

**INTERLOCAL AGREEMENT  
between  
THE CITY OF FARMERS BRANCH  
and  
DALLAS COUNTY SCHOOLS  
to  
ENFORCE AND ADMINISTER  
the  
AUTOMATED STUDENT SAFETY/SCHOOL BUS STOP ARM ENFORCEMENT  
PROGRAM**

This Agreement ("Agreement") is hereby made and entered into by and between Dallas County Schools ("DCS") and the City of Farmers Branch, Texas ("City").

**RECITALS**

**WHEREAS**, DCS 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 3312 ("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 Farmers Branch Code of Ordinances, Chapter 82, "Traffic and Vehicles", Article VII, "Automated School Bus Sign Enforcement", 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; and

**WHEREAS**, DCS owns and operates school buses for the Districts within the City and each District will enter into a separate Interlocal Agreement with DCS to provide certain processes and professional services to monitor and identify Student Safety/School Bus Stop Arm Violations and enforce the Ordinance in accordance with applicable law (the "Operating Interlocal"); and

**WHEREAS**, DCS and the City desire to enter into this Agreement in order to enforce and administer the Ordinance;

**NOW, THEREFORE**, DCS 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. **DEFINITIONS.** In this Agreement, the words and phrases below shall have the following meanings:
  - A. “Confidential or Private Information” means, all confidential information and Proprietary Property relating to and used in such party’s business, including, but not limited to, the terms and conditions of the Student Safety/School Bus Stop Arm Program, this Agreement, and the Operating Interlocal, and any Intellectual Property, ideas, concepts, designs, specifications, procedures, business plans, business opportunities, marketing methods, plans and strategies, techniques, forecasts, financial information, technical data or know-how, methods, trade information or secrets, client and customer lists and credit and financial information concerning such clients or customers, vendor or supplier information, account lists, costs, sales information, pricing information, marketing information, and similar information, documents, and records.
    - i. 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, or (d) was required by applicable federal or state laws or a court of competent jurisdiction to be disclosed.
  - B. “Effective Date” has the meaning set forth in Section 2.
  - C. “Equipment” includes any and all cameras, sensors, components, products, software, hardware and other tangible and intangible property provided by DCS to implement the Student Safety/School Bus Stop Arm Program.
  - D. “FxS” means Force Multiplier Solutions, Inc., a Louisiana corporation.
  - E. “FxS Intellectual Property” means all Intellectual Property owned or licensed by FxS which is used in the operation of the Student Safety/School Bus Stop Arm Program.
  - F. “Hearing Officer” means an individual designated by the City to administratively adjudicate violations of the Ordinance.
  - G. “Initial Term” has the meaning set forth in Section 2.

- H. “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) know-how, formulae, innovations, inventions, discoveries, techniques, formats, processes, and methods, (f) 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 (g) 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.
- I. “Law Enforcement Officer” means an individual licensed as a Law Enforcement Officer by the Texas Commission on Law Enforcement, including a peace officer, as defined under Article 2.12, Texas Statutes, Code of Criminal Procedure.
- J. “Notice of Violation” means the notice of a Student Safety/School Bus Stop Arm Violation (“Civil Student Safety/School Bus Stop Arm Citation”, as defined by the Ordinance), which is mailed or otherwise delivered by a Law Enforcement Officer to the violator in respect to each Student Safety/School Bus Stop Arm Violation.
- K. “Ordinance” has the meaning set forth in the recitals of this Agreement.
- L. “Potential Violation” means a potential Student Safety/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.
- M. “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.
- N. “Student Safety/School Bus Stop Arm Program” means the administration, processes, and procedures by which the Student Safety/School Bus Stop Arm Violations are recorded, monitored, identified, processed, approved, distributed, enforced, collected, reported, adjudicated, appealed, and otherwise managed by DCS, the District, and the City, as applicable.

- O. “Student Safety/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.
- P. “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 Student Safety/School Bus Stop Arm Violations.

## **2. TERM**

This Agreement shall be effective upon approval by the City Council of the City of Farmers Branch, Texas, which is this 4th day of November, 2014 (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. “Term” shall mean the Initial Term and any extended or renewal term after the Initial Term.

## **3. 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 DCS 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 DCS have any pecuniary interest in this Agreement or any part thereof.

