

INTERLOCAL AGREEMENT
between
THE CITY OF _____
and
TEXSERVE
to
ENFORCE AND ADMINISTER
the
AUTOMATED SCHOOL BUS STOP ARM ENFORCEMENT PROGRAM

This Agreement (“Agreement”) is hereby made and entered into by and between Dallas County Schools d/b/a Texserve (“Texserve”) and the City of _____, Texas (“City”).

RECITALS

WHEREAS, Texserve and the City are each political subdivisions of the State of Texas; and

WHEREAS, the City Council has determined that motor vehicles unlawfully pass stopped school buses that are operating visual signs while loading and unloading students in the City; and

WHEREAS, the City adopted Ordinance No. _____ (“Ordinance”), that provides for a civil penalty for a vehicle that passes a stopped school bus with its stop arm extended and lights flashing in violation of Texas Transportation Code Section 545.066, which has been codified in the City of _____ Code of Ordinances Chapter ____, Article _____; and

WHEREAS, it is a mutual objective of school districts (“Districts”) and the City to reduce the incidence of possible injuries caused specifically to children by the violation of motor vehicles unlawfully passing a school bus stopped with its stop arm extended and lights flashing for the purpose of loading and unloading students (“School Bus Stop-Arm Violation”); and

WHEREAS, the Districts own and operate school buses in the City and will each enter into a separate Interlocal Agreement with Texserve to install video equipment on those school buses in order to capture potential violations of the Ordinance; and

WHEREAS, through a request for proposal (“RFP”) process in accordance with Texas laws governing the procurement of products and services, Texserve has selected Force Multiplier Solutions, LLC. (“FxS”) as the exclusive vendor of equipment, and maintenance of video recording equipment on school buses and to provide certain processes and professional services to monitor and identify School Bus Stop-Arm Violations and enforce the Ordinance in accordance with applicable law; and

WHEREAS, Texserve and the City desire to enter into this Agreement in order to enforce and administer the Ordinance (the “School Bus Stop Arm Camera Program”);

NOW, THEREFORE, Texserve and the City enter into this Agreement pursuant to the authority of the Texas Government Code, Chapter 791, the Interlocal Cooperation Act, as amended, for the enforcement and administration of the Ordinance for the mutual consideration stated herein:

AGREEMENT

1.0 DEFINITIONS. In this Agreement, the words and phrases below shall have the following meanings:

- 1.1 “Busguard System,” means, collectively, all of the Equipment, applications, back-office processes, and cameras, sensors, components, products, software and other tangible and intangible property relating thereto owned by FxS.
- 1.2 “Confidential or Private Information” means, with respect to Texserve, any person and/or FxS systems, technology and software, any information, matter or thing of a secret, confidential or private nature, is acknowledged, agreed to and identified as “Confidential”, which is connected with such person's business or methods of operation or concerning any of such person's suppliers, licensors, licensees, the City or others with whom such person has a business relationship, and which has current or potential value to such person or the unauthorized disclosure of which could be detrimental to such person including, but not limited to:
 - 1.2.1 Matters of a business nature including, but not limited to: information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such person, Texserve and/or FxS obtains or has obtained from its clients or City, or at which such person, Texserve and/or FxS sells or has sold its services; and
 - 1.2.2 Matters of a technical nature including, but not limited to: product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term “trade secrets” shall mean the broadest and most inclusive interpretation of trade secrets.
 - 1.2.3 Notwithstanding the foregoing, Confidential Information will not include information that (a) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (b) became generally available to the public or otherwise part of the public domain after its

disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (c) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (d) was required by a court of competent jurisdiction to be described, or (e) was required by applicable state law to be described.

