, or point of view by Pace;
- o. material that encourages or depicts unsafe behavior;
- p. material that is intended to be or could reasonably be interpreted as being demeaning, disparaging, disreputable, discriminatory, or disrespectful to persons, groups, business, or organizations;
- q. material that Pace reasonably foresees may incite or produce lawless action in the form of retaliation, vandalism, or other breach of public safety, peace, and order or may result in harm to, disruption of, or interference with the transportation system;
- r. material that advertises any business or any municipality, village, city, town, county, township, or other unit of government; and/or
- s. self-portrait(s).

8. **Artist Duties and Responsibilities.** The Artist shall:

- a. use non-toxic, permanent mediums to create the Artwork;
- b. maintain the structural integrity of the Bench at all times such that the Bench remains functional for safe outdoor seating;
- c. complete the Artwork in a professional manner within 45 days after Pace’s delivery of the Bench to Artist;
- d. ensure that the Artwork matches Artist’s Pace-approved design concept;
- e. cooperate with Pace’s delivery of the Bench to and pickup of the Bench from Artist; and
- f. reimburse Pace in full for the cost of the Bench, which is \$656.53 (“Bench Cost”), within 14 days after receiving Pace’s demand for reimbursement, if the Bench is damaged, destroyed, or stolen during Artist’s possession of the Bench or if Artist fails to cooperate with Pace in connection with the Bench pickup.

9. **Completed Artwork.** Within two business days after completing the Artwork, Artist shall email a photograph of the completed Artwork to Pace at PaceBenches@gatesmanagency.com. Within two business days after receiving the photograph, Pace will provide written notice to Artist of Pace’s: (a) approval of the completed Artwork if Artist has complied with the requirements of this Agreement or (b) disapproval of the completed Artwork if Artist has not complied with the requirements of this Agreement. Pace’s decision to approve or disapprove of the completed Artwork is final.

10. **Bench Pickup and Gift Card.** Pace will pick up the Bench from Artist within seven business days after the date of Pace’s written notice of: (a) approval or disapproval of the completed Artwork or (b) Artist’s failure to perform any of Artist’s obligations under this Agreement. Pace will coordinate the Bench pickup with Artist, who shall be physically present and have Artist’s photo identification at the time of the Bench pickup. If Pace approves of the completed Artwork, Pace will mail a \$500.00 Visa gift card to Artist within 30 days after the Bench pickup.

11. **Bench and Artwork Ownership.** The Bench is and will remain the sole property of Pace. Neither Artist nor, if applicable, POLG shall assert any claim to or otherwise affect Pace’s ownership of the Bench.

Artist waives any right that Artist may have under any applicable laws, statutes, ordinances, rules, and regulations relating to the ownership, display, and copyright of the Artwork and hereby transfers all of Artist’s rights, title, and interest in and to the Artwork to Pace. Artist acknowledges that Pace may remove, replace, or destroy the Artwork and may reproduce, use, exhibit, display, broadcast, distribute, and create derivative works of the Artwork or any portion thereof for Pace media, advertising, promotion, publicity, reporting, or other lawful purpose.

Artist hereby grants permission to Pace to take photographs of Artist and otherwise capture Artist’s name, biography, image, likeness, statements, and/or remarks in connection with the Artwork (collectively, “Recordings”) and further grants to Pace the right to reproduce, use, exhibit, display, broadcast, distribute, and create derivative works of the Recordings for Pace media, advertising, promotion, publicity, reporting, or other lawful purpose.

Except for the gift card specified in paragraph 10, Artist waives any right to compensation or payment in connection with the Artwork, the Recordings, and the use of the Artwork, the Recordings, or any portion thereof.

12. **Bench Installation.** Pace, in its sole discretion, may install the Bench at a Pace bus stop of its choosing, remove the Bench at any time after installing it, or choose not to install the Bench at a Pace bus stop.

13. **Breach.** Pace may file a civil action against Artist or POLG, as applicable, for breach of this Agreement and seek any and all amounts due to Pace under this Agreement together with any and all costs and expenses, including reasonable attorneys' fees, that Pace incurs in connection with that action.

14. **Indemnification.** Artist or POLG, as applicable ("Indemnitor"), shall indemnify, defend, and hold harmless and hereby releases Pace, the Regional Transportation Authority, and their respective directors, officers, employees, representatives, and agents (collectively, "Indemnitees") from and against any and all liability, losses, damages, claims, suits, payments, settlements, judgments, demands, awards, expenses, and costs, including attorneys' fees, which may accrue against one or more Indemnitees arising out of the Artwork, including any intellectual property infringement or claim of such infringement; the Recordings; and/or any intentional or negligent acts or omissions concerning the performance of any of Indemnitor's obligations under this Agreement. Upon written notice by an Indemnitee to Indemnitor regarding any claim which Indemnitee believes to be covered under this paragraph 14, Indemnitor shall appear and defend all suits brought upon that claim and shall pay all costs and expenses related to that claim, but Indemnitee will have the right, at Indemnitee's option and expense, to participate in the defense of any suit, without relieving Indemnitor of Indemnitor's obligations under this paragraph 14.

15. **Compliance with Laws.** The parties shall comply with all local, state, and federal laws, statutes, ordinances, rules, and regulations applicable to this Agreement.

16. **Independent Relationship.** Nothing in this Agreement will be construed as creating an agency, partnership, joint venture, or any other relationship between the parties, and neither Artist nor, if applicable, POLG shall act on behalf of or bind Pace in any manner.