## **4. SCOPE OF SERVICES/RESPONSIBILITIES OF THE PARTIES**

- A. RESPONSIBILITIES OF DCS. DCS agrees to:

- i. Enter into a separate interlocal agreement with each District to participate in the operation of the School Bus Stop Arm Program.
- ii. Install and provide support for the Equipment capable of capturing potential violations of the Ordinance on certain school buses owned and operated by DCS for the District within the City;
- iii. Provide a certified Law Enforcement Officer(s) to act as enforcement officer(s) to review recorded images of Potential Violations from the Equipment to identify and issue Notices of Violations for Student Safety/School Bus Stop Arm Violations in accordance with applicable provisions of the Ordinance and the Enforce and Administer Interlocal;
- iv. 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 the City's Code of Ordinances (or similar code);
- v. Provide testimony and video evidence of violations to the City when requested during any appeal to municipal court;
- vi. Notify vehicle owners in writing of any delinquencies and penalties in accordance with applicable provisions of the Ordinance;
- vii. 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:
  - a. provide a collection agent; and
  - b. provide refunds as applicable;
- viii. Provide monthly reports to the City detailing the number of Notices of Violations issued and amount of fines, penalties, and costs collected each month;
- ix. Upon the City's reasonable request, 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;
- x. Assist with Public Information Act requests concerning the Student Safety/School Bus Stop Arm Camera Program, to the extent the request seeks information in DCS's possession and not City records; and

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

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

- i. Designate municipal court(s) to handle appeals from the Hearing Officers in accordance with applicable provisions of the Ordinance and City's Code of Ordinances (or similar code);
- ii. Provide monthly reports to DCS detailing the number of citations appealed to a Hearing Officer and/or municipal court and the status and outcome of those appeals; and
- iii. Jointly develop a plan with DCS to communicate all aspects of the Ordinance and Student Safety/School Bus Stop Arm Camera Program to the City's citizens and implement the developed plan.

**5. REVENUE TO CITY**

- 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 any such collection charge.
- 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 Student Safety/School Bus Stop Arm 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. LICENSE AND RESERVATION OF RIGHTS**

- A. FxS License.

FxS granted to DCS a perpetual and exclusive (in the State of Texas) right and license, including the right and license to sublicense, to use the FxS Intellectual

Property in order to administer, operate, and maintain the Student Safety/School Bus Stop Arm Program in the State of Texas.

B. Reservation of Rights.

The City and DCS hereby acknowledge and agree to the following:

- i. DCS is the sole and exclusive licensee or owner, as applicable, of the Intellectual Property related to the Student Safety/School Bus Stop Arm Program, and the sole owner of the Equipment;
- ii. This Agreement does not create in favor of the City a license or sublicense of any Intellectual Property related to the Student Safety/School Bus Stop Arm Program;
- iii. City neither has nor makes any claim to any right, title or interest in any of the foregoing; and
- iv. 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.

C. Restricted Use.

The City hereby covenants and agrees that it shall not:

- i. alter, remove, modify or tamper with the Equipment or the Intellectual Property related to the Student Safety/School Bus Stop Arm Program;
- ii. use any of the Intellectual Property related to the Student Safety/School Bus Stop Arm Program, including trademarks and names, in any way which might prejudice their distinctiveness, validity or the goodwill of DCS or FxS;
- iii. use any trademarks related to the Student Safety/School Bus Stop Arm Program or other marks, whether used in connection with the Student Safety/School Bus Stop Arm Program or otherwise, without first obtaining the prior consent of DCS; nor
- iv. disassemble, de-compile or otherwise perform any type of reverse engineering to the Equipment or the Intellectual Property related to the Student Safety/School Bus Stop Arm Program, or to any Proprietary Property of DCS, or cause any other person to do any of the foregoing.

D. Protection of Rights.

DCS 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 related to the Student Safety/School Bus Stop Arm Program including, without limitation, the filing of applications to register as trademarks in any jurisdiction, 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 Intellectual Property related to or arising from the Student Safety/School Bus Stop Arm Program without the prior written consent of DCS.

E. Infringement.

The City shall use its reasonable best efforts to give DCS prompt notice of any activities or threatened activities of any person of which it becomes aware that infringes or violates any of Intellectual Property related to the Student Safety/School Bus Stop Arm Program or that constitute a misappropriation of trade secrets or acts of unfair competition that might dilute, damage or destroy any of Intellectual Property related to the Student Safety/School Bus Stop Arm Program. DCS 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 DCS commences any enforcement action under this Section, then the City shall render to DCS such reasonable cooperation and assistance as is reasonably requested by DCS, provided that DCS shall reimburse the City for any reasonable costs.

F. Infringing Use.

The City shall give DCS prompt written notice of any action or claim, whether threatened or pending, against the City alleging that any of the Intellectual Property related to the Student Safety/School Bus Stop Arm Program infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other person, and the City shall render to DCS such reasonable cooperation and assistance as is reasonably requested by DCS in the defense thereof, provided that DCS shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance. If such a claim is made and DCS determines, in the exercise of its sole discretion, that an infringement may exist, DCS 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.

G. Assignment of Inventions.



The City hereby assigns, without further compensation, to DCS its entire right, title and interest in and to all discoveries and improvements, patentable or otherwise, trade secrets and ideas, writings and copyrightable material, which may be conceived by the City or developed or acquired by the City during the Term of this Agreement in connection with the City's duties under this Agreement and the Student Safety/School Bus Stop Arm Program, including any copyright and/or patent awarded by the United States Patent and Trademark Office, and agrees to execute any and all documents required or necessary to effect such assignment.