- 1.3 “Equipment” includes any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Busguard System(s).
- 1.4 “FxS Marks” means all trademarks registered in the name of FxS or any of its affiliates, such other trademarks as are used by FxS or any of its affiliates on or in relation to School Bus Safety at any time during the Term of this Agreement, service marks, trade names, logos, brands and other marks owned by FxS, and all modifications or adaptations of any of the foregoing.
- 1.5 “Hearing Officer” means an individual designated by the City to administratively adjudicate violations of the Ordinance.
- 1.6 “Intellectual Property” means, with respect to any person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world including, but not limited to, copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights of every kind and nature throughout the universe and however designated, whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing) of such person.
- 1.7 “Law Enforcement Officer” means an individual licensed as a Law Enforcement Officer by the Texas Commission on Law Enforcement Officers, including a peace officer, as defined under Article 2.12, Texas Statutes, Code of Criminal Procedure.
- 1.8 “Notice of Violation” means the notice of a School Bus Stop-Arm Violation, which is mailed or otherwise delivered by a Law Enforcement Officer to the violator in respect to each School Bus Stop-Arm Violation.
- 1.9 “Potential Violation” means a potential School Bus Stop-Arm Violation, which is documented in Violation Data that is subject to review and determination by a Law Enforcement Officer in accordance with the Ordinance.
- 1.10 “Proprietary Property” means, with respect to any person, any written or tangible property owned or used by such person in connection with such person's business,

whether or not such property is copyrightable or also qualifies as Confidential Information including, without limitation, products, samples, Equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spreadsheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such person, including financial statements, budgets, projections and invoices.

- 1.11 “School Bus Stop Arm Program” means the administration, processes, and procedures by which the School Bus Stop Arm Violations are recorded, monitored, identified, processed, approved, distributed, enforced, collected, reported, adjudicated, appealed, and otherwise managed by Texserve, the District, and the City.
- 1.12 “School Bus Stop Arm Violation” (“Violation”) means a violation of the Ordinance for which authorization to issue a Notice of Violation is given by a Law Enforcement Officer for illegally passing a stopped school bus that has its bus stop-arm extended while loading and unloading students.
- 1.13 “Violation Data” means all electronic data collected by the Busguard System that contains information, including but is not limited to, pictures, video, GPS location, date, and time of Potential Violations, which is subject to review by a Law Enforcement Officer for determination of School Bus Stop-Arm Violations.

2.0 TERM

This Agreement shall be effective upon approval by the City Council of the City of _____, Texas, which is this ___ day of ____, 2013 (the “Effective Date”) and shall continue for a five (5) year period from the date of first payment collected for a fine assessed within a Notice of Violation issued in accordance with the Ordinance (the “Initial Term”). Upon expiration of the Initial Term, this Agreement shall be extended for an additional five (5) year term unless either party shall notify the other in writing, within 90 days prior to the expiration of the Initial Term, of its desire not to renew.

3.0 RELATIONSHIP OF THE PARTIES

Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties. The relationship between the parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either party to incur any debts or liabilities or obligations on behalf of the other party (except as specifically provided herein).

Each party is acting independently of the other, and neither is an agent, servant, employee, or joint venture partner of the other. The parties represent and warrant that they have, or will secure at their own expense, all personnel and consultants required to provide the services under this Agreement and have contracted, or will contract, with any necessary third-party vendors to provide the services in accordance with this Agreement. No officer or member of the governing body of the City or Texserve shall participate in any decision relating to this Agreement that affects his or her personal interest, nor shall any such officer or member of the City or Texserve have any pecuniary interest in this Agreement or any part thereof.

4.0 SCOPE OF SERVICES/RESPONSIBILITIES OF THE PARTIES

A. RESPONSIBILITIES OF TEXSERVE. Texserve agrees to:

1. Enter into a separate interlocal agreement with each District to participate in the enforcement of the Ordinance.
2. Purchase, install, operate and maintain Equipment capable of capturing potential violations of the Ordinance on certain school buses operated by the District within the City;
3. Provide Law Enforcement Officer(s) to review video footage and recorded images of Potential Violations from video recording Equipment to identify and issue Notices of Violations for School Bus Stop-Arm Violations in accordance with applicable provisions of the Ordinance;
4. Provide testimony and video evidence of violations to the City when requested during any appeal to municipal court;
5. Collect any civil fines, penalties, and costs assessed under the Ordinance, and distribute such fines, penalties, and costs in accordance with applicable provisions of the Ordinance and this Agreement, including:
 - i. provide a collection agent; and
 - ii. provide refunds as applicable;
6. Provide monthly reports to the City detailing the number of Notices of Violations issued and amount of fines, penalties, and costs collected each month;
7. Periodically brief the City's municipal judges and municipal prosecutors regarding the video footage and recorded images and other information required for purposes of enforcement of the Ordinance;
8. Assist with Public Information Act requests concerning the School Bus Stop Arm Camera Program, to the extent the request seeks information in Texserve's possession and not City records; and