17. **Binding Effect.** This Agreement will be binding upon the parties and their respective directors, officers, employees, agents, representatives, heirs, executors, administrators, successors, and approved assigns.

18. **Entire Agreement.** This Agreement, including the introductory recitals and the attached exhibit, which are hereby incorporated into and made a part of this Agreement, constitutes the entire agreement between the parties and supersedes any prior written or oral understandings, agreements, or representations between the parties that may have related in any way to the subject matter of this Agreement, and no other written or oral warranties, inducements, considerations, promises, or interpretations, which are not expressly addressed in this Agreement, will be implied or impressed upon this Agreement.

19. **Survival.** Any provision of this Agreement that imposes an obligation after termination or expiration of this Agreement will be deemed to survive termination or expiration of this Agreement. For the avoidance of doubt, Artist's representations and warranties in paragraph 5 will survive the expiration or termination of this Agreement.

20. **Severability.** If any provision of this Agreement or amendment thereto is held invalid or unenforceable by an Illinois court of competent jurisdiction, that provision will be deemed severed therefrom, and the remaining provisions of this Agreement will remain in full force and effect.

21. **Assignment.** No party may assign, delegate, or otherwise transfer all or part of its rights and obligations under this Agreement.

22. **Notice.** Any notice under this Agreement must be in writing and must be given by: (a) personal delivery (deemed effective as of the date and time of delivery); (b) commercial overnight delivery (deemed effective on the next business day following deposit of the notice with a commercial overnight delivery company); or (c) email with delivery receipt requested (deemed effective as of the date and time indicated on the receipt confirming delivery, except the effective date and time will be 8:00 a.m. on the next business day after delivery of the notice if the receipt shows delivery during non-business hours).

The notice must be addressed as follows or to such other address as either party may specify in writing:

If to Pace:

Pace, the Suburban Bus Division of the RTA
550 W. Algonquin Road
Arlington Heights, IL 60005
Attention: Manager, External Relations

Email address: douglas.sullivan@pacebus.com

If to Artist or POLG:

See name, address, and email address of Artist or POLG, as applicable, identified on signature block of this Agreement.

23. **Governing Law, Jurisdiction, and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Illinois without regard to principles of conflicts of law, and the parties shall submit to the exclusive jurisdiction and venue of the Circuit Court of Cook County, Illinois, Third Municipal District, in Rolling Meadows, Illinois for any dispute arising out of or related to this Agreement.

24. **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed and delivered will be deemed to be an original and all of which when taken together will constitute one and the same agreement.

25. **Signatures.** This Agreement may be executed through the use of electronic signatures. Electronic signatures and signatures scanned and transmitted via email will be deemed original signatures for purposes of this Agreement.

If the Artist is under 18 years of age, POLG acknowledges that by signing this Agreement: (a) POLG is Artist's parent or legal guardian; (b) POLG is signing this Agreement on behalf of POLG and Artist; (c) POLG and Artist will be bound by the terms of this Agreement; (d) POLG consents to Artist's obligations under this Agreement; (e) POLG will take such action(s) as may be necessary to assist Artist in performing Artist's obligations under this Agreement; and (f) POLG unconditionally guarantees Artist's performance of all Artist's obligations under this Agreement.

PACE

Signature

Melinda J. Metzger
Print Name

Executive Director
Print Title

Date

ARTIST (complete only if Artist is 18 years of age or older)

Print Name

Street Address

City, State, and Zip Code

Signature

Phone Number

Email Address

Date

POLG (complete only if Artist is under 18 years of age)

Print Name

Street Address

City, State, and Zip Code

Signature

Phone Number

Email Address

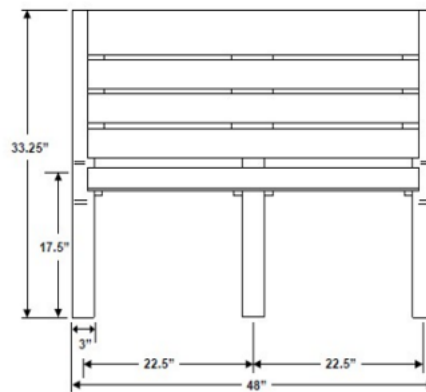
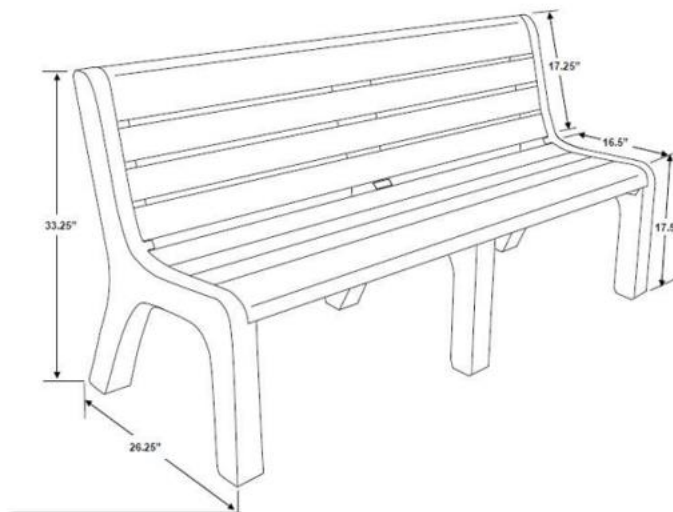
Date

Exhibit A



Malibu Series Recycled Plastic Bench – 4ft

799be100



The approximate weight of the Bench is 140 lbs.