## 7. TERMINATION

- A. City may, at its option, with or without cause, and without prejudice to any remedy it may be entitled at law or in equity or otherwise under this Agreement, terminate this Agreement in whole or in part without penalty or liability, by giving at least thirty (30) days written notice to DCS.
- B. Termination for Cause.
  - i. Either party shall have the right to terminate this Agreement immediately by written notice to the other if:
    - a. state statutes are materially amended as to prohibit or negatively affect the operation of the Student Safety/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 Student Safety/School Bus Stop Arm Program;
    - b. 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
    - c. the other party commits any material breach of any of the provisions of this Agreement, and fails to cure such breach within the 90-day period set forth in in paragraph 7B(i) of this section .
  - ii. DCS shall have the right to terminate this Agreement immediately by written notice to the City if:
    - a. the Ordinance is revoked by lawful action of the City Council of Farmers Branch, Texas.
- C. Wind-Down Provisions.

- i. In the event of termination for cause, City and DCS 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 DCS 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 for cause 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 this Agreement is terminated or expires, the City and DCS shall organize a methodical and efficient schedule for removal of Equipment from the school buses, as applicable In no event shall this schedule be less than 180 calendar days. DCS shall provide for the removal of the Equipment, at its sole expense, barring any additional expenses caused by the City's negligence.
  - iv. Notwithstanding any other provision of this Agreement to the contrary, the City and DCS 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.
- D. 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.
- E. 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. DCS 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 Student Safety/School Bus Stop Arm Program, (b) deliver to City any and all Proprietary Property of City provided to DCS 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 DCS 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 Student Safety/School Bus Stop Arm Program and accessing the Intellectual Property related thereto and (b) promptly cause to be delivered to DCS the Proprietary Property of DCS provided to the City in this Agreement.
- iii. Unless the City and DCS have agreed to enter into a new agreement relating to the Student Safety/School Bus Stop Arm Program or have agreed to extend the Term of this Agreement, DCS shall remove any and all Equipment or other materials of DCS installed in connection with DCS's performance of its obligations under this Agreement including, but not limited to, camera systems from any of the school buses.

## **8. SURVIVAL.**

- A. Notwithstanding the foregoing, each Section of the following shall survive the termination of this Agreement:
  - i. Definitions
  - ii. License and Reservation of Rights
  - iii. Notice
  - iv. Liability
  - v. Choices of Laws and Venue
  - vi. Default/Cumulative Rights/Mitigation
  - vii. Assignment
  - viii. Governmental Immunity
  - 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.

## **9. 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 DCS, to:**

Rick D. Sorrells, Ed. D.  
Superintendent  
Dallas County Schools  
612 North Zang Boulevard  
Dallas, Texas 75208

**If to the City, to:**

Bob Phelps  
Mayor, City of Farmers Branch  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

**10. LIABILITY.**

It is understood and agreed between the parties that each party hereto shall be responsible for its own acts of negligence in connection with this Agreement. Where injury or property damage results from the joint or concurrent negligence of both parties, liability, if any, shall be shared by each party on the basis of comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses available to them, including governmental immunity. Neither party shall be responsible to the other party for any negligent act or omission in connection with this Agreement. These provisions are solely for the benefit of the parties hereto and not for the benefit of any person or entity not a party hereto; nor shall any provision herein be deemed a waiver of any defense available by law.

**11. 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 Dallas County, Texas. All statutes and laws applicable to this Agreement shall apply as amended from time to time.

**12. 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 both DCS 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. 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. ENTIRE AGREEMENT**

This Agreement represents the entire agreement between DCS 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. 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. 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. 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, including but not limited to the Interlocal Cooperation Act (Chapter 791 of the Texas Government Code); provided, that each party receive prior written consent and each party remains responsible for its respective responsibilities set forth in Section 4 herein.

### **18. 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. GOVERNMENTAL IMMUNITY**

This Agreement is expressly made subject to DCS'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 that the parties have by operation of law.

## **20. 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 DCS'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 DCS's or the City's Board of Trustees for appropriate action.

## **21. 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. 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 DCS or the City pursuant to this Agreement shall belong to DCS or the City, as the case may be.

### **23. FORCE MAJEURE**

Neither DCS 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 DCS. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

Neither DCS 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. SIGNATORY AUTHORITY**

- A. The person or persons signing and executing this Agreement on behalf of DCS has been duly authorized by action of DCS Board of Trustees to execute this Agreement on behalf of DCS and to validly and legally bind DCS 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 DCS and the City of Farmers Branch, Texas in duplicate, each party taking one (1) copy, as of the day and year stated below.

**DALLAS COUNTY SCHOOLS**

By: \_\_\_\_\_  
Name: Rick D. Sorrells, Ed. D.  
Title: Superintendent, Dallas County Schools  
Date: \_\_\_\_\_

**THE CITY OF FARMERS BRANCH, TEXAS**

By: \_\_\_\_\_  
Name: Bob Phelps  
Title: Mayor, City of Farmers Branch  
Date: \_\_\_\_\_