9. Jointly develop a plan with the City to communicate all aspects of the Ordinance and School Bus Stop Arm Camera Program to the community, and implement the developed plan.

B. RESPONSIBILITIES OF THE CITY. The City agrees to:

1. Adopt an ordinance and fee schedule that imposes a civil fine for Bus Stop Arm Violations that is not less than \$300;
2. Designate Hearing Officer(s) to administratively adjudicate violations of the Ordinance by mail and in person in accordance with applicable provisions of the Ordinance and City Code;
3. Designate municipal court(s) to handle appeals from the Hearing Officers in accordance with applicable provisions of the Ordinance and City Code;
4. Provide monthly reports to Texserve detailing the number of citations appealed to a Hearing Officer and/or municipal court and the status and outcome of those appeals;
5. Jointly develop a plan with Texserve to communicate all aspects of the Ordinance and School Bus Stop Arm Camera Program to the citizens and implement the developed plan.

5.0 REVENUE TO CITY

All civil fines, penalties, and costs (Exhibit "A"- Fee Schedule) assessed under the Ordinance shall be distributed in the following manner:

- A. In compensation for the services provided under this Agreement, the City shall be paid an amount equal to twelve and one half percent (12.5%) of all monies collected for paid violations of the Ordinance, exclusive of the 60-day late payment penalty and NSF- Returned Check fee.
- B. The revenue to be paid to the City shall be due and payable on or before thirty (30) days following completion of:
 - i. the first full year of the Program; and
 - ii. each full year thereafter.
- C. The first one (1) year period shall be calculated from the date of first payment collected for a fine assessed within a Notice of Violation issued in accordance with the Ordinance to be administered herein.

- D. The City agrees that it will have no interest in Notices of Violations that remain uncollected for a period of more than two (2) years following the issuance of the Notice of Violation.

6.0 LICENSE AND RESERVATION OF RIGHTS

A. Reservation of Rights.

City and Texserve hereby acknowledge and agree to the following:

- i. FxS is the sole and exclusive owner of the Busguard System, the FxS Marks, all Intellectual Property arising from or relating to the Busguard System, and any and all related Equipment;
- ii. City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement; and
- iii. By reason of the exercise of any such rights or interests of City pursuant to this Agreement, the City shall gain no additional right, title or interest therein.

B. Restricted Use.

The City hereby covenants and agrees that it shall not:

- i. make any modifications to the Busguard System including, but not limited to, any Equipment;
- ii. alter, remove or tamper with any FxS Marks;
- iii. use any of the FxS Marks in any way which might prejudice their distinctiveness, validity or the goodwill of FxS therein;
- iv. use any trademarks or other marks other than the FxS Marks in connection with the City's use of the Busguard System pursuant to the terms of this Agreement without first obtaining the prior consent of Texserve and FxS; or
- v. disassemble, de-compile or otherwise perform any type of reverse engineering to the Busguard System including, but not limited to, any Equipment, or to any Intellectual Property or Proprietary Property of FxS, or cause any other person to do any of the foregoing.

C. Protection of Rights.

Texserve and/or FxS shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of FxS including, without limitation, the filing of applications to register as trademarks

in any jurisdiction any of the FxS Marks, the filing of patent applications for any of the Intellectual Property of FxS, and making any other applications or filings with appropriate governmental authorities. The City shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any registrations or filings with respect to any of the FxS Marks or the Intellectual Property of FxS without the prior written consent of Texserve and FxS.

D. Infringement.

The City shall use its reasonable best efforts to give Texserve prompt notice of any activities or threatened activities of any person of which it becomes aware that infringes or violates the FxS Marks or any of FxS's Intellectual Property or that constitute a misappropriation of trade secrets or acts of unfair competition that might dilute, damage or destroy any of the FxS Marks or any other Intellectual Property of FxS. Texserve and/or FxS shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto. In the event that Texserve or FxS commences any enforcement action under this Section, then the City shall render to Texserve such reasonable cooperation and assistance as is reasonably requested by Texserve, provided that Texserve shall reimburse the City for any reasonable costs.

E. Infringing Use.

The City shall give Texserve prompt written notice of any action or claim, whether threatened or pending, against the City alleging that the FxS Marks, or any other Intellectual Property of FxS, infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other person, and the City shall render to Texserve and FxS such reasonable cooperation and assistance as is reasonably requested by Texserve in the defense thereof, provided that Texserve shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance. If such a claim is made and Texserve or FxS determines, in the exercise of its sole discretion, that an infringement may exist, Texserve and FxS shall have the right, but not the obligation, to procure for the City the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement, or replace them with non-infringing items.

7.0 TERMINATION

A. Termination for Cause.

Either party shall have the right to terminate this Agreement immediately by written notice to the other if:

- i. state statutes are materially amended as to prohibit or negatively affect the operation of the School Bus Stop Arm Program or if any laws are enacted that

would substantially change or terminate the ability under the Agreement to obtain fines or charges for violations of law, which would eliminate the source for financing the School Bus Stop Arm Program;

- ii. a final decision (subsequent to any appeals that may be filed) by a court of competent jurisdiction declares that the results from the Busguard System are inadmissible in evidence; or
- iii. the other party commits any material breach of any of the provisions of this Agreement.

Texserve shall have the right to terminate this Agreement immediately by written notice to the City if:

- i. the Ordinance is revoked by lawful action of the City Council of _____, Texas; or
- ii. the civil penalty adopted by the City Council of _____ for Bus Stop Arm Violations is less than \$300.00 or subsequently reduced to less than \$300.00.

B. Wind-Down Provisions.

- i. In the event of termination, City and Texserve shall be relieved of any further obligations except as specifically provided within this agreement. Either party shall have the right to remedy the cause for termination within ninety (90) calendar days (or within such other time period as the City and Texserve shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-breaching party as to such breach.
- ii. Notwithstanding paragraph 7B(i) of this Agreement, expiration or termination of this Agreement will not relieve either party from its obligations arising hereunder prior to the effective date of such expiration or termination.
- iii. In the event the City or Texserve terminates this Agreement pursuant to paragraph A of this Section, the City and Texserve shall organize a methodical and efficient schedule for removal of Equipment from the School Buses, but in no event shall this schedule be less than 180 calendar days. Responsibility for removal shall be that of Texserve.
- iv. Notwithstanding any other provision of this Agreement to the contrary, the City and Texserve agree that any citation issued as of the effective date of termination shall be administered according to the provisions of this Agreement entered into between the parties.

C. The rights to terminate this Agreement within this section shall be without

prejudice to any other rights or remedies of either party in respect to the breach concerned (if any) or any other breach of this Agreement.

D. Procedures Upon Termination.

The termination of this Agreement shall not relieve either party of any liability that accrued prior to such termination. Except as set forth in paragraph C of this section, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

- i. Texserve shall, within a reasonable amount of time, (a) cease to provide services including, but not limited to, work in connection with the construction or installation activities and services in connection with the School Bus Stop Arm Program, (b) deliver to City any and all Proprietary Property of City provided to Texserve pursuant to this Agreement, and (c) deliver to the City a final report regarding the collection of Violation Data and the issuance of Notices of Violation in such format and for such periods as the City may reasonably request, and which final report Texserve shall update or supplement from time to time when and if additional Violation Data or information becomes available.
- ii. The City shall (a) immediately cease using the School Bus Stop-Arm Program, accessing the FxS System and using Intellectual Property of FxS and (b) promptly cause to be delivered to Texserve the Proprietary Property of FxS provided to the City in this Agreement.
- iii. Unless the City and Texserve have agreed to enter into a new agreement relating to the School Bus Stop Arm Program or have agreed to extend the Term of this Agreement, Texserve shall remove any and all Equipment or other materials of Texserve installed in connection with Texserve's performance of its obligations under this Agreement including, but not limited to, camera systems from the District's school buses.

8.0 SURVIVAL.

- A. Notwithstanding the foregoing, each Section of the following shall survive the termination of this Agreement:
- i. Definitions
 - ii. Revenue to City
 - iii. License and Reservation of Rights
 - iv. Notice
 - v. Indemnification and Liability
 - vi. Choices of Laws and Venue

- vii. Default/Cumulative Rights/Mitigation
 - viii. Assignment
 - ix. Confidentiality and Records; and
 - x. Those provisions, and the rights and obligations therein, set forth in this Agreement which either by their terms state or evidence the intent of the parties, that the provisions survive the expiration or termination of the Agreement, or must survive to give effect to the provisions of this Agreement.
- B. If any action is commenced against City under The Public Information Act, Texas Government Code Chapter 552, or otherwise seeking to compel production or disclosure of documents, the contractor or any other person asserting the confidentiality privilege of such documents shall defend, indemnify and hold City harmless from any costs, damages, penalties or other consequences of the City's refusal to disclose or produce such documents. City will promptly notify Texserve in the event such request is received. Texserve's failure to immediately intervene in such legal action will authorize the City to voluntarily provide the information for disclosure. City assumes no liability for disclosure or use of any document or portion of a contract, bid, or RFP that has not been clearly marked as "Confidential", or as otherwise constituting information exempt from the Texas Public Information Act, and may use or disclose such unmarked documents as public records.

9.0 NOTICE

Any notice, demand or request required or permitted to be given under this Agreement shall be deemed given if reduced to writing and delivered in person, shipped by overnight delivery by a recognized carrier such as UPS or FedEx, or deposited with the United States Post Office in the form of certified mail, postage pre-paid return receipt requested, to the party who is to receive any such notice, demand or request, at the respective address set forth below. Such notice, demand, or request shall be deemed to have been given upon actual receipt.

If to Texserve, to:

Rick D. Sorrells, Ed. D.
 Superintendent
 Dallas County Schools d/b/a Texserve
 612 North Zang Boulevard
 Dallas, Texas 75208

If to the City, to:

Name
 Title
 Address
 _____, Texas Zip Code

10.0 INDEMNIFICATION AND LIABILITY.

A. Indemnification by Texserve.

To the extent allowed by law, Texserve hereby agrees to defend and indemnify the City or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and each of their affiliates, and all persons acting by, through, under, or in concert with them, or any of them (individually a “City Party” and collectively the “City Parties”) against, and to protect, save and keep harmless the City Parties from and to pay on behalf of or reimburse the City Parties as and when incurred for, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees) of whatever kind and nature (collectively, “Losses”) which may be imposed on or incurred by any City Party arising out of or related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Texserve contained in this Agreement, or (b) negligent or willful misconduct of Texserve, its employees or agents which results in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any City Party, or (c) any damage to the school buses (owned, leased or contracted) as a result of installation or maintained. Texserve warrants that when and if the Equipment is uninstalled, any holes left on the bus from equipment installation shall be plugged and sealed.

B. Indemnification by City.

To the extent allowed by law, the City hereby agrees to defend and indemnify Texserve, FxS, and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert with them, or any of them (individually a “Texserve Party” and collectively the “Texserve Parties”) against, and to protect, save and keep harmless the FxS Parties from, and to pay on behalf of or reimburse the Texserve Parties as and when incurred for, any and all Losses which may be imposed on or incurred by any Texserve Party arising out of or in any way related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of the City contained in this Agreement, (b) negligent or willful misconduct of the City, its employees, contractors or agents which results in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any Texserve Party, (c) any claim, action or demand not caused by Texserve’s failure to perform its obligations under this Agreement, or (d) any claim,

action or demand challenging the City's use of the FxS System or any portion thereof, or the validity of the Notices issued, prosecuted and collected as a result of the City's use of the FxS System or any portion thereof.

C. Indemnification Procedures.

In the event any claim, action or demand (a "Claim") in respect of which any party hereto seeks indemnification from the other, the party seeking indemnification (the "Indemnified Party") shall give the party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof, provided, however, that failure to so give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. The Indemnifying Party shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the Indemnified Party, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the Indemnified Party shall have the right to participate in the defense at its sole expense, provided, however, the Indemnified Party shall have the right to take over the control of the defense or settlement of such Claim at any time if the Indemnified Party irrevocably waives all rights to indemnification from and by the Indemnifying Party. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim, and no party shall have the right enter into any settlement agreement that materially affects the other party's material rights or material interests without such party's prior written consent, which consent will not be unreasonably withheld or delayed.

D. Limited Liability.

Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any indirect, incidental, special, lost profits or consequential damages, however caused and on any theory of liability arising out of or relating to this Agreement.

11.0 CHOICE OF LAWS AND VENUE

In providing the Services pursuant to this Agreement, the parties must observe and comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations. This Agreement shall be governed by the laws of the State of Texas, and venue for any dispute shall be in _____ County, Texas. All statutes and laws applicable to this Agreement shall apply as amended from time to time.

12.0 AMENDMENTS AND CHANGES IN THE LAW

This Agreement may not be amended, modified, or supplemented unless such amendment, supplement, or modification is agreed to in writing and signed by each of Texserve and the City. Any alteration, addition, or deletion to the terms of this Agreement that is required by any change in federal, state, or local law shall automatically be deemed incorporated herein without written amendment to this Agreement, and any such alteration, addition, or deletion to this Agreement shall be effective on the date such law is effective.

13.0 SEVERABILITY

In the event that any part of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the illegal or unenforceable portion shall be deemed modified to the extent necessary to make it enforceable under applicable law, and the remainder of the provisions in the Agreement shall remain in full force and effect in accordance with their respective terms.

14.0 ENTIRE AGREEMENT

This Agreement represents the entire agreement between Texserve and the City with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, whether written or oral, with respect to such subject matter.

15.0 BINDING EFFECT

This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

16.0 DEFAULT/CUMULATIVE RIGHTS/MITIGATION

It shall not be deemed a waiver or default under this Agreement if the non-defaulting party fails to immediately declare a default, or either party delays in asserting any right hereunder. The rights and remedies provided under this Agreement are cumulative and in addition to the rights and remedies either party may have pursuant to law, statute, ordinance, or otherwise, and either party's use of any right or remedy provided for hereunder will not preclude or be deemed to waive such party's right to use any other remedy, whether hereunder or at law or equity. Both parties hereto have a duty to mitigate damages incurred pursuant to this Agreement and performance hereunder.

17.0 ASSIGNMENT

The parties agree that they may delegate the performance of their duties hereunder by contracting with third-party entities in accordance with applicable procurement and other laws, but each party remains responsible for their respective responsibilities set forth in Section 4 herein.

18.0 COUNTERPARTS, NUMBER/GENDER AND HEADINGS

This Agreement may be executed in multiple counterparts, including without limitation facsimile and e-mail counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender, and any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings used herein are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

19.0 GOVERNMENTAL IMMUNITY

This Agreement is expressly made subject to Texserve's and the City's governmental immunity under the Texas Civil Practice and Remedies Code and all applicable federal, state, and local laws. The parties hereto expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the parties have by operation of law.

20.0 PREVENTION OF FRAUD AND ABUSE

The parties shall establish, maintain, and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any known or suspected incident of fraud or abuse involving Texserve's or the City's employees or agents that involve funds or activities under this Agreement shall be reported immediately by the party that becomes aware of the incident to Texserve's or the City's Board of Trustees for appropriate action.

21.0 FISCAL FUNDING CLAUSE

Notwithstanding any provision contained herein to the contrary, the obligations of the parties under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein. The parties shall make any payments required under this Agreement from current revenue available to the parties. In the event a party is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, that party, at its sole discretion, may provide funds from a separate source or may otherwise terminate this Agreement by written notice to the other party at the earliest possible time prior to the end of the fiscal year; provided, however, the terminating party shall be required to pay any expenses already incurred pursuant to this Agreement as of the time the terminating party provides such notice. In the event that a party is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, the other party may immediately terminate this Agreement.

22.0 CONFIDENTIALITY AND RECORDS

- A. Except as may be subject to the provisions of The Public Information Act, Texas Government Code Chapter 552, during the term of this Agreement and for an indefinite

period thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of negotiations for this Agreement or during the Term of this Agreement, including the terms of this Agreement.

- B. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in confidence and not disclose to any third party any Confidential Information without the other party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any governmental authority, including laws relating to public records.
- C. Each party shall safeguard and adhere to all confidentiality, privacy, and security requirements under applicable federal, state, and local laws, rules, and regulations regarding the privacy and security of all information obtained by either party from the other in connection with this Agreement and each respective party's performance hereunder, including the Texas Public Information Act.
- D. Each party shall only use information obtained in connection with the Ordinance for the purposes of detecting a violation or Potential Violation of the Ordinance or for monitoring safety issues inside or outside the school bus, and such information shall not be used for general surveillance purposes.
- E. All records created by Texserve or the City pursuant to this Agreement shall belong to Texserve or the City, as the case may be.

23.0 FORCE MAJEURE

Neither Texserve nor the City shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God, nature or the public enemy, terrorism, invasion, insurrection, order of court, judge, or civil authority, strikes, stoppage of labor, riot, and unusually severe weather, significant fires, floods, earthquakes, storms, epidemics, quarantine restrictions, freight embargos, government regulation, or governmental authorities, and delays which are not caused by any act or omission by Texserve. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

Neither Texserve nor the City shall be deemed to be in violation of this Agreement if either party is prevented from performing any of its obligations hereunder by any of the aforementioned causes or any other cause reasonably beyond the nonperforming party's control and that is not

attributable to such nonperforming party's dereliction of duty or negligence hereunder. In the event of any such occurrence, the time for performance of the nonperforming party's obligations or duties shall be suspended until such time as the nonperforming party's inability to perform, provided that the nonperforming party is not responsible for such inability to perform, is removed. The party claiming the suspension of performance shall give notice of such impediment or delay in performance to the other party within ten (10) days of its knowledge of the occurrence of the event or events causing such nonperformance. The nonperforming party shall make all reasonable efforts to mitigate the effects of any suspension of its performance.

24.0 SIGNATORY AUTHORITY

- A. The person or persons signing and executing this Agreement on behalf of Texserve has been duly authorized by action of Texserve Board of Trustees to execute this Agreement on behalf of Texserve and to validly and legally bind Texserve to all terms, conditions, performances, and provisions set forth herein.
- B. The person or persons signing and executing this Agreement on behalf of the City has been duly authorized by City Council Ordinance No. _____ to execute this Agreement on behalf of the City and to validly and legally bind the City to all terms, conditions, performances, and provisions set forth herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement between Texserve and the City of _____, Texas in duplicate, each party taking one (1) copy, as of the day and year stated below.

TEXSERVE

By: _____
Name: Rick D. Sorrells, Ed. D.
Title: Superintendent, Dallas County Schools d/b/a Texserve
Date: _____

THE CITY OF _____, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

DRAFT

Exhibit "A" - Fee Schedule

FINES, COSTS AND FEES	
SCHOOL BUS STOP ARM VIOLATION FINE	\$300.00
30 DAY LATE PAYMENT PENALTY	\$50.00
60 DAY LATE PAYMENT PENALTY	\$100.00
FAILURE TO APPEAR PENALTY	\$50.00
ADMINISTRATIVE ADJUDICATION HEARING FILING FEE	\$25.00
MUNICIPAL COURT APPEAL HEARING FILING FEE	\$20.00
HEARING RESCHEDULING FEE	\$20.00
NON-SUFFICIENT FUNDS- RETURNED CHECK FEE	\$35.00